SPEECH AT THE LAUNCH OF THE COMMISSION OF SENIOR JUDGES OF THE PARISH COURTS

"ON THE JOURNEY TO COURT EXCELLENCE"

22 March 2021, Monday

The Honourable the Chief Justice Sundaresh Menon

Supreme Court of Singapore

Madame Chairperson, Your Honour Miss Sanchia Burrell, Senior Judge of the Parish Courts,

The Honourable Delroy Chuck QC, Minister of Justice,

The Honourable Mr Justice Bryan Sykes, Chief Justice of Jamaica,

The Honourable Mr Justice Patrick Brooks, President of the Court of Appeal of Jamaica,

The Honourable Mr Justice Adrian Saunders, President of the Caribbean Court of Justice,

Your Honour Mr Chester Crooks, Chief Judge of the Parish Courts,

Chief Justices and judicial colleagues,

Distinguished guests,

Ladies and gentlemen,

1. Let me first thank Chief Justice Sykes for inviting me to join you this evening on this very important occasion for the launch of the Commission of Senior Judges of the Parish Courts. This is a significant milestone in the transformation journey of the Jamaican courts, and it is part of a process that

was initiated last year with a historic strategic plan titled “Benchmarking the Future: Courting Excellence”. The blueprint of that plan draws inspiration from the International Framework for Court Excellence, which was developed by a global consortium of courts including the State Courts of Singapore,[1] and it is most gratifying that the seeds of the consortium’s work have found fertile ground in Jamaica. Let me congratulate Chief Justice Sykes and the Jamaican Judiciary for the outstanding progress it has made and the excellent work that is being done in Jamaica, as was recognised by the Honourable Minister and as was outlined in the Chief Justice’s opening remarks.

2. I think Chief Justice Sykes put it aptly in his introduction to the strategic plan when he spoke of a “journey towards court excellence”. Indeed, what lies ahead can, in many ways, be likened to a long but rewarding journey.

3. First, every worthwhile journey is a *process* and will take time. The strategic plan envisages a roadmap stretching over a period of four or five years. In Singapore, it has been some 30 years since our major reforms were undertaken in the 1990s. Despite the modest successes we have enjoyed, there remains much to be done; the work goes on, and excellence is perhaps best understood as a horizon, towards which our journey must continue with purpose and resolve.

[1] Chief Justice Chan Sek Keong, Speech at the 14th Conference of Chief Justices of Asia and the Pacific, “Pursuing Efficiency and Achieving Court Excellence – The Singapore Experience” (12-16 June 2011) (“Pursuing Efficiency”) at paras 14-16.

4. Second, it also helps, when embarking on a long journey, to look ahead to the destination. And if I may say so, your vision of court excellence – of an efficient court system able to render sound decisions in a timely fashion at a reasonable cost, aspiring to be one of the best courts in the world – is, without question, a destination well worth the while.

5. Finally, as with any long journey, we must expect that the going might get tough. When it does, there is no better balm than the encouragement and support of others on the same road. Though we all hail from different jurisdictions, I believe that, as judges, we are part of a *global* family that is united by a shared mission – the fair and efficient administration of justice. In our individual journeys towards that common goal, we have much to gain from exchanging our experiences.

6. In that spirit, let me share some of the lessons that we have learnt in our quest to improve the efficiency and administration of our courts. I propose to cover three points: first, the importance of continually striving towards organisational efficiency and excellence; second, the transformative potential of technology; and third, cultivating judicial leadership, which is key to sustaining the drive towards change.

I. Achieving organisational efficiency and excellence

7. Through the work of many hands over many years, the Singapore Judiciary

has built a hard-won reputation for efficiency and timeliness.[2] But this was not always the case. Beginning in the late 1940s, our courts struggled with a growing backlog of cases. By the 1990s, the situation in what is now known as the State Courts – which is counterpart to the Parish Courts in Jamaica – was that both civil and criminal litigants had to wait around *two years* just for their cases to be heard. The situation was much worse in the Supreme Court; civil litigants could expect an average wait of between *5 and 7 years* for a case to be heard.[3]

8. In a sobering indictment of the state of our justice system, Justice Lai Kew Chai, a former Judge of the Supreme Court, recalled as follows in 1999:[4]

> *At the beginning of the last decade in this millennium, the picture was a dismal one. A civil case generally took about 6 years before it was dealt with by the Court of Appeal. In criminal justice, the delays were reaching intolerable limits… The courts, in sharp contrasts with other constitutional arms of government, stood out like a sore thumb for our lackadaisical despatch of business. Justice was delayed. There was really no answer to mounting criticisms that our judicial system was seriously wanting in many respects.*

9. Something clearly needed to be done, and in 1990, efforts at comprehensive

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[2] In its 2019 Global Competitive Index, the World Economic Forum ranked Singapore first out of 141 countries, overall, and also notably, with regard to the efficiency of the legal framework in settling disputes: Klaus Schwab (2019) *The Global Competitiveness Report*. World Economic Forum. http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf.

