

SPEECH BY

THE HONOURABLE CHIEF JUSTICE
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OPENING OF THE LEGAL YEAR 2007

TUESDAY, 27 MARCH 2007

Honourable guests, Ladies and Gentlemen, good morning and welcome.

Another year has gone past, leaving some of us aghast at the speed at which the 365 days have become part of history. This is the usual comment one hears at the beginning of a new year.

But that is not all. Wisdom and sagacity lies not in celebrating on the pretext of welcoming a New Legal Year, rather it should remind us that it is time we took stock of ourselves, our profession and what we have achieved and what has been carried forward to this New Year.

In keeping with tradition I shall now state the figures of the various types of cases for 2006. Starting with the Magistrate's Court, and criminal cases first, the Court in Bandar Seri Begawan had 2662 cases registered, this being 247 more than 2005; Kuala Belait Court the figure was 310, that is, 122 less than the previous year, Tutong Court had 83 registered in 2006, that is, 40 less than in 2005; likewise Temburong had only 6 as compared with 32 in 2005.

The figures for civil cases registered in the Magistracies were: in Bandar Seri Begawan 1926 suits filed in 2006 as against 784 in the previous year; Kuala Belait Court showed the figures of 104 registered in 2006, this being only 4 more than the previous year; Tutong Court had 5 registered in 2006, that is 2 less than 2005 and in Temburong Court no civil matters were filed in the last two years.

The Intermediate Court had 193 civil matters registered in 2006, this being 3 more than in 2005, and 19 criminal matters were registered in 2006, this being 3 less the previous year; 8 civil appeals from decisions of the Magistrate's Courts were filed in the High Court in 2005, this being 5 more than in 2004, and 23 criminal appeals were filed in 2006, this being 18 less than in 2005.

Coming now to the criminal cases heard by the High Court, in 2006 it dealt with 22 cases as against 29 in 2005; and 174 civil cases were filed in the High Court in 2006 as against 196 the previous year. Civil appeals to the Court of Appeal from the Intermediate and the High Courts numbered 17 in 2006, that is, 4 less than in 2005; and criminal appeals to the Court of Appeal in 2006 were 14 in number, this being one less than the previous years. Chamber hearings before the Senior Registrars and Registrars had jumped to 554 in 2006 from the figure of 231 in 2005.

With regard to bankruptcy matters in 2006, 387 bankruptcy notices were issued; 305 receiving orders made; 114 adjudication orders were issued; 29 rescission orders made; no discharge of adjudication orders and 2 winding up orders were issued, as compared to 354, 171, 44, 19, 1 and 3 respectively in 2005.

Still on figures, there were 237 letters of administration issued in 2006 as compared to 264 in the previous year; of the 10 probate matters registered in 2006, 7 were issued. 161 civil marriage ceremonies took place in 2006, 3 more than in the previous year; and 22 divorces were registered in 2006 compared to 16 in 2005.

Legal aid was provided to 7 accused persons in capital cases in 2005 and none in 2006.

Lastly, the total revenue from civil and criminal matters, searches and registration matters amounted to \$2,721,021.34 and fees paid in respect of miscellaneous matters came to \$3,150.00. Estate duty paid totaled \$859,261.58 and stamp duty paid amounted to \$1,454,506.88.

I do not think that it is an easy task to look at ourselves critically, and take account of our achievements and the opportunities missed over the year that has gone by for, generally speaking, there always are numerous highs and the lows in our lives of the days gone by. I think it is important, therefore, in so far as the Courts and the Bar are concerned, that I should remind the learned members of the Bar of the existence of the supervisory role of the Law Society. I appreciate that I discussed this topic in the past but as Cicero reminded the citizenry, 'the good of the people is the supreme law', it is just so that I should revisit the past to refresh our memory of what people expect of our advocates and solicitors.

As is well known, advocates are important adjuncts in the achievement of justice for all who come to these courts seeking settlement of their disputes and legal problems. Thus the role of judges and lawyers is of significant importance. This reminds me of the address delivered by Justice Sardar Muhammad Iqbal, Chief Justice, Lahore High Court, Pakistan, to the District Bar Association in December 1975, (reproduced in the Malayan Law Journal [1977] 1 MLJ viii), under the heading "The Role of Lawyers and Judges", and the learned Chief Justice said,

"The Bench and the Bar must be regarded as component parts of the foundation rock on which is based the pragmatic functioning of basic activity of the State, that is, administration of law and order. No society, without a harmonious system of administration of law and order, can continue to exist as a civilized society. What is of utmost necessity for saving a society from reverting to the law of jungle is a strong integrated Bar and Independent Judiciary. Upon the proper functioning of the Courts depends not only the enforcement of rights and liabilities, such as those between individuals, but also the protection of the individual against arbitrary government and the protection of society against the lawless individual. The proper functioning of the Courts, however, depends a great deal upon the performance of the Bar. If the Bar is capable, conscientious and responsible, the quality of judicial performance is likely to be good: if not, the quality of justice is likely to be deficient." [Emphasis supplied].

