

SPEECH BY

**THE HONOURABLE CHIEF JUSTICE
DATO SERI PADUKA MOHAMMED SAIED**

OPENING OF THE LEGAL YEAR 2009

TUESDAY, 17 MARCH 2009

Mr. Attorney, Mr. Zainidi, Honourable Guests, Ladies and Gentlemen, good morning and welcome.

It's been a few months now that we said goodbye to the last year and welcomed the New Year, 2009. We hope that it bodes well for all of us.

But first as usual the figures of the various type of cases for 2008, starting with the Magistrates' Courts, and criminal cases first. The Court in Bandar Seri Begawan had 3412 cases, that being 48 more than 2007; for Kuala Belait the figure was 366, that is, 45 more than the previous year; Tutong Court had 79 registered in 2008, that being 65 less than in 2007; and Temburong Court had 47 criminal cases registered compared with 12 in 2007.

The figures for civil cases registered in the Magistracies were: in Bandar Seri Begawan 1533 suits were registered in 2008 as against 1979 filed in the previous year; Kuala Belait Court had 273 registered in 2008, that being 178 more than the previous year; Tutong Court had 239 registered in 2008, that is 228 more than in 2007, and in Temburong Court no civil matter was registered as in the previous three years.

The Intermediate Court had 107 civil matters registered in 2008, this being 28 less than 2007; and 14 criminal matters were registered in the past year, that being 7 less than the previous year.

There were 8 civil appeals from the Magistrates' Courts to the High Court in 2008, the same as in 2007; and 37 criminal appeals were filed in 2008, this being 6 more than in 2007.

Coming now to the criminal cases heard in the High Court, the Court dealt with 21 cases as against 11 in 2007, and 192 civil cases were filed in the High Court in 2008 as against 161 in the previous year.

Civil appeals from the High Court and Intermediate Court to the Court of Appeal in 2008 numbered 29, that being 9 more than in 2007; and criminal appeals to the Court of Appeal in 2008 were 12 in number, this being 5 less than the previous year.

Chamber hearings before the Senior Registrars and Registrars dropped to 297 from 454 in 2007.

There are 2 capital cases before the High Court awaiting trial of which one is of drug trafficking, and the other one murder. Trial dates have been given for both cases.

Lastly, the total revenue collected during 2008 amounted to B\$5,719,879.65 as compared to B\$7,425,571.41 during 2007.

I should think that not many people are aware of the fact that we shall also be celebrating the Silver Jubilee of the opening of the Supreme Court Building this year.

May I now take you back in history some 25 years to the opening of this courthouse by His Majesty when he said,

“Indeed it is my hope that in future all the officers and staff of the Judiciary will all comprise of my own subjects as what the position of the Legal Department at the moment. But the most important is to maintain the position of a just and equitable judiciary. So in that respect I urge my subjects especially those who are still in schools and institutions of higher learning to choose the subjects of law so that in future they can play an important role in the management of judicial and advocacy may it be in the Government or private sectors.”

Since then the staff of the Judiciary is now comprised mainly of local persons. All Magistrates and Registrars of the Supreme Court are Bruneians, as is the one Intermediate Court Judge. There are

three local Judges of the High Court. The Chief Justice is this humble person who is now addressing you.

In other larger jurisdictions, there usually is a bigger fraternity of practicing lawyers contrasted with much smaller jurisdictions where the number of practicing lawyers is comparably that much smaller.

Brunei Darussalam is one of such smaller jurisdictions where manpower resources are limited in certain fields, one of which is the Judiciary.

Appeals from the High Court in both criminal and civil matters go to the Court of Appeal, which presently is constituted by three retired judges from England and Australia to make up the full Bench at the sittings of the Court of Appeal twice a year.

A watchdog of some sort is necessary in an institution such as the Law Society which exists here in Brunei Darussalam to keep constant eye on the legal practitioners and keep them under tight rein. That ought to be, as far as I am concerned, one of the foremost concerns of the Law Society. This will ensure that members of the public seeking legal representation will be satisfied that they will be properly represented in the court of law.

I am glad to learn that the Law Society has heeded my advice to hold Seminars for the benefit of the profession. This exercise should continue regularly.

Occasionally we see an article in a newspaper or a magazine or internet media which is critical of judicial officers. The question would then arise whether the article is a contempt of court. This was considered in *Regina v. Commissioner of Police of the Metropolis, Ex parte Blackburn (No.2)* [1968] 2 Q.B.150. Lord Denning M.R. said at p.154:

“But is the article a contempt of court? This is the first case so far as I know where the Court has been called on to consider an allegation of contempt against itself. It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise: more particularly, as we ourselves have an interest in the matter.

Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing that is written by pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.”

Lord Salmon made this comment:

“It is the inalienable right of everyone to comment fairly upon any matter of public importance, This right is one of the pillars of individual liberty – freedom of speech, which our courts have always unfailing upheld.”

And Edmund Davies L.J. said:

“The right to fair criticism is part of the birthright of all subjects of His Majesty.”

I shall end with another quotation from What next in the Law by Lord Denning at page 268 under the heading “4. Leave it to the judges”:

“I know that there are difficulties in leaving it to the courts. It depends on whether the facts give rise to a point for discussion. It depends on whether the client or the lawyer will take it up. It depends on whether the judges have the wisdom or the courage to develop the law: or whether they will simply say: ‘It is not for us. It is for Parliament.’

But my answer is this: Even if you do get Parliament to pass a statute, you will still have many of the same problems. I hope that the judges of the future will do as the judges used to do in times past: they should develop the law according to the needs of the times. They should be among the bold spirits. They should not be timorous souls feebly saying: ‘It is for Parliament, not for us’: see *Candler v. Crane, Christmas & Co.*, [1951] 2 KB164.

We should heed that advice and be not afraid of being the bold spirits.”

Habits of people change over a period of time, so also their views. The law is not static and has to keep pace with the changing circumstances. This, to me seems an absolute, for if the law lags behind times that would quite obviously spell serious trouble for the citizens.

I am grateful to the Chief Registrar and the officers and staff of the Judiciary for the preparations they have made for this ceremony.

My thanks also go to the Commissioner of Police and the Royal Brunei Police Force for the guard of honour which I was privileged to inspect this morning.

I should not forget the Prisons Department for their assistance in holding the prisoners awaiting plea and trial, in safe custody.

Finally, on behalf of the Judiciary I must express my appreciation to all of you who have found time to attend this annual occasion. I think it signifies that there remains a deep interest in our judicial system which I believe has served Brunei Darussalam well and will continue to do so in the future.