[3] Waleed Haider Malik, *Judiciary-Led Reforms in Singapore: Framework, Strategies, and Lessons* (The World Bank, 2007) ("Malik") at p 16.

[4] Supreme Court of Singapore, *Excellence into the Next Millennium* (Supreme Court Singapore: 1999) ("*Excellence into the Next Millennium*") at p 150.

reform began in earnest.

10. Until then, the relatively leisurely pace of litigation had largely been dictated by the parties. Generous timelines were routinely approved, and adjournments were common. Under this "somnolent regime",[5] cases would progress only when counsel took the initiative. This state of affairs seemed to stem, in part at least, from the view that the judge's role was simply to decide cases fairly and justly; questions of *when* and *how* a dispute reached the judge – which concerned the *efficiency* of the process – were thought not to be the *court's* concern. Rather, it was left to the parties. Unfortunately, this misses a critical point, which is that court adjudication is not just a means of settling disputes. It is that for sure, but beyond that, it is a *public service* to secure access to justice for the vindication of citizens' rights. That perspective means that the judiciary is obliged to operate this public service within the constraints of the scarce and finite resources it is allocated. In that light, it becomes apparent that the unnecessary protraction of a case wastefully consumes valuable and finite judicial resources, which affects not just the parties to that case, but also the justice system's ability to do justice for all.[6]

11. It follows that the judiciary has an important interest in and a particular

[5] Pursuing Efficiency at para 1.

[6] Adrian Zuckerman, "Litigation Management under the CPR: A Poorly-Used Management Infrastructure" in *The Civil Procedure Rules Ten Years On* (Oxford University Press, 2009) at p 90.

responsibility for *ensuring* the efficient conduct of litigation. It was therefore necessary that *we* exercise control over the pace of litigation by the adoption of much more active approaches to case management. This was done through the introduction of pre-trial conferences, which allowed for closer monitoring of matters in the lead-up to trial. Timelines were substantially tightened, and trial dates, once fixed, would not be vacated unless this was unavoidable.[7]

12. Second, judicial time and resources were carefully managed and optimised. Processes were changed so that matters that were largely procedural or routine in nature, such as many bankruptcy petitions for example, were placed before registrars in the first instance,[8] thus freeing up judicial time for the hearing of trials. Judges were provided with enhanced support and assistance to enable them to carry out the core work of decision-making and judgment-writing more effectively. A judicial clerkship scheme was established, initially to assist the Court of Appeal, and this was later extended to Judges of the High Court.

13. Third, new processes were developed, and existing ones were transformed. The pursuit of efficiency requires us to continually search for new ways to simplify, streamline and transform our processes which may be too slow, too

[7] *Excellence into the Next Millennium* at p 153.

[8] Supreme Court of Singapore, *The Re-organisation of the 1990s* (Supreme Court Singapore: 1994) ("*The Re-organisation of the 1990s*") at p 44.

laborious or too costly. One critical step in this direction was to expand the use of *written* advocacy in various court processes. Since implementing this, we have found that *written* advocacy tends to yield submissions that are better focused, and also allows the judge to come better prepared, thus shortening the hearing time.[9]

14. Within a few years of introducing these measures, the picture had dramatically changed. Substantial progress was made in clearing the backlog; whereas in 1990 there were more than 2,000 cases outstanding in the Supreme Court's docket, by 1992, that number had almost halved, and by 1994, it had shrunk by more than 90%. In less than half a decade, the average wait for a commercial case to be heard in the High Court had fallen from around 6 years in the late 1980s to about 1.5 years.[10]

15. To ensure that these high standards would not slip over time, an internal system of stringent key performance indicators or "KPIs" was put in place to

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[9] The ongoing transformation of our civil justice processes has followed this trajectory. Today, paper hearings – where the matter is decided based entirely on the documents and written submissions tendered by the parties, without any *oral* hearing – are not uncommon in appellate proceedings in Singapore. Applications in civil appeals are now regularly decided on paper without an oral hearing; all applications in civil appeals to the Appellate Division of the High Court and the Court of Appeal may be decided on paper without being set down for hearing. See s 37(1)(*a*) and s 55(1)(*a*) of the Supreme Court of Judicature Act respectively. Earlier this year, we extended the use of paper hearings to certain types of civil appeals, albeit with the requirement that parties consent to dispense with an oral hearing. While the Court retains a discretion to convene an oral hearing if deemed necessary, our experience has been that simple applications can often be satisfactorily dealt with on paper, resulting in tremendous savings of time and cost.