These comments set out concisely the individual roles of the Bar and the Judiciary, emphasizing I think, the importance of the performance of the Bar, upon which rests the ultimate quality of justice that the Courts will administer. The advocate's role is: the training of one who is called to the Bar to understand that a member of the Bar is a helper in the administration of justice, that he is there to help the judge, and, when there is a jury, to help the jury, to arrive at a proper result in the dispute between the parties – *Beevis v Dawson and Others* [1956] 3 All ER 837, CA., at p. 839.

It brings to mind a comment made by an American Supreme Court Justice, Judge Sandra Day O'Connor, quoted in the *New Lawyer's Wit and Wisdom*, compiled by Kathryn Zullo, at p. 209. The learned Judge said, "I have watched with great sadness the decline in esteem held by our society of lawyers. There must be a rediscovery of civility in the profession."

That same “decline” has been clearly noticeable locally too, not only by the courts but also by those watching the performance of the profession. There may be voices of dissent from the practitioners, arguing that this statement of the learned Judge is too wide, that it does not and cannot envelop the entire membership of the Law Society. But they should be reminded, I think by way of retort, of the proverbial ‘single rotten egg’, that the Law Society should watch out for and deal with such ‘rogue’ element in a manner that would serve as a deterrent to others of the Law Society.

I emphasise that our Law Society has an uphill task ahead of it. Being the first one in the country, not only does it have the duty to chart the path ahead for the present but also for the next generation. It is for this reason that the members of the Society carry a heavy burden of dealing with the complaints that the Society might receive, with a firm yet even hand, thus setting precedents for the future.

The complaints against the members of the profession may be few and are bound to be about different topics. It is up to the Society to prove its worth and hand down its decisions even handedly, keeping at the forefront of their mind that they are required to act without fear or favour.

What is often overlooked is how the members of the profession behave and conduct themselves in the community as well as in the Courts of Law. They are required by the nature of their calling to set an example of excellence, impartiality and honesty, not forgetting that it is considered to be an unforgivable sin for counsel to try to deceive or mislead the Court in any manner so as to gain the upper hand. An advocate deceives or knowingly or recklessly misleads the court when, according to “The Guide to the Professional Conduct of Solicitors”, 8th ed., 1999, a publication of the Law Society of the United Kingdom,

“he or she puts forward to the court, or lets the clients put forward, information which the solicitor knows to be false, or is reckless as to its truth, with the intention to secure a result which would not otherwise be secured. The defence solicitor need not correct the information given to the court by the prosecution or any other party which the solicitor knows will have the effect of allowing the court to make incorrect assumptions about the client or the case, provided the solicitor does not indicate in any way his or her agreement with that information.”[Annex 21F, page 404].

This is an elementary, yet basically an important principle, which is taken for granted by members of the public and the courts. Yet, experience has shown that not all practicing lawyers are true to their professional oath and conduct themselves in a manner, which brings the profession into disrepute. Whatever the reason for their conduct, be it to win litigation by hook or by crook to impress the client or to seek reputation or be it simply for financial gain, soon enough a minor incident is sure to blow their cover and project them in their true colours for what they really are worth.

I imagine that such unscrupulous advocates are to be found everywhere, and Brunei Darussalam can be no exception. However, these characters bring the entire profession, reputedly the noble profession, into disrepute, not overlooking the fact that such conduct may, depending upon the manner in which litigation is conducted in court by the particular counsel, tarnish the entire judicial

process, as well as the image of the Judiciary. They should be aware of the fundamental principle that advocates “have an overriding duty to the court to ensure in the public interest that the proper and efficient administration of justice is achieved: they must assist the court in the administration of justice and must not deceive or knowingly or recklessly mislead the court”. *

Besides their overriding duty to court to ensure in the public interest that proper and efficient administration of justice is achieved, the advocates have to be bold to the extent that they,

“must promote and protect fearlessly and by all proper and lawful means the clients’ best interests and do so without regard to their own interests or to any consequences to themselves or to any other person (including professional clients or fellow advocates or members of the legal profession)”.

