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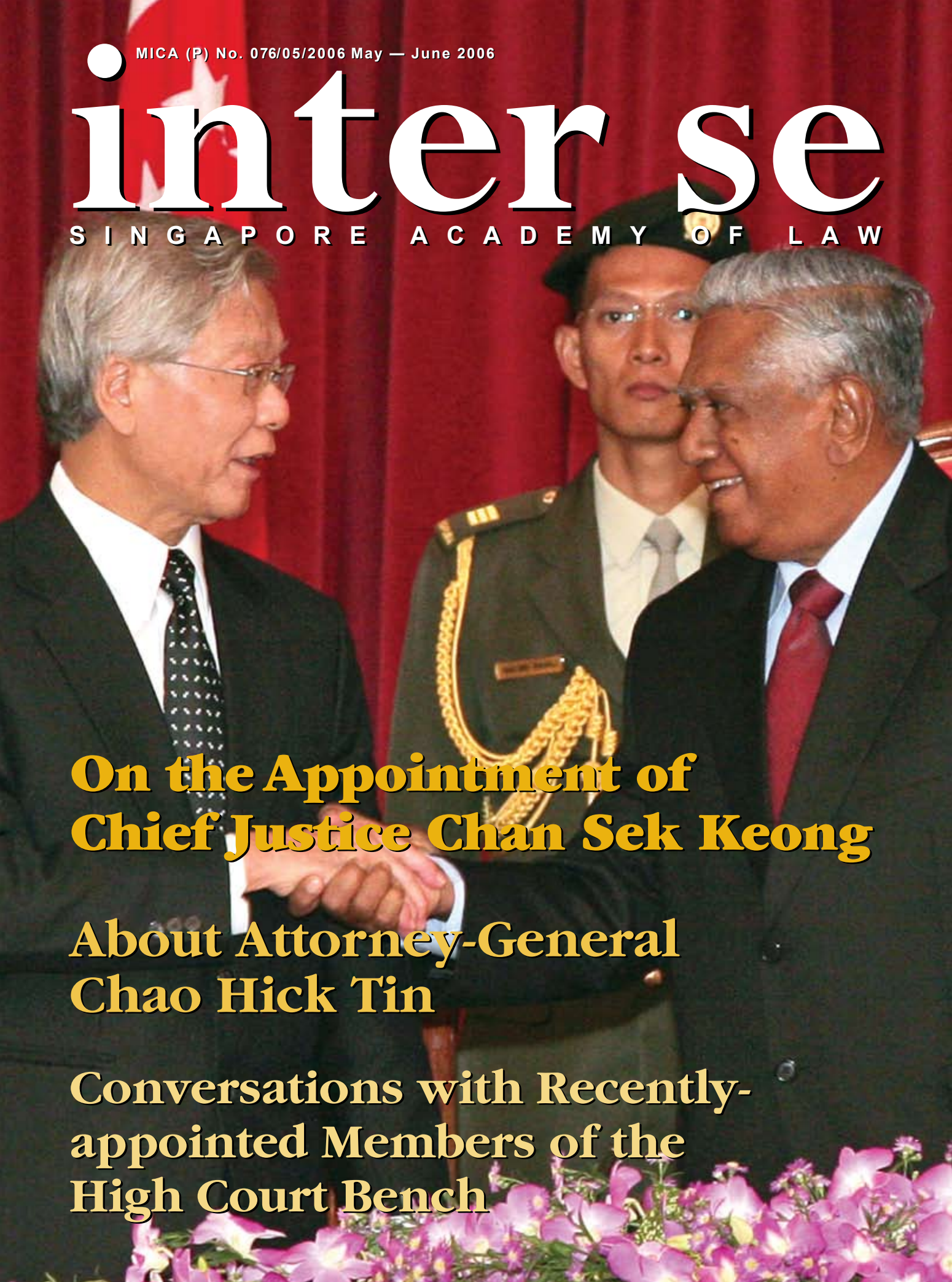
inter se

SINGAPORE ACADEMY OF LAW



On the Appointment of Chief Justice Chan Sek Keong

About Attorney-General Chao Hick Tin

Conversations with Recently-appointed Members of the High Court Bench

In this issue of *Inter Se*, we witness the swearing-in of the Honourable the Chief Justice Chan Sek Keong, the third Chief Justice of the Republic of Singapore, on 11 April 2006. Eleven days later, the legal profession gathered for the Welcome Reference held in his honour on 22 April 2006 wherein the Chief Justice outlined the areas of the legal system which he will devote particular attention to maintaining and developing, namely: the administration of the courts; the administration of justice, including criminal justice; the Judiciary's relationship with the Bar; and the rule of law and Singapore commercial law. We also feature an interview with Chief Justice Chan to find out more about the man who, leading legal luminaries say, is Singapore's finest legal mind.

The deep respect and genuine admiration that Chief Justice Chan inspires in those who have had the opportunity of working with him is clear. The President of the Law Society of Singapore, Mr Philip Jeyaretnam SC, has remarked that "[t]he practising profession knows that in Mr Chan Sek Keong, they have a friend who thoroughly understands the needs and concerns of the profession". In the Honourable Attorney-General Chao Hick Tin's speech at the Welcome Reference, the Chief Justice is described as a man with a "sterling reputation for fairness, integrity and objectivity". Then, there is the matter of the Chief Justice's impressive *curriculum vitae*.

Amongst the earliest and most significant changes that he made in his tenure as Attorney-General, was his role in persuading the Government in 1993 to enact the Application of English Law Act (Cap 7A) to remove the uncertainties surrounding the application of English law to Singapore and to make Singapore's commercial law independent of future legislative changes in the UK. In the same year, he persuaded the Government to introduce s 9A to the Interpretation Act (Cap 1), thus enabling the courts to have recourse to statements made in Parliament to ascertain legislative intention in the event of any ambiguity in a statutory provision.

In recognition of his immense work as Attorney-General, he was conferred the Distinguished Service Order (*Darjah Utama Bakti Cemerlang*) in 1999. In 2003, as Attorney-General, he led Singapore's legal arguments on the Straits of Johor land reclamation issue between Singapore and Malaysia, heard before the International Tribunal on the Law of the Sea in Hamburg. He has helmed the work of the *Singapore Law Reports* for the past 15 years, and chairs the Singapore Academy of Law's Council of Law Reporting. He is known for his formidable grasp of the law and varied interests outside the law. He has co-authored the chapters on Constitutional and Administrative Law in *Halsbury's Laws of Singapore*. As the head of the Judiciary, Chief Justice Chan returns to develop the jurisprudence of Singapore law.

Yet, as acknowledged by Chief Justice Chan, a leader is only as good as his team. The most recent judicial appointments are a heartening addition to the quality team of people that will help take the legal community to higher standards and greater successes in the years ahead. *Inter Se* features interviews with the Honourable Justice Lee Seiu Kin and the Honourable Judicial Commissioner Sundaresh Menon, both recently appointed to the High

Court Bench and both of whom bring "new ideas and different perspectives on the exercise of judicial power in the administration of justice" to the Bench. In the Chief Justice's words, the Bench is now "undeniably stronger today than at any time in its history".

To lead the Legal Service into its next phase of growth and development, the Honourable Justice Chao Hick Tin was appointed as the Attorney-General of the Republic of Singapore on 11 April 2006. The Chief Justice, congratulating Attorney-General Chao on his appointment, expressed that the Attorney-General's "combined experience as a Legal Officer, as a Judge and as a Judge of Appeal" would stand the Attorney-General in good stead "to discharge your onerous constitutional duties with distinction". It is this varied and illustrious career of the Attorney-General that *Inter Se* sets out to survey in this issue.

Qualifications and testimonials aside, it is Chief Justice Chan's vision of the road ahead and the team at the Judiciary, the Bar and the Legal Service that together have pledged to work with him that is, perhaps, what is most reassuring in this period of transition. As the President of the Academy, Chief Justice Chan, acknowledging that "[t]he Academy has a vital role in ensuring that the legal system reflects the fundamental values of our society", has plans to embark on "redefin[ing] the objectives and functions of the SAL committees to ensure that they continue to help in improving professional standards and building a strong legal community".

It is with confidence and enthusiasm that the Academy pledges itself to the goals set by Chief Justice Chan, to build a justice system that is consonant with the times and which is equal to the best in the world.

Serene Wee
Director/Chief Executive Officer
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CHIEF JUSTICE CHAN SEK KEONG: SWEARING-IN CEREMONY AND WELCOME REFERENCE

By DAVID LEE YEOW WEE, ASSISTANT REGISTRAR, AND SARAH LAM AND LEE TI-TING, JUSTICES' LAW CLERKS, SUPREME COURT

THE SWEARING-IN CEREMONY

It was an occasion that marked the closing of a chapter in Singapore's legal history and the opening of another. On 11 April 2006, the Honourable the Chief Justice Chan Sek Keong was sworn in as the third Chief Justice of the Republic of Singapore, at the Istana. Earlier that afternoon at the Istana, Chief Justice Chan Sek Keong was sworn in as Chairman of the Presidential Council for Minority Rights.

Former Chief Justice, Mr Yong Pung How (right) and Registrar of the Supreme Court, Mrs Koh Kuat Jong (left) look on as Chief Justice Chan Sek Keong is sworn-in by President S R Nathan.

