1994

The Attorney-General's Speech

It is my privilege and pleasure once again to address you this morning on the occasion of the opening of the New Legal Year.

The import of this morning's ceremony lies not in marking the passage of time but in reminding all of us who are gathered here that the quest for justice under the law does not end with the calendar year. It is a matter of great comfort to all our citizens who value the benefits of a safe and orderly society under the rule of law that in Singapore the administration of justice is placed in the safe custody of an independent judiciary, assisted by a self-regulated and independent Bar and by a State prosecution service in criminal trials. And so, it is appropriate that on this occasion we the members of the Bar and the Law Officers of the State make our annual pledge to assist your Honours in the best traditions of the profession in the discharge of your onerous duties in the coming year.

The past year was another year of progress and achievement for the Judiciary. Many more changes the machinery of justice, covering both the superior and the subordinate courts, were put in place to make our legal system more efficient and responsive to the needs and expectations of the public. More cases have been disposed of by the judges and the registrars with a degree of dedication, effort and efficiency unmatched in previous years. Our jurisprudence continued to be enriched by the large number of judgments handed down by your Honours, many if not most of which were, I understand, written outside of what is normally known as office hours. As a measure of your Honours' productivity, the 1993 Singapore Law Reports was published in three volumes, each with over 1000 pages of text, and that was after rigorous selection for publication. The District Judges and registrars have also responded in similar fashion. We now have a problem in finding a suitable journal to publish the many reasoned decisions given by them for the benefit of the profession.

It is common knowledge among the legal profession that this unprecedented increase in judicial output and productivity is due primarily to the inspiring example set by you, Chief Justice, in ensuring, whenever necessary and without denying any party a fair trial, that cases fixed before you are disposed of within their allocated time, and in delivering fully reasoned judgments soon after. It was not unusual for the Court of Appeal to sit well past the official court hours so that appeals fixed for that day would not run over to the following day. Emulating your example, it was also not uncommon for some judges and judicial commissioners to sit late into the day and also on Saturdays. I am full of admiration for the change in culture and attitude of the Judiciary in the past few years in the conduct of judicial business. Under your leadership, I do not believe that the public need have any misgivings of justice being denied by delays in the delivery of judgments or grounds of judgment.

I should however like to comment that the unremitting pace at which your Honours and also the Subordinate judiciary have worked last year, no doubt aided and abetted by some workaholic Registrars and Assistant Registrars, caused a tremendous strain on the manpower resources of my Chambers, particularly in the Crime Division. A normal busy day in the Supreme Court last year required the attendance of no fewer than 15 or 16 deputy public prosecutors to appear before the High Court for capital trials and Magistrates' appeals and before the Criminal Court of Appeal for criminal appeals. I would like to express my appreciation to my DPPs for their dedication and untiring efforts in successfully rising to the challenge.

The Legal Year 1993 is a watershed in the legal history of Singapore. It was a year when Parliament provided the legislative framework for the judiciary to begin a new era in the development of our legal system and our laws. The Constitution of the Republic of Singapore (Amendment) Act 1993 and the Supreme Court of Judicature (Amendment) Act 1993 have made it possible for the establishment of a new Court of Appeal with appellate civil and criminal jurisdiction and for the appointment of permanent Judges of Appeal. The Court was duly constituted on 1 July 1993 when Justice Karthigesu and Justice Thean were appointed as the first Judges of Appeal. I take this opportunity to offer my congratulations to both of them on their well-deserved appointments and wish them a long and successful tenure in their new office.

The establishment of a permanent Court of Appeal has a special significance in the legal and constitutional history of Singapore. It means, first of all, that the higher judiciary has reached a numerical strength which has made it possible for the State to dedicate two of our best judges, in terms of legal knowledge, experience and judgment and other judicial qualities, to the hearing of cases which in the main would be concerned with determination of points of law. Secondly, for suitably qualified practitioners

who are prepared to exchange their successful and financially rewarding careers at the Bar for high judicial office, the permanent Court of Appeal also opens up one more avenue for judicial advancement. Thirdly, it puts an end to a less than ideal appeal structure whereby judges of equal standing in hierarchy are required to judge the merits of each other's judgments.

