

SPEECH BY

THE HONOURABLE CHIEF JUSTICE
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OPENING OF THE LEGAL YEAR 2004

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Honourable Pehin Isa, Mr. Attorney, Your Excellencies of the Diplomatic Corps, distinguished guests, members of the legal profession, ladies and gentlemen.

It is a pleasure for us in the Judiciary to welcome you all again to this rather belated Opening of the Legal Year 2004. This annual event is of importance not only to the courts but also to the profession and the community at large. I should like to think of it as a venue at which we are able to exchange views, make suggestions some of which some times are beneficial and happily carried through!

My first thought about the statistics which have been mentioned annually was to skip it all together. On second thoughts I was afraid that this omission might be misunderstood. However, criminal cases registered during 2003 totalled 2025, about 750 fewer than 2002; civil cases registered in the same year were 967, that being 14 more than the previous year. Total revenue collected during 2003 was \$4,685,958.79, which was \$443,589.56 lower than was collected in 2002.

As we all know maintenance of law and order is a never-ending task. It involves both mental and physical faculties of people from various walks of life, professionals in different fields and those who may be described as the footmen or those who work in the field to enforce policies and decision taken by police makers. In order to succeed all these various sections of the community have to complement each other and understand that without full commitment of all to their calling incompetence or lack of agility to keep with the pace set by others will be a hindrance to progress towards achieving the final aim of all of them which is, as I have said, the maintenance of law and order.

It is just an important in my view as it is imperative that, as criminals become more resourceful, our crime busters are provided with modern crime detection implements and techniques. This aspect of the maintenance of law and order is not new and every one talks about it at one time or another. We attend seminars and send our up and coming young people abroad to learn more of the new inventions in this field. The corollary to that is that we should at the time make all those new facilities available at their disposal on their return. There are certain facilities, which are not available locally, for example samples taken from the scenes of crime and/or taken from suspects have to be sent abroad for testing or comparison. Coupled with that and this too is well known and has been harped upon in the past, is the role played by the lay prosecutors and the qualified public prosecutors. It is well known that criminal cases that appear from the evidence to be certain winners founder in court because of sheer incompetence or lack of knowledge and expertise in prosecuting or of the law.

Those ignorant of the principles, procedures and ethics of the common law upon which our judicial system is firmly embedded ask, in such a situation where the expected conviction was not achieved in spite of the strong indication from the paper evidence on record, why did the presiding judge/magistrate not help out the inexperienced prosecutor. The answer to this is obvious, that is, he simply cannot if he is to maintain the court's independence and his neutrality.

Perhaps it is time now to seriously consider investing more in crime detection as well as in crime prosecuting. Not too infrequently one hears this comment: what good is it to send people abroad to attend lectures, seminars or workshops if the facilities essential for the successful

implementation of the knowledge and experience gained, are not made available to them on their return. After all judicial decisions are made on the material put before the courts. Judges and magistrates are incapable of providing any assistance in this regard and if the requirements of the law in any given case have not been met there is bound to be an acquittal. Those bearing the heavy burden of prosecuting must be made to hone their knowledge and ability by regular refresher courses, and have at their disposal all the modern means of detection.

Staying with this topic of court work I should like to briefly touch upon the role of court interpreters. As you know English is the court language, so that where evidence is given in a language other than English it has to be translated simultaneously by the interpreter, keeping pace with the witness. Interpreting correctly in such circumstances is no mean task: it calls for more than average proficiency in both languages. It goes without saying that this is an onerous task of tremendous responsibility as it is upon the interpreter's version of the evidence that the ultimate decision of the court will depend. It is imperative therefore that we have such persons on this job who are properly trained and are well versed in local dialects and various languages of this region as well as English.

As of now there are 8 permanent interpreters, all having undergone a month long training course in Singapore, and 7 on call stand by basis. Training on the job is not very satisfactory as it slows down the progress of the case and more often than not there are objections from both sides. On the whole our courts have managed quite well and the care with which interpretation is kept under close scrutiny has been quite effective in maintaining the quality of justice. The judges and magistrates appreciate their assistance and I salute them for their contribution and determination. It seems that there is no shortage of applicants for this position. Recently two posts for interpreters and one for legal assistant were advertised. The response was staggering, over 100 applicants applied. We envisage that with the availability of new courts in August 2005 we shall need some more interpreters.