Among the 60 invited guests witnessing the ceremony were Prime Minister Lee Hsien Loong, Minister Mentor Lee Kuan Yew, Deputy Prime Minister & Minister for Law Professor S Jayakumar, Senior Minister for Law Associate Professor Ho Peng Kee, the Judges and Judicial Commissioner of the High Court, senior members of the Public Service Commission, Senior Counsel and managing partners of the major law firms in Singapore.

President S R Nathan and Chief Justice Chan seen here with Prime Minister Lee Hsien Loong and Mrs Chan Sek Keong.

The brief but dignified ceremony, officiated by His Excellency the President S R Nathan, commenced with the handing over of the instrument of office to the incoming Chief Justice, followed by the Chief Justice's Oath of Office. The ceremony was followed by a tea reception where guests extended their well-wishes to the new Chief Justice and bade their fond farewells to the outgoing Chief Justice. It was, indeed, a ceremony which marked the passing on of the baton from one leader to the next.

THE WELCOME REFERENCE

The Welcome Reference for the Honourable the Chief Justice Chan Sek Keong was held in the Supreme Court Auditorium on 22 April 2006. The event was attended by some 480 guests who came to offer their well-wishes to the Chief Justice on his appointment. What follows are summaries of the speeches delivered by the Attorney-General and the President of the Law Society of Singapore, as well as the full text of the Chief Justice's response to these speeches, delivered at the Welcome Reference.

Attorney-General Chao Hick Tin delivering his speech at the Welcome Reference.

Mr Philip Jeyaretnam SC preparing to deliver his speech at the Welcome Reference.

Speech by the Attorney-General

The Honourable Attorney-General Chao Hick Tin delivered the opening address at the Welcome Reference for the Honourable the Chief Justice. The Attorney-General observed that, with the Chief Justice's appointment on 11 April 2006 as the Republic's third Chief Justice, he holds the unprecedented and illustrious record of being the first local law graduate who had been consecutively appointed as Judicial Commissioner, Judge, Attorney-General, and Chief Justice. The Attorney-General recalled the four-and-a-half years during which he had the privilege of observing the Chief Justice's first-rate legal mind and judicial temperament as his colleague on the Bench. The Attorney-General affirmed that, with the Chief Justice's appointment, our Court of Appeal has become one of the strongest ever in its history.

Whilst paying tribute to the unique legal identity and first-rate legal system established by the Chief Justice's predecessor, Mr Yong Pung How, the Attorney-General also highlighted the challenges ahead, such as the proposed restructuring of the Legal Service Commission and the introduction of a more systematic talent management system for Legal Service officers, the low entry and high turnover rate of young lawyers in recent years and the thinning of the criminal and family Bar, as well as the promotion of Singapore law as the preferred governing law in international commercial contracts, which the Chief Justice, having the right mix of experience and fortitude, would guide us through. The Attorney-General then pledged the full support of the Legal Service to the Judiciary in the administration of justice.

Speech by the President of the Law Society of Singapore

The President of the Law Society, Mr Philip Jeyaretnam SC, spoke next. He started by tracing the Chief Justice's illustrious career in practice prior to his elevation to the Bench in 1986. Mr Jeyaretnam highlighted one quality of the Chief Justice particularly cherished by the Bar, namely that as Attorney-General, the Chief Justice did not forget the practising Bar in advising the Government on matters of legal policy and regulation.

Mr Jeyaretnam solicited the Chief Justice's continued support in ensuring that the practice of law, while maintaining its competitive edge, provides a satisfying and rewarding career. To enthuse young lawyers with the love of law, the Law Society stressed the encouragement of *pro bono* work as a professional value and habit. Mr Jeyaretnam concluded by renewing the Bar's pledge of support to the Judiciary in the administration of justice.

The Chief Justice's Response (full text)

Let me begin by thanking both of you [the Attorney-General and Mr Jeyaretnam] for your warm words of welcome and your assurances of support for the Judiciary in the days ahead.

I would also like to thank you, Mr Attorney, for your excellent and wide-ranging speech on the state of our legal system and its comprehensive coverage of my legal career. Since there is no tradition of a welcome reference for a new Attorney-General, I would like to use this occasion to say a few words on your appointment as Attorney-General. First, I congratulate you unreservedly. Second, your intellectual and judicial qualities are manifested in

Chief Justice Chan delivering his response to the speeches by the Attorney-General and President of the Law Society.

the many authoritative judgments which you have delivered, some of which have been accepted and followed in important Commonwealth jurisdictions. Third, your combined experience as a Legal Officer, as a Judge and as a Judge of Appeal will stand you in good stead to discharge your onerous constitutional duties with distinction.

My responsibilities call for a new mindset that can meet the challenges of sustaining an efficient and fair justice system that is sensitive to the needs of a multi-racial and multi-religious society and one that will also administer justice fairly and justly to all who seek justice in the courts. These are daunting responsibilities. Fortunately, there are a number of factors that give me the confidence to discharge them.

First, the legacy left by Chief Justice Yong Pung How of a court system whose efficiency is legendary. The detailed briefings I have received from senior judicial officers of both the Supreme Court and the Subordinate Courts on the court systems, the support systems and processes, the current performance indicators, the current and future plans to upgrade them, show their complete mastery and understanding of the objectives of the systems, and their concern especially that prescribed performance targets be met, leave me in no doubt that in their hands these systems and processes will not be allowed to operate otherwise than at their optimal levels of efficiency at all times.

Second, the assurances of support of the Attorney-General's Chambers and of the Bar which you, Mr Attorney and you, Mr Jeyaretnam have given me. I am familiar with the high quality of legal output from the Attorney-General's Chambers, and I certainly look to the Bar for the professional skills and competence to match the high standards the Bench expects from counsel.

Third, the support of a Bench that, with the appointments of Justice Lee Seiu Kin and Judicial Commissioner Sundaresh Menon, is undeniably stronger today than at any time in its history. They bring with them new ideas and different perspectives on the exercise of judicial power in the administration of justice.

Fourth, I hope my work experience in private practice, as a Judge and as Attorney-General, totalling more than 42 years, in dealing with private and legal and policy issues both at the micro and macro levels will allow me to bring a new dimension and perspective to the administration of justice.

Fifth, the motivation of any responsible public office holder to leave to his successor a legacy better than the one he has inherited.

There has been much speculation in the profession and the media on my vision for the Judiciary. All eyes are said to be on the Judiciary and the direction I will take. Indeed, my gardener has remarked that four million pairs of eyes are now on the Judiciary. However, my legal philosophy and approach to judicial decision-making are well known to the legal community as they are apparent from the judicial decisions I have given on the Bench. My determination to uphold the rule of law and respect for the integrity of the law and a fair judicial process are also well known to the legal community. It is therefore not

surprising that Professor Michael Hor, who teaches criminal law and justice in the Law Faculty of the National University of Singapore, expects me "to re-focus on the law and its internal values – rather than on its management and measurement by external criteria – with an increased attention to the quality of decisions, a fine tuning of the balance between fairness and efficiency."

My response to this expectation is: "Yes, the fearsome backlog of cases which was the driving force behind the relentless waves of court reforms has been eliminated more than ten years ago. Efficiency is vital in court administration but it should not be pursued to the point when it starts to yield diminishing returns in the dispensation of justice. The Judiciary must always give priority to upholding the fundamental values of the legal system, such as due process or procedural fairness, equal protection of the law, consistency and proportionality in sentencing, and rationality in decision-making. We should now be confident enough to give greater emphasis to the basics of judicial decision-making without the recurrent fear of a resurgent backlog." But, these observations are not intended to deny the significant contributions of Chief Justice Yong to the development of Singapore law during his tenure. His many landmark judgments are found in the law reports and have been analysed and commented upon in law journals and the mass media.

Let me now mention briefly a few aspects of the legal system that I will pay particular attention to. They are: (a) the administration of the courts; (b) the administration of justice, including criminal justice; (c) the Judiciary's relationship with the Bar; and (d) the rule of law and Singapore commercial law.

The Administration of the Courts

There will be continuity in the way the courts are presently administered. Efficiency will continue to be the norm. I need to emphasise this because there is some concern that if there is no constant oversight over court administration, things will backslide. I understand the concern but I believe that the work culture embedded in the system will not allow this to happen. As Chief Justice Yong has pointed out, a new generation of lawyers has been brought into the Legal Service and the Judiciary, with new mindsets and attitudes. Efficiency is now an established value in court administration. The practices and systems that have been driving efficiency have altered the genetic structure of court administration, which can be further modified to achieve greater efficiency. In this connection, Justice Lee Seiu Kin and a team of IT-savvy lawyers are currently working on a project to reconfigure the Electronic Filing System into a more sophisticated Electronic Litigation System that will incorporate a new electronic case management module to provide real time alerts of delays in the progress of any case and trigger timely and appropriate remedial actions. These systems, together with our constantly updated rules of practice and procedure, will sustain our high standards in court administration. I intend to keep it that way.

But just as important is the changed mindset and attitude of the Bar towards efficiency and productivity. The current professional standing of many of our large law firms in the region testifies to this change. The Bar now recognises and accepts that the efficient and timely disposal of cases is in the public interest and in the interest of the litigants. I am confident that we shall collaborate closely to achieve both objectives.