[10] *Excellence Into the Next Millennium*: Case disposal rates had increased dramatically; the disposal rate for criminal cases doubled in 1992 as compared to 1990, and had more than tripled by 1993.

monitor the continuing efficiency and productivity of the courts. Today, this remains an integral part of our quest for efficiency. Thus, in the General Division of the High Court, our target is for at least 85% of all writs to be disposed of within 18 months of the date of filing, and this is a target we have successfully met every year since its introduction. In the Court of Appeal, the current target is for appeal hearings to be fixed within 19 weeks from the time the record of appeal becomes ready and the parties' preparations can begin.

16. I want to draw two points from this account. First, herculean though the task of judicial reform might seem at the outset, with a good plan, the firm and committed leadership of the judiciary and the willing participation of all stakeholders in the justice system, the task can be accomplished. And second, the end goal, an efficient and trusted justice system, is not a fixed metric to be achieved; rather, it is a standard that we strive towards and must maintain over time. As our economies grow and societies mature, disputes will arise with greater frequency and present with growing complexity. If the standards of efficiency we have set are to be maintained, it is critical that the courts – in terms of both our infrastructure and our processes – evolve alongside the societies we serve, so that we remain able to meet the changing needs of those who come to us seeking justice.

II. Technology and transformation

17. This leads to my next point, which concerns the crucial role that technology

will play in the transformation of court processes. The pandemic has been a shot in the arm at least for the adoption of technology in justice systems worldwide, and this has been so not least through the rapid uptake of video-conferencing technology. But as Professor Richard Susskind has noted, we are now only "at the foothills of transformation".[11] It is essential that we leverage on the present momentum to drive the transformation of court services in even more fundamental ways. Allow me to make two observations on the role that technology will play in this transformation.

18. First, in thinking about the role of technology in reshaping our justice system, we should develop both near and longer term strategies.[12]

19. In the near term, we should clearly search for tweaks to our existing processes that can be easily implemented to deliver quick gains. There is sometimes a tendency to assume that worthwhile solutions must be novel or spectacular; but it is often the humblest and simplest of things – involving commonly available technologies – that can make all the difference. The rapid shift to remote hearings amidst the pandemic last year is an excellent example of this. As courts worldwide were forced to shut their doors when lockdowns were

[11] Professor Richard Susskind, "The Future of Courts", The Practice, Centre on the Legal Profession, Harvard Law School, vol 6, issue 5, July/August 2020.

[12] Chief Justice Sundaresh Menon, Speech at the SMU Law Academy Intensive Course, "Understanding the Legal Implications of Artificial Intelligence and Other Emerging Technologies" (27 November 2020) ("Understanding the Legal Implications of Artificial Intelligence") at para 4.

imposed to contain the pandemic, remote lines of access were the precious threads by which the work of the courts could continue. The technology which enabled that – video-conferencing – had been in existence for decades, and this, I think, underscores the point that the best solutions are sometimes those overlooked in plain sight.[13]

20. In the longer term, we must recognise that the true potential of technology lies not just in the digitisation or automation of our existing processes, but in its capacity to *transform* them entirely. Thus, instead of stopping at asking whether oral hearings have been made more efficient by being conducted remotely, the more fundamental question might be: are oral hearings even necessary all the time? Could, for example, *asynchronous online exchanges* offer an even better and more efficient means of facilitating communications between the court and the parties?

21. The use of asynchronous processes in case management is presently under study in our State Courts. Under a series of ongoing pilot programmes, a host of case management processes are now managed asynchronously using email. As a result, the affected parties need not attend physically in court throughout the case management process. Instead, they can update the Court, receive directions – and even certain decisions[14] – from the Court,

[13] Understanding the Legal Implications of Artificial Intelligence at para 4.

[14] RC No 2 of 2020: Asynchronous Court Dispute Resolution Hearings by Email (aCDR), <https://www.statecourts.gov.sg/cws/Resources/Documents/RC 2 of 2020.pdf>. An Early

anywhere, at any time.[15] For the self-represented litigants, in particular, the costs of an attendance in court are often hidden: consider, for example, the employee who must take unpaid leave to attend court, or the parent who must make urgent childcare arrangements. These are hidden, but nonetheless substantial, costs. Asynchronous hearings could therefore prove a massive boon not just in enhancing efficiency, but also in enabling effective access to justice.