Now that we have the Law Society, it is expected that it will not be slow to effectively deal with or shun any ‘rogue’ characters who display the tendency to act to the contrary, keeping always at the forefront of their minds, the words of the 4th century B.C. philosopher Socrates, “Nothing is to be preferred before Justice”, which, to my mind, advocates ought not ever forget or ignore. They should attempt to fully comprehend the wisdom of this maxim, and never during their time at the Bar let it be erased from their minds.

I should think that it is not difficult in not too large a community to get to know of the activities of others of the same profession. Nevertheless, the Law Society will not act on mere rumours or speculation of any wrong doing without any complaint from an aggrieved party first having been registered against the advocate who had been acting for him. Perhaps lawyers would benefit from a comment, which the great man, Sir Winston Churchill, once made, “Never stand so high upon a principle that you cannot lower it to suit the circumstances.”¹ Hopefully this might be of some guidance to counsel who are habitually at sea, when making their closing speeches, to heed this beneficial advice which is bound to save a good deal of valuable time for everybody.

* The Guide to the Professional Conduct of Solicitors, 8th edn. The Law Society, p.386.

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So, now, members of our noble profession are on notice: any infraction of the rules of conduct and practice brought to the attention of the Law Society will, hopefully, be dealt with promptly and appropriately. Let them heed the words of Francis Bacon, the English philosopher and writer, “If we do not maintain Justice, Justice will not maintain us.”² The gauntlet has been thrown; let them prove that Sidney J. Harris, British-American writer, was wrong when he said,

“Bar associations are notoriously reluctant to disbar or even suspend a member unless he has murdered a judge downtown at high noon, in the presence of the entire Committee on Ethical Practices.”

Still on the topic of the practicing members of the Bar, it seems to have become habitual for some of them not to attend Court on the date that had been fixed in their presence for the next mention

of a criminal matter, and instead ask another advocate, who is almost invariably ignorant of the subject matter or the reasons for the mention, to attend on their behalf. This conduct exposes their utter lack of respect for the Court as well as blatant ignorance of what the word "mention" in this particular regard means. The basic point clearly is that they are under instructions by the accused person to represent him, and this means to represent him personally in Court or in Chambers on any date fixed by the Court in the presence of the advocate and his client, one exception to this rule of practice being the advocate being unwell for which a medical certificate from a Government hospital would suffice; there may be other reasons but those have to be cogent and supported by a relevant certificate from a recognized authority. The accused, who more often than not, is held in remand custody in the prison, is brought up into Court, but missing is the counsel who had been instructed by the accused; instead some other counsel stands up and informs the Court that he appeared for the accused on behalf of his counsel, who was out of the country on some errand or for some other reason.

1 The Wicked Wit of Winston Churchill, compiled by Dominique Enright, July 2001, page 148.

2 The New Lawyer's Wit and Wisdom, compiled by Kathryn Zullo, page 164.

3 The New Lawyer's Wit and Wisdom, page 124.

On the face of it, it may look satisfactory, but is it? The absentee lawyer did not have the courtesy of personally applying to Court for permission to leave the jurisdiction, perhaps he did not know of the existence of this basic principle that he could not just disappear at his own whim and fancy or for, the so called, very important matter abroad or whatever reason, which usually is the excuse put forth by the Good Samaritan stand-in lawyer filling in the gap left by the absentee counsel.

It is a basic principle that, where counsel has been retained by an accused person who is being held on remand or is on bail, he ought to be there in Court on the date that had previously been allotted either for the trial or for mention.

This word 'mention' is about the exercise of the Court's inherent jurisdiction to adjourn a criminal matter before or after a plea has been taken from an accused person, for some reason pertaining to the accused or for some matter relating to the prosecution of the case and brought to the Court's attention by either party, which necessitates adjourning the matter to another date to enable the party applying for such postponement to deal with the matter, thus facilitating smooth progress of the trial without any interruption once the trial proper has commenced. This procedure is helpful to both parties in that documents such as witness statements etc. may be made available to the other side, or generally to clear away any other potential problems that might cause some delay to the trial if not dealt with beforehand.

It is clear therefore that 'mention' of the case is an exercise geared towards the smooth and uninterrupted progress of the trial once it starts, save for some unexpected development that the parties might not have perceived beforehand. As such 'mention' of a criminal matter is an important step in the preparation for a smooth progress of the trial proper.