Concern has also been expressed that the litigation bar is diminishing and losing young legal talent. This will be detrimental to the quality of the Bench and the administration of justice in the future. Mr Jeyaretnam has in his speech referred to the stress of litigation that has turned away young lawyers from the courts. This flight from litigation could become a serious problem. We will look into this. A survey conducted in December 2005 among the 236 law students in the National University of Singapore on their practice preferences showed that more than 50% chose practices in banking, corporate finance and securities (which are mainly advisory and documentation services), with only about 10% opting for general litigation.

I assure the Bar that young lawyers who appear before me and my fellow Judges should not feel stressed and should have no fear of being stressed. Mr Jeyaretnam believes that one way of enthusing young lawyers to love the law is to encourage the acceptance of pro bono work as a professional value. I support these efforts and have agreed to Judicial Commissioner Sundaresh Menon acting as an

adviser to the Law Society in devising programmes to promote pro bono work. I hope that more young lawyers will do advocacy work. The litigation bar should have its proper share of legal talent.

The Administration of Justice

Both justice delayed and justice hurried can cause injustice. It is obvious that Judges must not judge in haste or prejudge disputes in order to dispose of cases faster. But, on the other hand, they must also not delay justice so as to impose an unacceptable cost on litigants or defendants in terms of liberty, mental stress and anxiety or loss or deprivation of property or other civil rights. Whilst court disputes should be disposed of in a timely manner, no litigant should be allowed to leave the courtroom with the conviction or feeling that he has not been given a fair or full hearing because it was done hurriedly. Hence, it is important that the Judiciary gets the balance right if litigants are to have confidence in the administration of justice. But efficiency and justice, or the appearance of justice, do sometimes clash.

A recent English decision provides a good illustration of this clash of values in the legal system. A litigant had sought to disqualify a Judge from trying his case on the ground of apparent bias. The Judge refused, on the ground that the disqualification would cause considerable inconvenience to the system and the parties as the trial would have to be adjourned, there would be practical problems in finding a new trial judge at such short notice, the parties would suffer additional costs and there would be delay in fixing a new trial date. The Court of Appeal rejected these considerations and allowed the appeal. The relevant paragraph in the judgment reads:

> "In terms of time, cost and listing it might well be more efficient and convenient to proceed with the trial, but efficiency and convenience are not the determinative legal values: the paramount concern of the legal system is to administer justice, which must be, and must be seen by the litigants and fair-minded members of the public to be, fair and impartial. Anything less is not worth having."

This clash of values goes to the heart of the matter. The fair administration of justice must ultimately trump court efficiency and convenience, where the two are in direct conflict. But in the general run of cases, these values are not antithetical. Justice can be dispensed efficiently. When efficiency is added, justice need not be subtracted. I intend to examine closely this aspect of the administration of justice in consultation with my fellow judges to find the proper balance between justice and efficiency.

Criminal Justice

I wish to say a few words on criminal justice. The strict enforcement of the criminal law has made Singapore a paradigm for law and order. There will be no let-up by the courts in this aspect of criminal justice. There may be some expectation or even apprehension that the courts will now go soft on criminals, with potentially dire consequences to the crime rate. The punishment imposed in the first criminal appeal after my appointment, and which I was disqualified from hearing, is already the subject of media comment. That case does not signal a departure from established sentencing practice or benchmarks. Let me emphasise that the strict, but fair and efficient administration of criminal justice, will remain a key priority.

But concern has been expressed on our sentencing practices with respect to consistency and proportionality. Sentencing is a very difficult and contentious subject. Settled principles of sentencing and benchmarks can help to reduce inconsistency in punishments in the large majority of cases. But the unusual case always tests sentencing benchmarks and consistency in sentencing. It is also difficult to satisfy every constituency with an interest in crime and punishment. But correct sentencing is a critical aspect of the administration of criminal justice, and so we need to constantly review this. I intend to set up a panel to review how current sentencing and bail guidelines can be further rationalised and improved. It is essential to maintain public confidence that while the courts will continue with the policy of dealing firmly with criminals, the punishments imposed should fit the crimes.

The Judiciary's Relationship with the Bar

The Bar is an essential part of our legal system. It has an indispensable role in the administration of justice. The Bar's role is not only to represent clients but to assist the Judges in dispensing justice. They must enjoy a good working relationship with the Bench. However, the relationship between the Bench and Bar has been uneasy in the last few years. But friction between Bench and Bar is not new in Singapore. Older members of the Bar may recall Chief Justice Wee Chong Jin's famous "trinity" speech when he chastised the then President of the Law Society for his professional lapse or arrogance in equiparating the public standing of the Bar with that of the Bench in the administration of justice.

It is necessary that we start a new chapter in our relationship. I look forward to a closer and more cordial and harmonious relationship between Bench and Bar. There should be less stress in litigation if counsel give no cause to the Judiciary to make litigation stressful. I should add that Senior Counsel have an important function as role models to the young members of the Bar in improving their advocacy skills, court presentations and ethical standards. This should be the primary objective of the Forum of Senior Counsel. Another is to act as a resource forum on ways to improve the legal system. This is a principle of *noblesse oblige*.

In this connection, I should mention that I have asked the chairmen of all the committees of the Singapore Academy of Law to redefine the objectives and functions of the SAL committees to ensure that they continue to help in improving professional standards and building a strong legal community. The Academy has a vital role in ensuring that the legal system reflects the fundamental values of our society.

The Rule of Law and Singapore Commercial Law

The rule of law is a fundamental value in our legal system. From an economic perspective, it is also a valuable tool in attracting and retaining foreign investments. Singapore's phenomenal economic growth is due, among other things, to investor confidence that under the rule of law the Government may not act arbitrarily and an independent and impartial Judiciary will protect and enforce contract and property rights according to law. The quality of our laws, especially our commercial laws, written and unwritten, and the existence of an independent and competent legal profession are other factors that have contributed to the inflow of foreign investments to Singapore.

It is, therefore, important that we develop and enhance our commercial laws to meet the legal needs of the business and financial sectors of the economy. Our commercial laws are, in terms of scope, maturity and modernity, comparable to the most favoured national laws in global finance, *viz*, New York law and English law. There is anecdotal evidence of an increasing demand for Singapore law services by business houses in the region. Singapore lawyers are well regarded in the region for their legal skills and expertise, and honesty and integrity in dealing with clients. Their professional reputation makes them potentially significant exporters of Singapore law services to the region.

The Judiciary will play its part in developing the principles of commercial law. On the extra-judicial side, Justice V K Rajah is heading a committee of the Singapore Academy of Law to promote the greater use of Singapore law in the region and Judicial Commissioner Sundaresh Menon wants to promote it as the *lex mercatoria* of the region.

CONCLUSION

Chief Justice Yong's achievements in the administration of justice are unique and not capable of emulation. He has left behind a rock solid foundation on which the Judiciary, working closely with the Bar and the Legal Service as well as law academics, will have the opportunity to build a justice system that is consonant with the times and which is equal to the best in the world. Let us work together to realise these goals.

Let me conclude by thanking all of you for being here this morning. It is indeed gratifying to see so many lawyers present on a non-working day to express their support for the Judiciary.

IN CONVERSATION WITH CHIEF JUSTICE CHAN SEK KEONG

By KWEK MEAN LUCK, SENIOR ASSISTANT REGISTRAR, SUPREME COURT

On 11 April 2006, The Honourable the Chief Justice Chan Sek Keong was sworn in as the third Chief Justice of the Republic of Singapore. Chief Justice Chan shares with *Inter Se*, his personal insights on law and life.

THE EARLY YEARS

How did your early years shape your views today?

I was born in Ipoh the third of five children. My father was a clerk in the Hong Kong and Shanghai Bank. He was a bank clerk throughout his life. When the Japanese Occupation began, my father took his family to Taiping, where my grandfather lived, for safety. I spent the war years in Taiping until 1945 when we went back to Ipoh.

In Ipoh, we occupied two rooms on the second level of a communal house. The building we lived in was a purpose-built garage for motor cars. On the ground floor was space for cars and above were rooms which were presumably for the drivers. Everything from bathrooms to kitchens was communal. Living in a communal house, you learn what it means to share things with other people and to accommodate one another's needs. I came from a very poor background and I never got used to people doing things for me. Self reliance is essential for survival.

My father first enrolled my elder brother and me in King Edward VII School in Taiping before we returned to Ipoh in 1945. But I did not actually start schooling because on the first day when I went to school I could not find my classroom! I could not speak English and did not know how to find my way around. So I went home. Later, after we returned to Ipoh my father enrolled my two brothers and me in Anderson School. We were in that group of children who because of the war had missed the normal entry into school at the age of six. I was then almost eight.

Chief Justice Chan Sek Keong at the Welcome Reference held in his honour.

Anderson School was then the premier government school in Ipoh. It was the Raffles Institution of Perak and multi-racial in its composition of students. There was a large number of expatriate staff in the school, some of whom were excellent teachers. I had a very happy time in school and made many friends, some of whom I still see every time I return to Ipoh and with whom I keep in close touch. In my school days, we used to mix with everybody. So I am very comfortable with different ethnic groups. I used to visit the homes of my Malay, Sikh and Indian friends and ate their food. It opened up a large variety of cultural and culinary experiences.

These experiences have shaped my philosophy of life and my thoughts on the kind of society we need. I believe that one must try to understand the feelings and the thinking of people who are different from you, whether culturally or socially. So in many ways, about life and people, I do not have strong views. Many of my views are relative to the conditions I find myself in.