22. Of course, as we march on with the digital transformation of the courts, we must not leave behind those unable to access digital court services, either for lack of means or know-how. This has sometimes been referred to as the problem of the 'digital divide'. And while it will diminish in intensity over time, as internet and mobile penetration rates increase,[16] and more and more people become comfortable with the use of technology, so long as it persists, it cannot be ignored.

23. The concern is potentially of special gravity because it will likely feature

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Neutral Evaluation process will also be conducted asynchronously by email, including the provision by the Court of its preliminary indications on the liability of a party to another or on the quantum in the claim.

[15] RC No 13 of 2020: Asynchronous Hearing and Processing of Pre-Assessment of Damages Alternative Dispute Resolution Conferences, <https://www.statecourts.gov.sg/cws/Resources/Documents/RC 13 of 2020.pdf>.

[16] Internet penetration in Jamaica stood at 55% in January 2020, up 0.5% from 2019. The number of mobile connections in January 2020 was equivalent to 111% of the total population, up 3.1% from 2019: DataReportal, "Digital 2020: Jamaica": <https://datareportal.com/reports/digital-2020-jamaica>.

disproportionately in the lower courts, which tend to see higher numbers of self-represented litigants unfamiliar with the legal system and its processes. Such persons may require in-person assistance, and it may therefore be necessary to ensure that *offline* options remain available. And so when we introduced the e-filing system for court documents physical 'service bureaus' were set up so that those unable to file documents electronically could seek physical assistance. In a similar vein, our Family Justice Courts ("FJC"), in seeking to address the needs of self-represented litigants unfamiliar with the Zoom video-conferencing platform, issued a technical guide and an instructional video on its use. The FJC also established "Zoom rooms", where litigants who could not set up a call on their own could come and be assisted to attend an online hearing. The critical contribution that the Zoom rooms made to sustaining access to justice is reflected in the fact that the FJC cleared more than a third of its regular case load using these Zoom rooms during our lockdown.[17]

24. Let me close the discussion on technological transformation by speaking about two of our first forays into the digitisation of legal processes.

25. Electronic filing, or "e-filing", was a completely new concept just 20 years ago when our first such system, the Electronic Filing System, or "EFS", was

[17] Chief Justice Sundaresh Menon, Speech at the Judicial Integrity Network in ASEAN Webinar: "Justice in Times of COVID-19" (28 May 2020) ("Justice in Times of COVID-19") at para 15.

launched in 2000. Its most basic function was also its most revolutionary – law firms with an account on the system could, for the first time, electronically file documents at any time of the day, without having to physically attend at the courts.[18] The EFS was replaced 13 years later by eLitigation. As a web-based service, eLitigation introduced yet another dimension of accessibility by eliminating the need for the installation of special software and access by smart cards; instead, any court user with a web browser is now able to commence proceedings, file documents and monitor her case.[19]

26. Another example of the rapid, iterative change associated with technology is in legal research. Many of us will remember a time when legal research meant making a trip to the law library. Today, we can access vast amounts of information, far in excess of anything that any law library could offer, all at the click of a mouse. In 1990, our first ever complete database of Singapore legislation was uploaded onto a platform called LawNet.[20] As the needs of the legal profession evolved, LawNet too evolved to meet those needs. It has since been transformed from a simple repository to a searchable, one-stop

[18] CrimsonLogic, "eLitigation Case Study": <https://clprodwebportal.s3.ap-southeast-1.amazonaws.com/2020-02/eLitigation_web_0.pdf>.

[19] See Justice Chua Lee Ming, Speech at the 2nd China-ASEAN Justice Forum, "Technology in the Singapore Courts" (8 June 2017); CrimsonLogic, "eLitigation Case Study": <https://clprodwebportal.s3.ap-southeast-1.amazonaws.com/2020-02/eLitigation_web_0.pdf>; eLitigation, "About eLitigation": <https://www.elitigation.sg/_layouts/IELS/HomePage/Pages/AboutElit.aspx>.

[20] Lynette Ong, The Straits Times, "A-G Chambers goes on-line to computerize S'pore laws" (5 January 1990).

portal for legal research, information and transactions.[21] Plans are presently under way to further develop LawNet into a personalised work space, where a lawyer can find authorities, annotate and bookmark pages, and flag related cases.

27. When we introduced these technologies 2 or 3 decades ago, the use of technology in the courts was seen more as an interesting novelty than as essential infrastructure. Today, they have become indispensable parts of our litigation landscape. Our early investments in these technologies, not just in terms of the financial outlay but also the organisational commitment to a tech-enabled vision of the future, have already paid handsome dividends. These technologies enabled our Bench and the Bar to work remotely amidst the pandemic and were critical to our ability to keep the wheels of justice turning.