It is fundamental that attendance of counsel on any date fixed either for mention or for trial may be dispensed with by the Judge in charge of the case for good cause shown in person by the advocate who had been retained by the accused, the prosecutor also having an opportunity to make any comment on the application. All this usually takes place in the presence of the accused person.

Thus the practice to make light of the mention date projects either ignorance of the rules of conduct, or deliberate non-compliance thereof and is, in my opinion, improper and inexcusable, as it shows that the advocate concerned has "forgotten that the main purpose of the law profession is to serve the public interest",* which is not served by such shoddy and, may I add, irresponsible conduct of the advocate retained by the accused.

(* The New Lawyer's Wit and Wisdom compiled by Kathryn Zullo., p. 123.)

I think, therefore, that this is an appropriate occasion to sound this warning to those who, by their conduct, challenge the inherent jurisdiction of this Court over advocates as officers of the Court, and choose deliberately to disregard it or pay scant regard to its importance and to the dignity of the Court, may be liable to be held in contempt of Court and to suffer such punishment as the Court may, in its absolute discretion, mete out to them for their misconduct.

One significant matter spilling over from the last year into the current year ought to be mentioned, and this concerns capital cases, those being cases for which the law has provided the death penalty. According to the latest list of such cases awaiting trial, provided by the Prosecuting Section of the Attorney General's Chambers dated 5th March, there are eight such cases awaiting trial in the High Court: six are drugs related cases, one fire-arms case and one murder case. The law as of now prescribes that two judges shall hear such cases. This leaves one other judge and the Chief Registrar who wears two hats in that he acts in a dual capacity: that is, carrying on with his substantive duties of Chief Registrar and also sitting as a Judicial Commissioner which, is a tenuous arrangement but it highlights the pressing need for at least one more full time Judge. The sooner the complement of the present full-time High Court judges is increased, the better it will be for clearing up the backlog, and keeping pace with the increasing work-load in the High Court. This is perhaps not properly appreciated in some quarters, thus adding to the accumulation of the backlog of criminal and civil workload of the present complement of judges. It follows that any undue delay in the disposal of criminal cases has the undesirable effect of enhancing further the incarceration of those accused persons who are held in remand custody because of the seriousness of the alleged crime committed by them, thus burdening such accused with the uncertainty of their fate.

This problem has been recognized by other jurisdictions, Malaysia for example amongst others. They have adopted the practice, which I have no hesitation in recommending strongly that we should follow as well, of one judge hearing capital cases. This is not unusual since it is already

being practiced by some other common law jurisdictions, thus affixing the seal of approval upon the practice and procedure of the conduct of the trial by one judge, and confirming also that in no way is the quality of justice harmed or affected in maintaining its standard in any manner or form. The accused person does not suffer any disadvantage or prejudice, nor does the prosecution steal the march over the accused. In the event of conviction of the accused by a single judge, the accused is free to appeal to the Court of Appeal.

Thus in the local context, one judge will be spared to handle some other matters. It is manifest therefore that this procedure provides for a speedy trial for the accused persons facing capital charges and I should repeat that this procedure and practice be adopted and that the sooner it is done, the better will it be for all those concerned, especially the accused persons who will not have to wait a long time for their trial as is the case at present.

I can say with confidence that our judiciary is fortunate to have experienced judges who are capable of dealing with such capital offences sitting alone.

Just a brief note of information before I finish, our Magistrates moved out of this Courthouse on 15th May 2006, and are now housed in the newly built beautiful building called the Law and Courts Building, within a short walking distance. However, walking over to the Magistracy now by the shortest route has one hazard to overcome. This is to cross over a ditch immediately next to which is the boundary wall, at the most 2-3 feet high. To overcome this problem, a wooden structure of some planks has been placed at the spot, leaning on the ground on our side. The majority is of the view that we should have a proper covered walkway commensurate in style with the buildings it would connect, those being the High Court building to the Magistracy and then on to the Attorney General's building.

I should take this opportunity of thanking the police, the prosecutors, all other police institutions concerned with crime prevention and detection and the prison authorities, for their arduous task. The courts appreciate and applaud their efforts in this regard and for keeping the courts busy.

Lastly, may I express on behalf of the Judiciary and on my own behalf our thanks to you all for sparing some of your valuable time to enable us to keep you informed of the functions, achievements and hopes of the Judiciary. I am particularly grateful for your patience in listening to what I had to say.

I now call upon the Honourable the Attorney General to address this gathering, and he will be followed by the President of the Law Society.

At the conclusion of all the speeches, would you please proceed to the ground floor for refreshments.