I had one of the best Senior Cambridge School Certificate results in the whole of Malaya in 1955 with eight distinctions, but I was not offered a scholarship. I was offered a teaching bursary; it was quite attractive financially, but I did not take it up as I did not want to teach. I wanted to do economics. So I went to the Sixth Form with a vague idea that I would become an economist.

In the second year of the Sixth Form course, my English literature teacher, Dr Etherton, told me that a professor of law from the University of Malaya would be visiting my school to interest Sixth Form students in the new law course his Department of Law was offering at the then University of Malaya in Singapore. Dr Etherton thought I had the sort of mind for Law and advised me to study it. I had no idea what career prospects a law degree offered and I didn't ask. Dr Etherton was one of the best teachers I ever had. I trusted his judgment. He is still alive and is over 80 years of age.

I decided to be interviewed by the visiting professor of law, who turned out to be Professor Sheridan, and was accepted into the first batch of students admitted to the Law Department in the University of Malaya in 1957. Later, I found out that the law degree I was studying for had not been recognised for admission to the Bar, and this led to my first appearance in court as a petitioner.

After I graduated, I went to Messrs Bannon & Bailey in Kuala Lumpur to read in chambers. My pupil master was Peter Mooney (now Dato). He was a conscientious and an excellent pupil master who introduced me to the practical realities of the law. I attended my first court martial in the British army headquaters in Seremban as his assistant. After I had completed my six months' pupillage, I could not be called to the Bar as the necessary legislation had not been enacted! After the legislation came out, I immediately applied for a shortening of my period of formal pupillage. The Bar Council of Malaysia objected and R Ramani, a leading advocate and Chairman of the Bar Council appeared personally to object to my petition on the ground that I had provided only one reason for abridgment of time when the relevant provision in the Act referred to "reasons". Fortunately, the petition was heard by Justice H T Ong. He decided that the provision must be interpreted *rebus sic stantibus* ... and that one reason was sufficient. It was my first important lesson in real life statutory interpretation as opposed to textbook interpretation.

ON BEING A JUDGE

It has been fifteen years since you were last in the Supreme Court. How does it feel being back on the Bench as a Judge?

My first reaction to being back on the Bench is – there is not much difference from when I left in terms of how appeals are heard. Certainly, the appearances are shorter and more disciplined in terms of time. However, I noticed from in the first set of appeals I heard, that we could do with some improvements in the pleadings on the legal issues.

I noticed one difference in myself from having been Attorney-General for 14 years. I am not able to write and express myself in the same way as I did 15 years ago. I read one of the judgments I wrote 15 years ago and thought I couldn't write in that way today. After 14 years as a legal adviser to the Government service, I had got into the habit of writing concisely and going straight to the point. I think I have lost the knack to express myself in a literary style. Government minutes are written in plain English. Now, I try to use short sentences to capture all my ideas and arguments. I can't go back to my old style, but I am not sure that going back to it is right. I think that Court of Appeal judgments should be expressed in language that a reasonably educated layman can understand.

Of course, the Bench is different today in another way. There is a change in court culture. Almost all the current judges are from the private sector unlike 15 years ago. They are used to hard work and they get along very well. The camaraderie is very strong. The whole place is alive, especially at our Wednesday lunches.

A good judge has to have patience, which is a facet of what is called judicial temperament. I think a person either has it or he does not have it. He must not think he knows everything, because he doesn't, and he must be able to listen to both sides.

Could you share with us some of your life and judicial philosophy?

I sum up my life philosophy in one phrase – "Live and let live".

As for judicial philosophy, it is different from 15 years ago when I was interested only in the legal issues put before me. I find that what I am really interested in now is to find, whenever possible, a practical solution to the problems that surface to the court, to try to meet the needs of both parties. I no longer like to decide on the law just for the sake of it. This change is a result of my years of work as Attorney-General.

In two company law cases that I heard in the Court of Appeal during my first week back on the Bench, we reserved judgment and suggested to the parties that they should try and resolve their differences before we delivered judgment. I don't know whether the parties will take up the suggestion. I was told that the Court of Appeal has never done this before. It might work, but it doesn't matter if it does not, because we are going to deliver a considered judgment in each case.

From your experiences, what are the qualities needed to make a good judge?

In my tribute to Chief Justice Wee Chong Jin, I referred to the views attributed to Socrates on the qualities of a good judge. A good judge has to have patience, which is a facet of what is called judicial temperament. I think a person either has it or he does not have it. He must not think he knows everything, because he doesn't, and he must be able to listen to both sides. As a judge, you should try to place yourself in the position of the parties and of the counsel trying to argue a case. Then, you will be able to understand a lot more about the case even if counsel fails to persuade you of the justice of his case. As a judge, one should not only listen but intervene to indicate to counsel how he is looking at the case. A silent judge is an unhelpful judge. Counsel want to know – "Am I reaching you?"

Other requisites of a good judge include the ability and desire to learn new things and to have a broad general knowledge of current events. Better still if he has a good knowledge of legal history and legal developments. Judges must read widely. All kinds of experiences are useful to him. Most importantly, he must know what the judicial process is all about, and why fairness and the perception of fairness is critical in the administration of justice. If you take short cuts, you may end up dispensing injustice or giving the perception of it, which affects public confidence in our legal system.

How do you think we can develop good judges for the Judiciary?

This is very difficult. We can teach lawyers the rudimentary skills of judging, but I doubt that we can change his character and temperament. What we can do is probably to identify lawyers who are good judges of fact, of people, of things, and lawyers who have good legal minds. We look at their court performances as lawyers, their intellectual pursuits, their habits, their moral standards, etc. I doubt we can develop good judges through a process of incubation. Good judges are good lawyers with a long and vast experience as advocates. There is nothing like practice to make perfect, even in the law. Good academics can make good appeal judges, but under our judicial system, they would be the exception.

In England, they provide judicial training, but that is more about understanding the broader perspectives of judging. You learn to look at the values of the community. The judicial board in

England teaches how minorities think, why certain groups commit more crimes than others, how to avoid language that is sexist or culturally loaded. This is a broader level of training that goes beyond that of the basic judicial functions of fact finding or finding law. In other words, a good judge must understand the culture and habits of the communities that make up a multi-racial society. In Singapore, I would say that all our judges are aware of the cultural and religious sensitivities of minority groups.

Do you see any difference in the roles played by Subordinate Courts judges as compared to High Court judges?

In terms of decision making, I don't see a difference between a trial judge in the High Court and a trial judge in the Subordinate Courts. Of course, one has a much greater and varied experience of life and the law than the other, but their judicial methodologies, *ie* the way they process evidence and analyse the legal principles and apply the law is likely to be the same. The only difference is in their jurisdiction and powers. That is one formal aspect in which their roles can be said to be different.

It is often said that the Subordinate Courts are the face of justice for most people since they deal with 95% of the cases. What, for you, are the important areas for the Subordinate Courts judiciary?

In terms of substantive law, the most important areas are criminal law and family law. These are the two areas of law which affect most the lives of the people. People charged with offences are still people and should be treated with some consideration for their plight. People involved in family disputes and divorces are also in need of some sympathy from the judges for their social problems

In terms of procedural justice, defendants and litigants must be treated fairly by the courts. The face of justice in the Subordinate Courts is the face that the majority of defendants and litigants see. In a court of law, the judge must conduct himself properly. Censure when he must of litigants and witnesses or even counsel, but he should not pass unkind and cruel remarks which are unwarranted and to which they can only suffer in silence. There is no need to talk down to or at them. Litigants must come away from the court with the feeling that even though they lost, they have had their day in court and have been heard. They may not agree, but they know that this is the system, they accept it.

Lawyers also resent it if they are talked down to, but they can talk back. Litigants on the other hand, are intimidated by judges and wouldn't dare to talk back. It helps that we have a generation of Subordinate Courts judges who recognise the importance of not saying more than is necessary in court.

The Justices' Law Clerks scheme was started in 1991 to provide research assistance to the judges. What are your thoughts on the JLC scheme?

I recall raising the subject with Chief Justice Wee in 1985 when I was chairing a working committee to review legal services. I asked him why he had not introduced a justices' law clerk scheme to assist his judges who then were not known for expeditiousness in deciding cases or writing judgments. He replied that he had thought about it but decided not to introduce it for fear that his judges would rely on their clerks to write their judgments for them. I also recall that later, I mentioned the subject to Minister Mentor (then Prime Minister). So, I have been in favour of a JLC scheme since a long time ago.

Since coming back onto the Bench, I have read many bench memoranda written by them and have discussed their work with each of them, some exhaustively. You have to appreciate what their roles are. First, they are there to assist the judges by summarising the factual and legal issues and providing research on the law. That is their primary role. Second, the judges must discuss their work with them as that is the only way they can benefit from being JLCs. So I spend a lot of time discussing their bench memoranda with them, just as I did with the legal officers in the Attorney-General's Chambers on their advices when I was there

From July onwards, I will be giving the JLCs trial work as well as appellate work. This is to broaden the exposure of our law clerks. This way, they can see how counsel conduct their case. Apart from doing it yourself, the only way

to learn is to watch how others do it. That way, you can avoid all the mistakes without first having to experience them personally.

Could you share with us your views on developing the law?