However, the crucial importance of the permanent Court of Appeal lies in its prospective role in the development of an indigenous legal system appropriate to the needs and values of the society we live in. The Privy Council remains as of now, in legal theory, the final appellate court of Singapore. However, in the last few years, consequent upon the imposition of various statutory restrictions affecting the types of cases and the circumstances in which appeals from the Court of Appeal may be made to the Privy Council, the Court of Appeal has functioned as the de facto final appellate court in our legal system. This state of affairs will continue whether or not we sever our formal links with the Privy Council. It is unlikely that the Privy Council will ever again act as a constraining influence on the ability of the Court of Appeal to develop the common law to suit our circumstances. For this purpose, English decisions are only one of many sources of the common law. Equally important sources of the common law are the decisions of the appellate courts of Australia, Canada, Malaysia, New Zealand and other Commonwealth countries. The Bar has an equally important role in this respect, as more often than not, under our adversarial system of justice, the law is shaped and developed by the courts on the anvil of counsel's arguments.

The enactment of the Application of English Law Act 1993 is more than a symbolic act in the formal severance of our historical link with England in relation to English legislation generally and English commercial law in particular. More than a century of uncertainty as to which pre-1826 English statutes have been received as part of the law of Singapore and which post 1826 commercial statutes would be held to apply to a particular dispute arising out of a commercial transaction has been resolved. Henceforth, no lawyer need to give qualified advice on whether a particular English statute applies in Singapore or to consider whether a particular issue of law is one relating to mercantile law. The Law Revision Commissioners hope to be able to revise and publish by the first quarter of this year all the English statutes which were considered suitable for retention as part of Singapore law.

The Subordinate Courts (Amend ment) Act 1993 is also another piece of legislation that should lead to an improvement in the administration of justice in the subordinate courts. It has enlarged the civil jurisdiction of the District Courts by its monetary limit as well as by subject matter. They now have full equity jurisdiction in most areas of law and also jurisdiction in classes of cases as the Chief Justice may from time to time assign to them. He also has the power to allocate classes of proceedings commenced in the District Courts for hearing in the High Court. These powers make it possible for the Chief Justice to consolidate our judicial resources and, whenever necessary, deploy them more effectively to resolve any problems of congestion or delays in either the District Courts or the High Court. The enlarged jurisdiction will also enable District Judges to acquire knowledge and experience in areas of law which hitherto were within the exclusive jurisdiction of the High Court.

The Legal Profession (Amendment) Act 1993 may well prove to have the greatest impact in the long run on the legal profession and indirectly on the administration of justice. The Law Society and the disciplinary bodies are now given more powers to deal more effectively with delinquent lawyers. The High Court can now set its own standards of ethical behaviour and professional conduct on members of the Bar without being circumscribed by standards referable by those applicable to the legal profession in England. Most important, the Act provides the legislative framework to check the current rate of growth in the supply of lawyers to a more manageable level and also at the same time to ensure that the profession is able to provide legal services of high quality in the future. Standards in the legal profession have continued to rise each year as more and more of our better graduates gained more experience and exposure in their practice. With the statutory requirement for entry to the Bar of higher academic qualifications for overseas-trained law graduates and also for law graduates of the National University of Singapore for entry to the Bar, the high standards already achieved by the Bar will continue to be enhanced.

Last year, the Board of Legal Education was inundated with 483 applications for places in the Practical Law Course. Fortunately, the number was reduced to 413 when the course started as otherwise the Board would not have been able to provide the physical and teaching facilities to cope with that number. 379 of the 412 who sat for the PLC examinations have passed and are now qualified for admission to the Bar. This number constitutes a potential increase of about 16% of the number of lawyers (i.e., 2418) who held practising certificates as at 31 December 1993. It is expected that the next two years will see another 600 law graduates qualifying for admission to the Bar. In connection with the Practical Law Course, I wish to express my grateful thanks to the 264 members of the legal profession who came forward willingly and gave their valuable time in helping to run of the course, and in particular to the 72 of them who so generously donated their honoria to the Singapore Academy of Law, the Board of Legal Education and CLAS. I look forward to their customary cooperation and continuing generosity this year.