In view of the important role that they play in maintaining the standard of justice I think that it is advisable to have some proper interpreter training facility. The Chief Registrar is currently in the process of applying to the Australian Institute of Judicial Training for membership. This will enable us to avail of the training opportunities for judges, magistrates, court interpreters and court administrators.

There are some subjects that have been mentioned before, but there seem to have been no movement with regard to those topics. For example, the Small Claims Court was at one time being considered. I recall that a draft of the proposed legislation was made available but since then it seems to have been put in the freezer. There are some other services under the umbrella of the Welfare Department of the Ministry of Culture and Sports such as community service, reformatory schools, probation service and the approved schools. These are relevant to young or youthful offenders for whom prison is not appropriate. The staffs of such institutions are required of necessity to be well trained. Sending such offenders to prison is not an acceptable alternative, not even if they are segregated from adult prisoners. These institutions I have named ought to be manned by fully qualified and trained staff.

Last year I touched upon the duty of citizens to assist the crime-prevention agencies in detecting crimes. That duty remains constant and perpetual and if citizens wish to live happily without fear of thugs and criminals then they must come forward and do what is legally and morally required of them, that is, identify the culprits and be willing to testify against them. Every citizen should understand and appreciate that such assistance to the relevant authorities, be they the Police, the Narcotics Control Bureau or the Anti-Corruption Bureau etc. will ultimately result in providing them and their families a safer and more enjoyable life. I think that we should put a little more effort both in terms of manpower and extra money on programs to enhance public awareness and appreciation of their obligation of assisting crime preventing agencies.

I am not forgetting that the other essential aspect leading to the success of any judicial system is the professional quality of the advocates and solicitors who represent clients at trial. They are qualified people and are referred to both in Court and outside as the learned people. Those who have had occasion to sit through a trial will recall how often lawyers representing the parties addressed each other as my learned friend. Many may wonder, after watching the performance of some of them in Court, whether that expression is truly befitting or simply is a euphemism. To be deserving of such a compliment the advocate must prove that he is in fact learned in the law and its practice, both in and out of court. Just as the judicial officers need to have refreshers to keep pace with the incessant developments in the legal field generally, so also members of the legal profession need to undergo such short refreshers so that they are able to prove themselves to the society that they indeed are learned in the law. Merely passing the law examinations of any kind does not a lawyer make, it is only by slogging through the few years after university or the Inns of Court as juniors and gaining experience through sheer hard work that some, and I emphasize some, can claim to boast of being good advocates. I have not heard of the existence of any such local refresher scheme. The reason for this is not difficult to identify which is, in my opinion, the non-existence heretofore of any professional body to take care of the quality and standard of those who practice at the Bar of the Courts of the country.

This subject that had been mentioned repeatedly almost annually is now near to fruition. The relevant law has been amended to allow for the setting up of the Law Society. However, there still remains a final step before elections for the Council can be held. That is the formulation of the election rules, which have been drafted and are now the subject of final discussion by the advocates. Once this had been done I shall waste no time in approving the rules. The advocates will then be able to elect the first Council of the Law Society of Brunei Darussalam.

The importance of this Society has been discussed on a number of occasions. Perhaps it is appropriate at this juncture to remind the local legal fraternity of the words of Lord Donaldson of Lynton, former Master of the Rolls, in the foreword he gave to *The Law, Practice and Conduct of Solicitors* by Bird and Weir (1989), where he referred to the "strident demands for change....at a time when changes already made could fairly be described as not far short of revolutionary". Admittedly we have not had any such changes, but I think that his comment is about the profession generally and may be beneficial for those forming the profession to be reminded of it. The learned Master wrote:

“A profession neither deserves to endure, nor will it endure, if it does not adapt to the changing needs of its clients. But equally a profession neither deserves to endure, nor will it endure, if it abandons or compromises the essential characteristics which make it a profession rather than a business.”