When it comes to the development of the law, the Judiciary can only do so in a very small number of areas and in a very small number of cases, which come up very infrequently. The legal issues that have not been decided by some court in another Commonwealth jurisdiction are rare. When hearing cases, judges rely on counsel to feed them with the law and to bring up novel points of law. If counsel fail to do so, the law will remain static. Rare is the case where a judge brings up a novel issue of law, but it can happen. The problem however with this process is that counsel are invariably unprepared and therefore not in a position to help the court. But a well read judge can provide a lot of inputs to a case where counsel is unable to do so.

It is here that academics can help to identify and expound on the legal issues. Unfortunately, when academics bring up the issues in law journals, it is often too late, although there are cases where academics have discussed judgments under appeal.

When the courts develop the law, they should do so consonant with our national values. Aside from that, it is important that we know whether and how courts in other Commonwealth jurisdictions have dealt with the same issues. The common law has a core of fundamental principles that are or should be the same in every Commonwealth jurisdiction. It is the common law of a family of nations, overlaid with the national characteristics of each member of the family. Today, this process is very easy as we have access to the law reports of the major Commonwealth jurisdictions.

ON LEGAL PRACTICE

How do you see the state of legal practice today?

With the emphasis on economic growth and national prosperity, more and more of our young lawyers are less interested in the law as a vocation. They are more interested in the business side of law. We cannot turn the clock back. But litigation is critical to the health of our legal system and to the vitality of the Judiciary. That is why I would like the litigation Bar to grow and become stronger.

Of course, our litigation Bar is not very large and is rendered smaller by the existence of large firms with large litigation practices. These firms together employ the greater majority of the good litigation lawyers. What this means that 30 to 60 advocates can end up acting for only one client. This is made worse by the informal “retainer” system adopted by big business, especially the big financial houses. If two or more large law firms are on their panel of lawyers, 100 advocates could be “conflicted” out by one client. I am not sure what we can do about this. What is also happening is that where counsel from a big firm appears against counsel from a small firm, the chances are that the former is better prepared than the latter, if only because he has more resources at his command. We must try to equalise this inequality of arms and to increase the number of good independent advocates who are not beholden to big business. Theoretically, one answer to that is a split bar. Then every one has a chance and you can train up a good litigation bar.

Within the current framework, we are trying to improve the structure for developing more litigation lawyers. For example, we will be instituting a rule in the Supreme Court whereby once a case is ready to proceed for hearing or trial, we will not postpone the matter even for Senior Counsel to find an available date six or nine months down the road out of their packed diary. Otherwise, the top litigators would take all the work and the court has to postpone cases because their calendar is full. This new rule will spread the cases out. Currently, litigants may feel that particular counsel are the best, but it may very well be that others are just as good, if given the chance to demonstrate it.

Do you have any advice to young lawyers in the early years of practice?

To be successful today or in the future as a lawyer, you need to specialise. To be an expert in something means doing the same thing again and again. Even if you are a general litigator you need to specialise in one or two areas. This means

Good advocacy is simply about coming to the point. Direct your mind to the critical issues of the case. The rest is up to the persuasive powers of counsel. In appellate hearings, good advocacy is desirable but not necessary.

studying everything on that subject. Learn as much as you can about the things you are interested in, and that will stand you in good stead.

I worked really hard in my younger days. I tried to read everything I could about the law. Of course in those days, if you are serious you could actually go through the entire Malayan Law Journal. In law school, my interest was equity and trust. When I came out into practice in 1965, I knew all the cases in equity and trust reported in the local reports. Today the information environment is different. The corpus for Singapore alone may be too much. But in the practice of law, there are ways of learning fast and intelligently. It comes from being able to recognise the risks involved in the course of the actions you take. Conveyancing is one area where you can do it. There are others.

What do you look for in terms of good advocacy in the Court of Appeal?

From my recent Court of Appeal hearings, I find that limiting the time for counsel to argue their cases is a good procedure. It concentrates the mind on the essentials and issues of the case and shortens the hearings. Once counsel are able to identify the critical issue and address them, having regard to the fact that they have already given full written submissions, there is often nothing more that they can say. The judges can then use the extra time that is then available to question counsel on their arguments. Of course, this means the court has to hear many more cases, crammed into a few days. Recently, the Court of Appeal heard eight appeals at one sitting of five days.

Good advocacy is simply about coming to the point. Direct your mind to the critical issues of the case. The rest is up to the persuasive powers of counsel. In appellate hearings, good advocacy is desirable but not necessary. Ninety percent of it is already in the written submission which the judges can read at their leisure. Good advocacy is useful for trials. It can get you somewhere, but it does not take you far if the facts or the law are not with you. That is why in the US Supreme Court good advocates are those who can put across their points to the court clearly and succinctly and who can answer questions directed by the court in the same manner.

You spoke in the Welcome Reference of a new chapter in the Judiciary's relationship with the Bar. How do you think this relationship can be strengthened?

At a very basic level, it starts with greater interaction between the Judiciary and the Bar. Hence, I recently attended the Bench and Bar Games in Langkawi.

Where there are issues involving the legal profession, I want to understand the problems as seen by the profession. I would then want to see what are the merits or demerits of the existing proposals to solve the problem, and see how I can contribute to the solution. For example, when the Law Society was looking for systemic solutions to the issue of some lawyers absconding with client's moneys, I pointed out the existence of a rule that allowed lawyers to issue cash cheques from clients' accounts. This was a dangerous practice and one innocent partner was bankrupted because of it. This point was taken by the Law Society.

Apart from these, ultimately, it is about mutual respect.

Inter Se *thanks Chief Justice Chan Sek Keong for granting* Inter Se *this interview and congratulates the Chief Justice on his appointment.*

A MAN OF MANY TALENTS:
ATTORNEY-GENERAL CHAO HICK TIN

By GILLIAN KOH TAN, STATE COUNSEL AND DEPUTY PUBLIC PROSECUTOR, ATTORNEY GENERAL'S CHAMBERS

The Singapore Academy of Law congratulates the Honourable Justice Chao Hick Tin on his appointment as Attorney-General of the Republic of Singapore on 11 April 2006.


Attorney-General Chao Hick Tin.

The Honourable Attorney-General received his legal training at University College London where he obtained his Bachelor of Law and Masters of Law degrees in 1965 and 1966 respectively. He was called to the Bar as a barrister of the Middle Temple in 1965 and joined the Attorney-General's Chambers in 1967. He was appointed Senior State Counsel in 1979. This was followed by his appointment as Head of the Civil Division three years later, a post which he held until his appointment as a Judicial Commissioner of the High Court on 1 October 1987. He was subsequently appointed Judge of the High Court, and served as a Judge of Appeal from 2 August 1999 until his appointment as Attorney-General.

The Attorney-General has actively contributed to the development of law and legal education in Singapore. He is the Chairman of the Board of Legal Education and the Vice-President of the Singapore Academy of Law and the Society of International Law (Singapore). He also chairs the Singapore Academy of Law's Publications Committee and is a member of its Council of Law Reporting. In addition, he was President of the Industrial Arbitration Court from September 1993 to August 1999. He also previously served as Chairman of the Singapore Mediation Centre, the Internal Security Act Advisory Board, and the Supreme Court Library Committee.

The Attorney-General has delivered numerous landmark judgments throughout his distinguished judicial tenure. For example, the legal principles applicable to discovery and interrogatories that he formulated in *Oversea-Chinese Banking Corp Ltd v Wright* [1989] SLR 580 more than 15 years ago are often cited with approval even today.

He has also rendered numerous judgments of great commercial importance. Most notably, he clarified the law on hypothecation, and fixed and floating charges in *Re Lin Securities (Pte); Chi Man Kwong Peter v Asia Commercial Bank* [1988] SLR 340 and *Re City Securities Pte; Ho Mun-Tuke Don v Dresdner Bank* [1990]

The Singapore Academy of Law congratulates the Honourable Justice Chao Hick Tin on his appointment as Attorney-General of the Republic of Singapore on 11 April 2006.

SLR 468. These judgments emphasised the importance of considering the context and surrounding circumstances of the transactions to determine if the particular security created a fixed or floating charge, and dramatically re-shaped securities law and practice in Singapore.

The Attorney-General's significant contributions to the development of Singapore law can also be seen in his judgments in other cases. In *Merck & Co Inc v Pharmaforte Singapore Pte Ltd* [2000] 3 SLR 717 and *Genelabs Diagnostics Pte Ltd v Institute Pasteur* [2001] 1 SLR 121, he delivered the Court of Appeal's first pronouncements on the fundamentals of patent law in the field of biotechnology, specifically concentrating on the areas of novelty, inventive step, utility, sufficiency of disclosure and infringement.

One of the Attorney-General's judgments which has received international attention and approval is his judgment for the Court of Appeal in *APL Co Pte Ltd v Voss Peer* [2002] 4 SLR 481. In this case, it was held that a straight bill of lading (a bill of lading consigned to a named consignee) could not be equated with a sea waybill, and production of a straight bill of lading was a necessary prerequisite to obtain delivery of the goods in question. The Court of Appeal's decision was subsequently endorsed by the English Court of Appeal and the House of Lords in *The Rafaela S* [2005] UKHL 11.

The Attorney-General also delivered the landmark Court of Appeal decision in the case of *Management Corporation Strata Title Plan No 2297 v Seasons Park Ltd* [2005] 2 SLR 613, which held that in an action for defects to the common property of a condominium project, a developer could rely on the defence of "independent contractor" by appointing competent professionals and contractors to design the plans and supervise the construction of the development.

