

SPEECH BY
THE ATTORNEY-GENERAL, MR V K RAJAH, SC
AT THE OPENING OF THE LEGAL YEAR 2016
(As Delivered, 11 January 2016)

May it please Your Honours, Chief Justice, Judges of Appeal,
Judges and Judicial Commissioners of the Supreme Court,

Introduction

1. On these occasions, it has been the recent custom for the Attorney-General to give a general report on what his officers have done in the past year and what his plans are for the New Year. In the past year, my officers have certainly discharged their duties with their usual dedication. Indeed, many of them went well beyond the call of duty as we put in place new processes to help us discharge our responsibilities more effectively. While I certainly do have a number of plans for my office and officers in the year ahead, today I want to break from this tradition and focus on my role as the Public Prosecutor. How my prosecutors and I do our jobs has a big impact on offenders, on victims of crime, on families of both offenders and victims, on law and order as well as public confidence in the administration of criminal justice in Singapore. Criminal law must not be enforced for its own sake, but for the greater good of society. It is an area in

which I have done much thinking and reflection over the past year, and I think there is some value in sharing what my approach is.

2. I start from the point that, as the Attorney-General cum Public Prosecutor, I am constitutionally responsible for how prosecutions are brought and carried on. It is a function that I exercise independently, together with my deputies. The Government for its part respects the independence of prosecutors. The Instruction Manuals, which regulates the conduct of civil servants, has always contained a stern injunction to this effect. So if anyone has any criticism or praise on how prosecutions are done in this country, please direct them to my Chambers.

Prosecutorial philosophy

3. What are the principles that guide my prosecutors and me in our work?
4. It will not surprise anyone that we come down hard on criminal activity that affects law and order in Singapore and our way of life. Examples include violent crime, organised crime, drug trafficking, corruption, serious financial crime, and threats to our social, racial and

religious harmony. It is in the public interest for us to vigorously prosecute these crimes and we will push for robust sentences. This policy is non-negotiable, because the peace and good order of Singapore is non-negotiable.

5. For less serious crimes, I take a broader view. Other considerations come in. We know that prosecution leaves a black mark. We know that not every offender is a hardened criminal and there can be extenuating circumstances. We have a framework for assessing such matters. So sometimes, after taking into consideration the factual matrix, we are prepared to consider issuing advisories or proceeding on reduced charges. But there are only so many second chances we can give. So for those to whom we have given the benefit of the doubt, I hope that you stay clear of the law and may our paths never cross again.

6. When we do prosecute, punishment is not always the main or the only consideration. Parliament has led the way in creating a framework for community sentences under the Criminal Procedure Code. Under the framework, an offender can make amends for his crime as an alternative to punishment. This option has so far been under-utilised. I have asked my prosecutors to invite the court to consider

giving community sentences in the right cases. We should, however, tread carefully. As we gain more experience with such sentences, perhaps Parliament can consider extending this option to other less serious crimes. It is also worthwhile to consider introducing the concept of suspended sentences, which will incentivise offenders to turn over a new leaf.

7. More generally, we do our work with the awareness that prosecution and punishment cannot be the only response to crime. A society that is tough on crime must also be tough on the causes of crime. As a society we must strive to create a moral climate and socio-economic conditions in which individuals have no inclination and, indeed, no need to turn to crime. Much of this work is beyond the remit of prosecutors, but our work is informed by the necessity to tackle the root causes of criminal activity.
8. Where criminal behaviour is substantially the result of mental illness, the possibility of treatment and recovery is an important consideration when we make prosecutorial decisions.
9. Where a breadwinner is facing a long jail term, prosecutors will work with prison authorities and social

services officers to assess the impact on his family and dependants. For the offender, the law must take its course. But his family and dependants should not be condemned to a vicious cycle of deprivation, desperation and crime. The Ministry of Social and Family Development (“MSF”) now has in place schemes to provide financial support in appropriate cases. My Chambers, enforcement agencies, prison authorities and MSF have recently created working protocols to share relevant information earlier so as to facilitate such support.

10. Where an offender has a real prospect for rehabilitation and general deterrence is not the main sentencing consideration, prosecutors will ask for a sentence with a rehabilitative element. Sometimes a rehabilitative sentence such as corrective training will take longer than a purely punitive sentence. For this reason some offenders prefer to be punished. But I would invite defence counsel to join us in taking a longer-term view of their clients’ best interests in such cases.
11. Then there is how we deal with young offenders. This is an area in which I have always taken a keen interest. Young people are our future. It is a terrible waste when a bright future is permanently stained by a youthful

indiscretion. We must intervene early in the lives of vulnerable youths to prevent them from turning to crime. Even when a young person has strayed, we must try to rehabilitate him whenever this is possible.

12. The Government is now taking a fresh look at youth justice issues. Second Solicitor-General Kwek Mean Luck is participating in an inter-ministry study on this. The Ministry of Law, the Ministry of Home Affairs, MSF, the Prisons Service, the State Courts and the Family Justice Courts are all involved. The composition of the team reflects the many facets of youth justice and I look forward to their recommendations. But let me also caution that youth is not a licence to offend. For grave offences, the public interest will still require prosecution and punishment.

The role of prosecutors

13. Next, I want to discuss the role of prosecutors in the criminal justice system. The most visible part of prosecutorial work is advocacy, and I certainly expect my prosecutors to be formidable advocates. Continuous advocacy training is a big part of the AGC Academy's work.