The many reforms that have been made to the machinery of justice are only a precursor of more reforms to come. Much remains to be done to make our legal system, particularly in the area of civil litigation, more

efficient and responsive to the needs of a fast changing society. We have inherited an adversarial system of justice which allows litigants and their lawyers to dictate the pace of trial and in which the judge is a silent umpire. It is now acknowledged even by the English Bar that there is a need for more intervention by judges to reduce long windedness and repetitiveness by counsel, both in cross-examination of witnesses and submissions on the law. Fortunately, in this respect our judges have needed no encouragement from the Bar to intervene whenever necessary to expedite the conclusion of the proceedings before them.

Litigation lawyers are aware of the many procedural changes introduced recently by the Rules Committee to shorten trials and to make litigation more open and transparent. The effect of these changes should be felt by now but the successful operation of these rules can only be achieved with the co-operation of the Bar in keeping to the prescribed time limits provided by the rules. But more needs to be done. For example, we do not need so many types of originating processes in civil proceedings. We should have fewer and simpler rules of procedure so that we can expend our time and effort more profitably to resolving substantive disputes rather than procedural issues. We also need to look into the simplification of our laws in certain areas. As an example, we should examine whether allowing so many different periods of limitation for different types of claims is conducive to the efficient and just resolution of civil disputes. The Law Reform Committee of the Singapore Academy of Law and its various Sub-Committees should have a busy time this year. Members of the Bar and also of the Faculty of Law will no doubt do their part in this regard by volunteering to sit on these Sub-Committees.

I can go on at some length on law reform but I must not keep you waiting for the highlight of the occasion. I would like to end my address by stating what is obvious to many people, that in law as in other matters, if we keep our eye on the essentials, more will be achieved with less time and effort. In this connection, I would like to refer to a civil case in which Justice Punch Coomaraswamy appeared as senior counsel in 1964. He was briefed to defend a fellow lawyer, a law graduate from the University of Malaya in Singapore, who was sued by his expatriate employer for breach of a restrictive covenant not to practise within five miles of Kota Bahru for a period of two years after cessation of his employment. When we arrived at the Kota Bahru High Court on the morning of the trial, we saw, lined up on the plaintiff's side of the table, more than 20 volumes of the All England Reports containing the leading English authorities on the common law relating to covenants in restraint of trade. As you are aware, under English law a covenant in restraint of trade is not valid if it is not reasonable. Justice Coomaraswamy brought with him only one authority, and that was the Malay States (Contracts) Ordinance, section 28 of which read: "*Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of* any *kind,* is *to that extent void.*" The case is reported in 1964 MLJ 269.

I mention this episode this morning in tribute to Justice Coomaraswamy who retired on 1 October 1993 after nine years on the Bench. I wish to express my gratitude to him for what I have learned and gained from my long association with Justice Coomaraswamy, first as my law teacher in law school, then as my employer and mentor in practice, and finally as a friend and a senior colleague on the Bench. He had and continues to have a deep and abiding interest in the law and affection for the legal profession. At the expense of his own practice, he devoted an enormous amount of time and energy to the activities of the Bar Committee. He was the original draftsman of the Legal Profession Act which established the Board of Legal Education and the Law Society of Singapore in 1966. In the same year, he cut short his career at the Bar to embark on a long and distinguished record of service to the nation, first as Deputy Speaker of Parliament, then as Speaker, followed by a long tenure as High Commissioner and Ambassador to eight countries, and finally as a High Court Judge. I wish him a long and happy retirement.

We can confidently look forward to more changes to our legal system this year and another year of achievement and progress in the administration of justice. If we wish to retain in 1994 the position in the world league of public confidence in the fair administration of justice accorded to us in 1993 by the World Economic Forum of Switzerland, all of us who are involved in the administration of justice will need to renew our efforts greater than ever before. I can assure you that the Legal Service will play its part. We do not need to be No. 2 to try harder.

On this note, I, on behalf of the Legal Service, wish to extend to you, Chief Justice, and your brother judges our best wishes for 1994 which will be, I can say with certitude and felicity, a more prosperous year than 1993.