In addition to the Attorney-General's contributions in Singapore, he has also contributed to the development of international law. He represented Singapore in both the United Nations Conference on the Law of Treaties in 1968 and the Third United Nations Conference on the Law of the Sea from 1974 to 1981. The Attorney-General was also one of the founding members of the ASEAN Law Association ("ALA") which was established in 1979 to promote close relations amongst lawyers in ASEAN countries. The Attorney-General has served as President of the ALA since 2003.

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At the Welcome Reference for Chief Justice Chan Sek Keong on 22 April 2006, the Chief Justice congratulated the Attorney-General on his appointment and stated that the Attorney-General's "intellectual and judicial qualities are manifested in the many authoritative judgments" delivered by him. The Chief Justice also noted that the Attorney-General's combined experience as a Legal Officer, Judge and Judge of Appeal would stand him in good stead to discharge his constitutional duties with distinction.

Additional reporting by Senior Assistant Registrar Audrey Lim, Assistant Registrar Low Siew Ling and Assistant Registrar Dorcas Quek, Supreme Court.

A WELCOMED RETURN:
AN INTERVIEW WITH JUSTICE LEE SEIU KIN

By MOHAMED FAIZAL AND WONG CHEE WEI, JUSTICES' LAW CLERKS, SUPREME COURT

On 11 April 2006, the Honourable Second Solicitor-General Lee Seiu Kin was sworn-in as a Judge of the High Court. This appointment marks Justice Lee's return to the Bench after some three years as Second Solicitor-General with oversight of the Criminal Justice and Civil divisions of the Attorney-General's Chambers as well as its Computer Information Systems Department. Justice Lee had, prior to his appointment as Second Solicitor-General, served as a Judicial Commissioner for five years (from 1997 to 2002).


Justice Lee Seiu Kin.

"... Engineers deal with the physical laws of nature that are, on the whole, predictable to a great deal of precision. Lawyers deal with human beings and human relationships in which the parameters are virtually infinite and the solutions are much less clear cut."

Having been a Colombo Plan scholar whose first career was in engineering, Justice Lee obtained an MBA from INSEAD before finally taking the plunge and embarking on a career in law. When asked about the reasons behind this switch in professions, Justice Lee replies candidly: "Although I was initially happy working as an engineer, I soon found myself looking for other challenges. That was the reason I went to INSEAD for an MBA, after which I was seconded to a government-linked corporation providing engineering services. It was during this secondment that the opportunity presented itself to read law in the National University of Singapore under the Approved Graduate Programme. Engineers deal with the physical laws of nature that are, on the whole, predictable with a great deal of precision. Lawyers deal with human beings and human relationships in which the parameters are virtually infinite and the solutions are much less clear cut."

Justice Lee, in the 20 years since his decision to pursue a career in the law, has also been actively serving on numerous committees, especially those involving the use of technology. Notable contributions in this field include overseeing the computerisation of the Attorney-General's Chambers and being the Project Director, and consequently, Chairman of the Singapore Academy of Law's LawNet Management Committee. It is to this role of technology in the dispensation of justice that the interview turns and Justice Lee remarks: "With the Electronic Filing System, we have converted physical documents into electronic ones and at the same time brought the legal profession fully into the IT age. We

are about to embark into the next phase, called ELS – Electronic Litigation System – that aims to integrate the litigation process commencing from the lawyer's office all the way to the court. The challenge ahead is to bring the entire legal profession into the era of paperless – or at least, paper-less – hearings. The objective in all this is to achieve a seamless flow of information without the need to output the information onto paper at any stage of the process and thereby realise the full benefits of computerisation."

Not being one who believes that his contributions should extend solely to the Legal Service, Justice Lee has also sat on the boards of the Info-communications Development Authority, Competition Commission of Singapore, Civil Aviation Authority of Singapore and Monetary Authority of Singapore and in recognition of his wide-ranging contributions, Justice Lee was awarded the Public Administration Medal in 1996.

When asked about Justice Lee's appointment to the Bench, fellow judge and neighbour the Honourable Justice Choo Han Teck describes him as a person who "is broadminded and has a deep insight into law, and life, among other things" and "is a fine sportsman, and like any true sportsman, has a keen sense of fair play, and humour". This keen insight into the law and life manifests in Justice Lee's response when we solicit his advice to young lawyers who may be finding the first years of legal practice a struggle: "When one is young, it is alright to struggle a little. That is the best time to learn and the experience will stand you in good stead later on – quite apart from the bragging rights that you will be entitled to! My general advice to anyone, young and old, is: do what you enjoy and enjoy what you do. There is nothing more soul destroying than to be trapped in a job for which you have no love. And nothing is more fulfilling than to find meaning in what you are doing."

Inter Se *congratulates Justice Lee Seiu Kin on his reappointment to the Bench.*

A WELCOMED ADDITION:
AN INTERVIEW WITH JUDICIAL COMMISSIONER SUNDARESH MENON

By CHARLENE TAY AND GARY LOW, JUSTICES' LAW CLERKS, SUPREME COURT

It is difficult writing an account of someone whose reputation precedes him – there is always the danger of stating the obvious and seeing an impressive *curriculum vitae* rather than a person. We thought it best, therefore, to meet with the Honourable Judicial Commissioner Sundaresh Menon to find out more about the man himself from the man himself. Internet searches conducted in preparation for the interview turned up, again and again, superlative praise for Menon JC whom, as the head of Jones Day's Dispute Resolution practice in Asia, the Legal 500 website praised as follows: "The esteemed Sundaresh Menon's team of 20 outnumbers all rivals, and has longevity in the market." A quick glance at Menon JC's resumé leaves one convinced that Menon JC had been, until his appointment to the Bench on 3 April 2006, "unquestionably Singapore's

Judicial Commissioner Sundaresh Menon.

leading arbitrator" as declared in *The Asia Pacific Legal 500* (2004/2005) publication.

The interview starts off with the usual questions about beginnings and struggles. Menon JC warmly answers all our questions and what comes through is not only the sheer breadth of Menon JC's legal practice prior to joining the Bench (Menon JC practised in the fields of commercial litigation, arbitration, and construction law for some 18 years) but also the immense hard work that has been devoted to that practice. Menon JC graduated with First Class honours from the National University of Singapore's Faculty of Law and later with a Masters degree from Harvard Law School. He is also admitted to practise in Singapore, New York, and England and Wales.

Menon JC started his legal career in the mid-1980s at Messrs Shook Lin & Bok. Right from the get-go, he was plunged into the deep-end of arbitration practice. In the early 1990s, along with Mr Wong Meng Meng SC and Mr Alvin Yeo SC, he started Wong Meng Meng & Partners (the precursor to Wong Partnership). As the firm was in its fledgling years, Menon JC had to take on a broad range of cases, many of which involved drawn-out litigation. In the late 1990s, he joined Messrs Rajah & Tann and there, Menon JC helped to build the firm's arbitration team from scratch.

Menon JC recalls with fondness his first major arbitration brief in Messrs Rajah & Tann which involved a power plant in the middle of a Thai jungle – a far cry from the comfortable hotels and fine dining associated with business travel. Then, Menon JC's eyes brighten as he recounts one of the highest points in his legal practice career – being appointed to the team investigating the collapse of Barings Bank. Travelling between Singapore, London, Hong Kong and Tokyo for eight weeks and interviewing around 81 people, Menon JC takes considerable pride in the way the Singapore team held up under the intense media scrutiny, especially in England, as they worked to uncover the reasons which led to the collapse of Barings Bank. The report issued by the Singapore team has had considerable impact on the banking and finance industries both at home and abroad.

That Menon JC is committed to his work is evident in the many high-profile, complex and time-consuming cases he has tackled. Yet, his chambers is filled with pictures of his family – his wife whom he met in his first year of law school and his three sons – his greatest achievement.

As the interview winds down, Menon JC notes how as a young lawyer at Messrs Shook Lin & Bok, he had for a period of three months been a colleague of a certain Mr Chan Sek Keong (as he then was). Some 20 years have since passed and Menon JC finds himself in a similar position. We remark that his appointment to the Bench must be a full circle moment for him. Menon JC agrees.

Inter Se *congratulates Judicial Commissioner Sundaresh Menon on his appointment to the Bench.*

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SMALL CASE COMMERCIAL MEDIATION SCHEME

By SHERRIE LEE, SENIOR EXECUTIVE, SMC

The Singapore Mediation Centre ("SMC") has been at the forefront of commercial mediation in Singapore for the past eight years. With mediation fees starting at $900 per party per day (fees are pegged to the quantum of claim), cases brought to SMC typically see claims of hundreds of thousands of dollars. Other dispute resolution services for commercial cases include the Small Claims Tribunals and the Consumer Association of Singapore ("CASE"). While Small Claims deals with claims up to $20,000, CASE only deals with consumer-related disputes.

In recognising the gap where a commercial dispute may not fall into the purview of existing dispute resolution services or the quantum of claim may not warrant the fees payable, SMC has started a Small Case Commercial Mediation Scheme ("SCCMS"). The SCCMS aims to provide mediation services for cases where the quantum of claim is S$30,000 or less.

Supervised by members of the SMC Panel of Principal Mediators, the scheme will focus on helping the public to settle commercial disputes amicably. The SCCMS will provide those seeking dispute settlements with a straightforward and easy to use system. The SCCMS, however, will not be offered to matters relating to neighbourhood and community disputes as such disputes are more appropriate for the Community Mediation Centres and other dispute resolution service providers.