14. But a prosecutor is more than an advocate pleading a case. There is no point in securing convictions if the public is not confident that the process is fair and the convictions are safe. We have seen what happens in some mature legal systems where large segments of the public lose confidence in the criminal justice system. We do not want to see that in Singapore. To me, prosecutors have a special responsibility to uphold the integrity of the criminal justice system. We share a responsibility with the court for ensuring that prosecution is carried out fairly and the process is one in which the public can have confidence. Fulfilling this responsibility is a big part of a prosecutor's role. There are several aspects to this. Let me list a few.

15. We provide legal advice to enforcement agencies so that they are aware of the legal framework under which they operate, and to ensure that the evidence they collect stands up to forensic scrutiny. My prosecutors have started work with police and narcotics officers on a pilot scheme to video record the statements given by accused persons. Video recording has the potential to improve the accuracy and reliability of an accused person's statements when they are eventually produced in court. The

experience we gain on this pilot will help policymakers to set the future direction in this area.

16. We will continue to do our part to ensure that cases progress through the courts in good time. The wait for justice should not be another type of punishment. Special attention will be given to cases where the accused person is in remand, where the accused person is a foreign national who is being held in Singapore, or where there are foreign witnesses who will only be in Singapore for a limited time. For the most part, our colleagues at the Defence Bar are doing their part to ensure the timely administration of criminal justice, and for this we are grateful. But I do suggest that the number of pre-trial conferences in each case can still be optimised. A few defence counsel should also consider if they are taking on more work than they can promptly attend to.

17. We have gained much experience in operating the criminal case disclosure system. Prosecutors are now thoroughly familiar with the letter and the spirit of their disclosure obligations both under the Criminal Procedure Code and the common law. If previously irrelevant material becomes relevant as a case develops, we will promptly disclose the material. Disclosure may or may not

affect the outcome of the case, but the fairness and openness of the process is important.

18. As the existing disclosure regime matures, perhaps it is now time to consider how we can make the system even better. As a matter of principle, I am in favour of having both the prosecution and defence show all their cards at the same time, and early on in a case. Disclosure should not be delayed for tactical advantage, and there should be disincentives for doing so. If implemented, I think that this approach can greatly improve the way that the court, the prosecution and the defence interact with each other.
19. We have assisted the courts in the principled development of criminal law, and will continue to do so. Our aim is to get the law right and to ensure that fair outcomes are achieved, even if the result in a particular case is not in our favour. This is what the public interest demands.
20. The prosecution will take issue with manifestly excessive as well as manifestly inadequate punishment. Many in this audience will remember that, in Pius Gilbert Louis's case,¹ my predecessor Mr Chan Sek Keong considered that the High Court had exceeded its sentencing jurisdiction. He

¹ *Public Prosecutor v. Louis Pius Gilbert* [2003] 3 SLR(R) 418.

made a criminal reference to the Court of Appeal to clarify the point. The Court of Appeal agreed with Mr Chan. In Lim Choon Teck's case last year,² I thought that the 8-week jail term imposed by the District Court on the accused, a cyclist who had injured a pedestrian on a road pavement, was manifestly excessive. Normally, this would be left to the defence to raise on appeal. But the accused was not legally represented and it looked as if nothing would be done about the sentence. I therefore directed my prosecutors to intervene. Justice Chan Seng Onn in the High Court agreed with us that the prosecution had the power to appeal against a manifestly excessive sentence and that the sentence given to Lim was in fact manifestly excessive. He reduced Lim's sentence from 8 weeks to 3 weeks.

21. Outside of the criminal justice process, we will continue to communicate on prosecutorial decisions and criminal justice issues that engage the public interest. A recent editorial in the Straits Times quite rightly observed that the AGC is no longer the opaque institution it once was.³ Public communication is especially important when we

² *Public Prosecutor v Lim Choon Teck* [2015] SGHC 265.

³ "Justice seen to be even-handed", *ST Editorial* (30 September 2015)

<<http://www.straitstimes.com/opinion/st-editorial/justice-seen-to-be-even-handed>> (accessed 8 January 2016)

take decisions that may be considered unusual, and when prosecutorial policies change. But I would caution against using AGC's public statements to game our prosecutorial policies, in order to evade or minimise criminal liability. Policies evolve, and we always take a dim view of premeditated wrongdoing.

Conclusion

22. Your Honours, it is said that where there are people there will be crime. And where there is crime, there must be prosecutors. Our methods and approach will depend on the nature of the crime involved and may change as society evolves, but we will always remain guided by what the public interest requires. I hope I have given a helpful snapshot of where AGC stands today, and I welcome further conversations with other stakeholders in the criminal justice system.
23. As we embark on a new Legal Year, I pledge to the Judiciary the fullest support of my Chambers and the Legal Service in the discharge of your constitutional responsibility to administer justice according to law.
24. I would like to take the opportunity to welcome Mr. Chan Sek Keong, Mr. Kan Ting Chiu, Mr. Andrew Ang, Mr. Tan

Lee Meng and Ms Lai Siu Chiu back to the Bench on their appointment as Senior Judges of the Supreme Court. I would also like to welcome the 12 eminent jurists who have been appointed as international judges of the Singapore International Commercial Court.

25. I congratulate Mr. George Wei on his appointment as Judge of the Supreme Court. I also congratulate Judicial Commissioners Kannan Ramesh, Chua Lee Ming, Foo Chee Hock and Foo Tuat Yien on their appointments to the Supreme Court Bench. Additionally, I would like to congratulate Mr. Vincent Hoong on his appointment as the Registrar of the Supreme Court.

26. Finally, may I extend my well wishes to everyone present and all members of the legal community for good health and happiness in the year ahead.