III. Cultivating judicial leadership

28. I turn to my final point: judicial leadership. This, in my view, is key to sustaining the journey towards court excellence.

29. There are, I think, at least three reasons why judicial leadership – at all levels of the judiciary – is of such importance.

30. First, at the *organisational* level, it is essential that the judiciary takes the lead

[21] Singapore Academy of Law, "LawNet": <https://www.sal.org.sg/Resources-Tools/LawNet>.

in driving policy that directly affects our ability to ensure the fair and efficient administration of justice.

31. Here, let me congratulate Chief Justice Sykes and his team on the development of the strategic plan. The plan sets out a clear vision for the transformation of the court system – one that is truly by, for and of the judiciary. And it carefully explains how that vision will be achieved in concrete and practical terms. That, if I may say so, is an outstanding example of judicial leadership at an organisational level.

32. In Singapore, judicial reform is and has been actively spearheaded by the judiciary. I have already referred to the reforms of 1990 – the chief architect of which was the then-Chief Justice, Yong Pung How – and the entire effort was supported and led by countless judges and judicial officers. Today, the Singapore Judiciary continues to be at the forefront of organisational reform aimed at ensuring that our courts remain able to meet the needs of the increasingly sophisticated and discerning public that we serve. To that end, we have established various new departments within the judiciary in much the same way that you have established the Court Administration Division. Let me mention a few examples. An Office of Public Affairs was established to oversee public engagement and court outreach soon after I took office. The

Singapore Judicial College[22] was launched in 2015 to ensure that our judicial training and professional development needs are well-met. An Office of Transformation and Innovation was set up to coordinate and drive transformative change throughout the entire judiciary.[23] Most recently, a Knowledge Management Office was established, in order to ensure that institutional know-how is properly archived, retained and deployed.

33. Second, cultivating a culture of leadership *at all levels of the court system* will allow the organisation to fully leverage on the experience and expertise of all its people. In Singapore, we do this through an institutionalised system by which judges at all levels engage in a process of regular and rigorous internal assessment. The lower judiciary, for example, develops annual workplans for the lower courts that are submitted for the approval of the Chief Justice. By these workplans, the lower judiciary charts its objectives, and develops initiatives to meet those objectives.[24] Each year we hold an annual forum called the Council of Judges, an exercise mandated by statute to review our procedures and the state of the administration of justice in all our courts.[25] In

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[22] Tan Boon Heng, "Judicial Education: The Singapore Brand" (April 2015): <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/sjc/iojt_journal_judiednsgbr.pdf>.

[23] Chief Justice Sundaresh Menon, "Response By Chief Justice Sundaresh Menon: Opening of the Legal Year 209" (7 January 2019) at para 59.

[24] Malik at pp 36, 51.

[25] See s 81(*c*) of the Supreme Court of Judicature Act, which provides that the Council shall assemble at least once in every year for the purpose of "inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of

a similar vein, the higher judiciary formulates its objectives and initiatives, and deliberates on these at the Council of Judges.[26] The judiciary's strategic objectives and plans are then presented publicly annually at the formal opening of each legal year, which is attended by key stakeholders in our justice system. In this way, we encourage judicial leadership at *all levels of the courts*.

34. Third, and at the *individual* level, it is the *personal responsibility and duty* of every judge to ensure that our institutions and processes are working well. We occupy a unique space in the justice system which combines an intimate understanding of the importance of our mission of doing justice and upholding access to justice for all, with a detachment which allows us to be driven by nothing but the public interest. By dint of that special vantage point, we each have a particular opportunity and responsibility, as individuals, to take a keen interest in how the justice system may be changed and improved, and to walk the talk by embodying that change and leading by example.

35. This I think is precisely what the judiciary of Jamaica is embarking on and it promises to be an exciting journey driven by an admirable vision. I wish you

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the law in the General Division, the Appellate Division or, the Court of Appeal or in any subordinate court".

[26] See ss 81(*a*) and 81(*b*) of the Supreme Court of Judicature Act. Section 81(*b*) in particular states that the Council shall assemble for the purpose of "considering the working of the Registry of the Supreme Court and the arrangements relative to the duties of the officers of the Supreme Court".

all very well for what I am sure will be a most meaningful and fulfilling endeavour in your quest for court excellence. Like all long journeys, this too must begin with a single step and we walk beside you. This launch of the Commission is a significant step forward, and I extend my heartiest congratulations and best wishes to Chief Justice Sykes and the Jamaican Judiciary.

36. Thank you very much for inviting me to speak to you and I wish you a very good evening.