The SCCMS has two stages: a) Mediation Advisory Clinics for case assessment; and b) the actual mediation session itself. Clinic sessions are held once a week for the first three weeks of each month. Mediation sessions are held once a month on the fourth Saturday of every month for half a day. A pilot scheme for the SCCMS started on 7 March 2006.

For more information, please call 6332 4366 or e-mail enquiries@mediation.com.sg.

OPERATING HOURS:

Weekly Mediation Advisory Clinic
First to third Tuesdays of the month.
4.30pm – 6.30pm.

Mediation (by appointment only)
Every fourth Saturday of the month.
9.00am – 1.00pm.

Mediation Advisory Clinics and mediation sessions will be held at the Singapore Mediation Centre located at 1 Supreme Court Lane, Level 4, Singapore 178879.

COST

Consultation fee for Mediation Advisory Clinic: $10.00
Fee payable if mediation proceeds:
$25.00 per party
(Note: A rebate of $10.00 will be given to the party who paid the consultation fee.)

The Consultation fee for the Mediation Advisory Clinic is currently waived until further notice.

COMMISSIONERS FOR OATHS & NOTARIES PUBLIC 1 OCTOBER 2006 TO 30 SEPTEMBER 2007

The Singapore Academy of Law ("the Academy") invites applications for the appointment/reappointment* of commissioners for oaths and notaries public for the period 1 October 2006 to 30 September 2007. **Applications should be received by the Academy before 4.00pm, Monday, 31 July 2006.** Late applications will not be considered.

Subject to the Board of Commissioners for Oaths & Notaries Public's discretion, the internal guidelines used for the fresh appointments of advocates and solicitors as commissioners for oaths and notaries public are as follows:

	As at 1 October 2006
Commissioners for Oaths	• those with not less than ten years' experience in active legal practice and/or legal service; and • those who are not less than 35 years of age.
Notaries Public	• those with not less than 15 years' experience in legal practice; and • those who are not less than 40 years of age.

Public officers from Government ministries, departments, statutory boards and Government-linked companies, and court interpreters may apply for appointment as commissioners for oaths. To be eligible for appointment, first-time applicants who are public officers must have attended a briefing for commissioners for oaths.

All commissioners for oaths and notaries public will be issued with expiry date stamps for use on documents administered in exercise of their appointments. Commissioners for oaths and notaries public are required to maintain a register of these documents.

Advocates and solicitors are required to pay annual fees of $500.00 for appointment/reappointment as commissioners for oaths and $500.00 for appointment/reappointment as notaries public. Public officers pay an annual fee of $100.00 for appointment/reappointment as commissioners for oaths.

For more information on the appointment/reappointment of commissioners for oaths and notaries public, please call Ms Judy Ang at 6332 4116/7.

Application forms may be downloaded from the Academy website at www.sal.org.sg or obtained from:

Singapore Academy of Law
Board of Commissioners for Oaths and Notaries Public Office
1 Supreme Court Lane
Level 4
Singapore 178879

* Commissioners for oaths and notaries public whose appointments expire on 31 March 2007 should apply in January 2007.

SINGAPORE ACADEMY OF LAW SCHOLARSHIPS

Applications are invited for the Singapore Academy of Law Scholarships from persons planning to apply for postgraduate studies in Law for the academic year 2007–2008.

The scholarships were introduced by the Singapore Academy of Law in 1996 to promote excellence in legal study and research amongst young lawyers. Applicants must:

- be members of the Singapore Academy of Law;
- be below 40 years of age in January 2006;
- possess at least a Second Upper honours degree in Law; and
- at the time of the award, not have been awarded any other scholarship for the course for which this application is made.

For more details, please call Ms Judy Ang at 6332 4006. Application forms may be downloaded from the Academy website at www.sal.org.sg or obtained from:

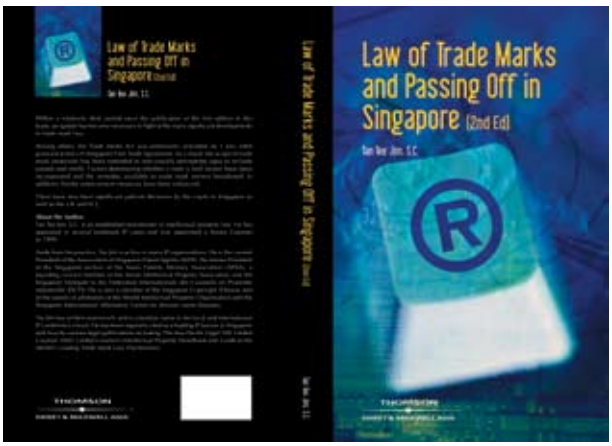
Singapore Academy of Law
1 Supreme Court Lane
Level 4
Singapore 178879

Applications should be received by the Academy **before 4.00pm, Thursday, 31 August 2006.**

BOOK REVIEW

By SAW CHENG LIM, ASSISTANT PROFESSOR OF LAW, LEE KONG CHIAN SCHOOL OF BUSINESS, SINGAPORE MANAGEMENT UNIVERSITY

Title: Law of Trade Marks and Passing Off in Singapore (2nd Ed, 2005)
Author: Tan Tee Jim SC
Publisher: Thomson Sweet & Maxwell Asia
Pages: lviii + 962pp
Price: S$302.40 (incl GST)



It was in the year 2003 that Senior Counsel Tan Tee Jim first published his book on the *Law of Trade Marks and Passing Off in Singapore*. Barely two years after, a second edition is now available. Whilst the author must certainly be congratulated for, amongst other things, the speed and efficiency in updating his book, it appears that such an exercise has become necessary – even critical – for works whose subject-matter concerns intellectual property ("IP"). Indeed, given the recent spate of legislative amendments affecting virtually every branch of IP in Singapore, such works are susceptible to becoming outdated almost as soon as the manuscript goes to print, and the first edition of the book currently under review is but an example.

Fortunately, Tee Jim's commentary on the law of trade marks and passing off in Singapore has not lost its currency. Whilst retaining the lucid and methodical

Whilst retaining the lucid and methodical structure of the earlier edition, the second edition now incorporates the latest amendments to the Trade Marks Act (Cap 332) ...

structure of the earlier edition, the second edition now incorporates the latest amendments to the Trade Marks Act (Cap 332) which were brought about as a consequence of the US-Singapore Free Trade Agreement, examples of which include an expansion of the scope of registrable subject-matter, enhancing the scope of protection for well-known trade marks in Singapore, as well as the availability of statutory damages in infringement actions involving the use of counterfeit trade marks. At a more general level, it is significant to note that the author has tracked very closely the plethora of recent case law developments in the UK and the EU and has given due attention and analysis to them at the appropriate juncture (see, in particular, the impact of recent decisions from the European Court of Justice on the scope of registrable subject-matter as discussed in Chapter 2. Recent decisions emanating from our courts (including the very recent decision of the Court of Appeal in *McDonald's Corp v Future Enterprises Pte Ltd* [2005] 1 SLR 177) have also not been forgotten and the author makes reference to these in his preface and elsewhere in the book.

The most recent changes to Singapore's trade mark legislation only took effect on 1 July 2004. In many ways, therefore, Tee Jim's second edition continues to break new ground as our courts, understandably, have not yet had the opportunity to consider these new provisions. Take, for example, the newly-introduced s 28(4)(*a*) of the Trade Marks Act which provides for the defence of "fair use in comparative commercial advertising or promotion". Whilst the concept of comparative advertising itself is not new in our domestic law of trade marks, the notion of "fair use" certainly is. Nevertheless, Tee Jim is, as always, generous in offering his own clearly-articulated views as to how "fair use" ought to be interpreted in the local context.

Another consequence of recent legislative activity concerns the enhanced protection accorded to well-known trade marks in Singapore, an example of which is to be found in the discussion of s 8 of the Trade Marks Act (the relative grounds for refusal of registration). More specifically, for trade marks filed on or after 1 July 2004, the author notes in that an objection may be raised under s 8(3A) and goes on to discuss the provision in greater detail. There are, however, two matters to highlight in this regard.

First, it would have been helpful to point out that the objection under s 8(3A) (or what is now s 8(4)) can be raised by the Registrar regardless of the nature of the goods or services for which the mark is sought to be registered (whether they be identical, similar or dissimilar to those in respect of which the earlier well known trade mark is protected). Second, the author's analysis of s 8(3A)/8(4) is somewhat curious. Tee Jim appears to have read and analysed the provision as a whole, without making any distinction between limbs (i) and (ii) therein. In this reviewer's opinion, it would have been preferable for the author, in discussing s 8(3A)/8(4), to point out the (intended) differences between limbs (i) and (ii) of that provision – for example, that the issue of "dilution" or taking "unfair advantage" becomes relevant only where the earlier trade mark is "well known to the public at large in Singapore".

Be that as it may, the reader will certainly appreciate Tee Jim's clear and succinct exposition of the twin concepts of "dilution" and taking "unfair advantage" and particularly so when these doctrines were hitherto not part of the corpus of law protecting well-known trade marks in Singapore.

Tee Jim has once again demonstrated that the heavy demands of legal practice is no obstacle to his sincere and passionate contributions to legal writing. Just as the author himself is highly regarded at the IP Bar in Singapore, this reviewer is positive that the second edition of this great work will – in its appeal to practitioners, academics and students alike – be accorded the high level of respect that it rightfully deserves.