Those words encapsulate the true worth of the legal profession. Our legal profession is fused, that is, a lawyer acts in the dual capacity of a barrister and a solicitor. In that sense his responsibility may be said to have doubled. I think that it can be said with some degree of certainty as is argued by the co-authors of the book to which I have referred, that the profession insists that the conduct of advocates satisfied two fundamental principles, “the need to avoid conflict,” of interest and “the requirement that for justice to be done it must also be seen to be done...and to abrogate either for the sake of greater competition would indeed be to set the market-place above the rule of law.”

I feel that there is need for our advocates to be reminded of those fundamental principles lest they let the urge to degrade and bring this noble profession down to the level of a business, where the entire human energy is geared to making as much wealth as possible within as short a period of time as possible, takes the better of them. The authors refer to “the demands of the market-place, on the one hand, and the requirement that the machinery of justice must be seen to operate in the public interest, on the other”, so that as the authors say and I am certain that we all would agree, “the status of officer of the Supreme Court is an integral part of the solicitors’ independence, and that it would therefore be against the public interest if that status were lowered.” Surely that ought to be the goal for the profession and it must be at the top of the priority list for the Law Society.

Advocates are bound by the ethics of the profession to guard against conduct that would bring the profession into disrepute and it is hoped that the Law Society of Brunei will be bold enough and not shirk its responsibility and duty to take care of such tendencies, should they be found to exist. It is within the framework of the rules of conduct that advocates serve the public. All advocates know but I think that it is appropriate at this juncture to repeat the words of Lord Mansfield as long ago as 1767 about the predecessors of the modern solicitor, locally he is known as advocate, that “part of the profession which is carried on by attorneys is liberal and respectable, as well as useful to the public, when they conduct themselves with honour and dignity.”

We and the rest of the community except the new Council to take heed of those words and to ensure that the profession always follows that edict, to conduct themselves with honour and dignity. I think that I have said enough but let me end on this note of warning to the first Council of the Society soon hopefully to come into existence that the community shall watch their performance closely and carefully in dealing with the rogue element within the profession, should it be detected, and the Council will certainly be held accountable in that respect.

I am sure that the honourable guests here assembled this morning would join me without any hesitation in wishing the Law Society of Brunei Darussalam all the very best and success in the discharge of their onerous burden. Let the Society acquit itself of its responsibilities without fear or favour with understanding, honour and dignity, to the full satisfaction of the citizens.

We await with anticipation and eagerness the arrival of the IT technological benefits, particularly the Court Management System (CMS), which will provide the background anchor service as well as the backbone of the computerized work system of the courts. It is our vision that once implemented, the CMS will lead the way to a full Electronic Filing System consistent with our commitment and endeavour to become a fully fledged paperless Court. We are lagging behind in law reporting since it is done elsewhere outside of Brunei. Hopefully the envisaged CMS will take care of this problem as well.

As you may have noticed there are signs of construction works in the vacant area to the left of the Law Building. This new building will house some government offices viz., the companies and the trade marks registries, and some courts and facilities for lawyers. The stone laying ceremony took place on 22nd April 2004 and the expected completion date of the project is 2nd August 2005. The court accommodation in this new building will ease the present shortage of courts in the Supreme Court Building, which becomes acute when the Court of Appeal is also in session. Hopefully these problems will disappear when the new building is completed.

I should not forget the Guard of Honour parade mounted by the police contingent. As usual they immaculately and paraded so professionally. To all of them and to the Commissioner I say thank you very much.

All that remains for me now is to offer you the sincere thanks of all those employed in this building from the humblest rank right through to the top for your attendance and for the patience with which you have sat through my address.

Before I end may I take this opportunity to publicly thank Honourable Pehin Isa who, as a member of the profession, has so ably represented the profession over the years in the absence of a body representative of the advocates. I can speak on behalf of the Judiciary with confidence and thank him for his valuable advice and suggestions from time to time. I have no doubt that I speak for all concerned in saying that the Honourable Minister has represented the profession in a very sagacious and capable manner in the absence of the Law Society.

I shall now call upon the Honourable Attorney General to express his views and he will be followed by Honourable Pehin Isa. After the speeches we shall proceed to the main lobby on the ground floor for some refreshments.