SINGAPORE ACADEMY OF LAW ANNUAL LECTURE 2006

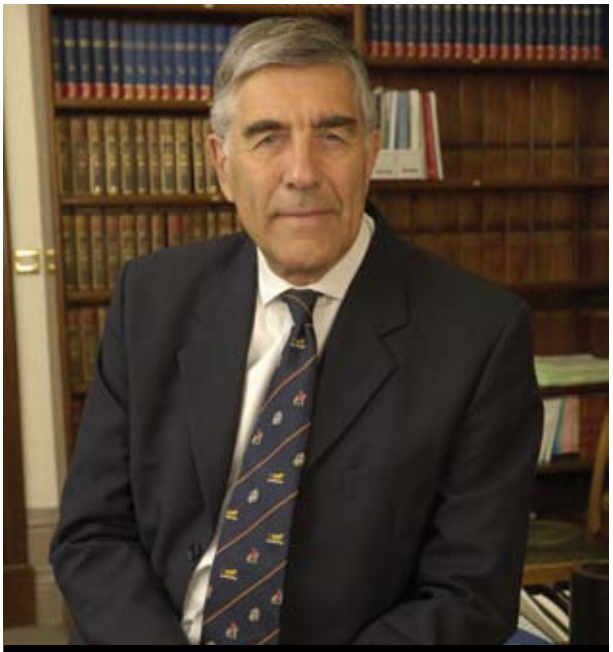
The Singapore Academy of Law is pleased to announce that The Lord Chief Justice of England and Wales, The Right Honourable The Lord Phillips of Worth Matravers, will be the speaker for the 13th Singapore Academy of Law Annual Lecture. Lord Phillips will speak on "Terrorism and Human Rights" on Tuesday, 29 August 2006 at 7.30pm at the Supreme Court Auditorium.

Lord Phillips was born on 21 January 1938, and educated at Bryanston School from 1951 to 1956 where he studied classics. His relationship with the school did not end upon graduation. In 1975, he became one of the school's Governors and, since 1981, has been Chairman of the Governors of the school. Between 1956 and 1958, he undertook National Service as a Commissioned Officer with the Royal Navy as Midshipman RNVR (Royal Naval Volunteer Reserve).

Lord Phillips read law at King's College, Cambridge and was called to the Bar in 1962 by the Middle Temple where he was the Harmsworth Scholar. He then practised at the Bar for the next 15 years, specialising in admiralty and commercial work. From 1973 to 1978, he was Junior Counsel to the Ministry of Defence and to the Treasury in admiralty matters. Lord Phillips took silk in 1978.

In 1982, Lord Phillips was appointed a Recorder, and in 1987, he was appointed to the Queen's Bench Division of the High Court. As High Court Judge, he presided over several lengthy and complex trials, including the Barlow Clowes and Maxwell prosecutions. In the meantime, he became actively involved in legal training and chaired the Council of Legal Education from 1992 to 1997. From 1998 to 2000, he was chairman of the inquiry into the outbreak of BSE.

Lord Phillips was promoted to the Court of Appeal in 1995 and elevated to Lord of Appeal in Ordinary on 12 January 1999. Two months later, Lord Phillips sat in one of General Augusto



The Lord Chief Justice of England and Wales, The Right Honourable The Lord Phillips of Worth Matravers.

Pinochet's appeals and ruled that the former dictator of Chile had no immunity from extraditable crimes. On 6 June 2000, Lord Phillips was elevated to Master of the Rolls and Head of Civil Justice. On 1 October 2005, Lord Phillips succeeded The Right Honourable The Lord Woolf of Barnes as Lord Chief Justice of England and Wales.

According to the BBC, Lord Phillips is popular amongst lawyers and pioneered the use of computers in court. He is also known for cycling to and from court. In his free time, Lord Phillips enjoys walking and swimming, and France. The Academy is honoured to have Lord Phillips grace our 13th Annual Lecture.

The Annual Lecture is open to both members of the legal profession and to the public, by invitation only. As limited seats are available, invitations will be issued on a first come, first served basis. Please visit the Academy's website at www.sal.org.sg to request for an invitation by 10 July 2006. For further inquiries, please contact us at 6332 4149 or e-mail annuallecture@sal.org.sg.

ADMISSION OF ADVOCATES AND SOLICITORS 2006

By ANITA PARKASH, EDITOR, SAL

The proceedings that took place on the morning of Saturday, 20 May 2006 were significant to many people for many reasons. For the 202 men and women being called to the Bar as advocates and solicitors, the proceedings were a culmination of years of hard work and a celebration of success. For the practising Bar, what took place was an infusion of vitality that increased the strength of the Bar to some 3414 practitioners. For the legal community, it was a ceremony of change – the annual mass call ceremony was held for the first time in the auditorium of the new Supreme Court building and was officiated by the Honourable the Chief Justice Chan Sek Keong.

The Chief Justice addressed the newly-called lawyers on five important areas, namely, the future of the legal profession, involvement in litigation, the tasks of young lawyers, commitment to professional development and the need for specialisation, and the importance of honesty, integrity and contribution to society.

The Chief Justice pointed out that the globalisation of legal services in recent times has created opportunities for talented young lawyers to pursue a wide range of specialised legal work both domestically and internationally. The Chief Justice then highlighted the importance of the litigation Bar in facilitating the administration of justice, drawing attention to the dwindling numbers of young lawyers who opt to specialise in litigation practice due to the perception of stress of litigation. For those with an interest in litigation practice but daunted by the prospect of conducting a case before a court and against more experienced lawyers, the Chief Justice offered encouragement: " … you should take heart in the knowledge that a great litigator is not born but made, that effort and dedication to the craft will be rewarded."

" … you should take heart in the knowledge that a great litigator is not born but made, that effort and dedication to the craft will be rewarded."

The young lawyers were then reminded of the task that lay before them to preserve the reputation of the Singapore Bar as one which is honest, fair and efficient even as they worked towards establishing their individual reputations in their chosen fields of practice. Such a task would involve a commitment to keeping up with developments in their practice areas and working towards expertise in those areas. The Chief Justice, pointing out that "the law is not just an ordinary occupation" but rather "a vocation committed to justice", also called upon the newly-called lawyers to participate actively in *pro bono* work "to help others who would not otherwise have access to legal advice".

In conclusion, the Chief Justice offered the following advice: "Bear in mind always that a lawyer's first and foremost duty is to uphold the principles of honesty, integrity and professionalism. … In every case you take, whether big or small, remember that it is important to someone. For better or for worse, your advice and advocacy as a lawyer affect and change people's lives. Choose your area of practice wisely and apply your legal knowledge and skills honestly and scrupulously to help those in need, and in the process you will, I believe, find fulfilment in the law."

WATERFRONT WONDERLAND

**By SHERINA CHAN, ASSISTANT MANAGER,
CORPORATE COMMUNICATIONS AND MEMBERSHIP DEVELOPMENT, SAL**

All 180 complimentary tickets for the Singapore Academy of Law's ("SAL") latest members' event, sponsored by ONE°15 Marina Club Singapore ("ONE°15"), were snapped up by members in just over 24 hours. The event was held on 22 April 2006 in conjunction with Boat Asia 2006, an annual event bringing together leisure-boating enthusiasts and the latest products in the luxury leisure-boating industry. As Singapore continues to simplify and streamline regulatory procedures to nurture its growing boating community, events such as Boat Asia have become highlights in the calendars of those interested in the lifestyle. If attendance is anything to go by, the boating industry is set to more than just stay afloat – over 6000 people turned up at the Boat Asia 2005.

At the event sponsored by ONE°15, members were given a sneak peek into the latest rage to hit town – waterfront living with all the bells and whistles (or rather, boats and wave-runners) in the form of Sentosa Cove. Members had the opportunity to visit a variety of booths set up by boating industry players as well as partake of complimentary jet ski rides, and board over 20 boats and yachts on display in what can only be described as a waterfront wonderland. The

centerpiece of this amazing set-up was the Jongert 40T "Number One", a $24m super-yacht that had everybody talking long after the event was over. Talk was, however, momentarily paused during the sumptuous barbeque dinner that was laid out for members after the exhibition part of the event.

In his welcome speech, Mr Arthur Tay, Chairman of ONE°15, described the ONE°15 marina facility as well as the clubhouse that will be ready by the first quarter of 2007 as "the perfect waterfront antidote to the hurly burly of big city life!" Judging by the response from members who attended this event, a lot of people would agree that there can be little else more wonderful than sitting out on the deck of a boat gently afloat on a calm sea, watching the sunset while sipping a chilled white and appreciating the good life as more than a passer-by.

Mr Montague Choy, District Judge Tan Boon Khui, Mr Darrell Chan, Ms Cheryl Chia, The Honourable Solicitor General Chan Seng Onn and Mrs Chan Seng Onn. Some of the many SAL members and their guests who attended the event.

BROADBAND 2.0 – THE DEATH OF REGULATION?

By TAN KEN HWEE, DEPUTY SENIOR STATE COUNSEL, ATTORNEY-GENERAL'S CHAMBERS

First-generation Internet advocacy suggested that the Internet would create a "law-free" zone in which governments would have no control or jurisdiction.[1] This utopian view has been greatly moderated with the passage of time. Whilst superficially "borderless", the Internet has had geography re-imposed on it through technological innovations. Governments have also learnt to regulate activities, independent of the technological means by which such activities are conducted. Nevertheless, whether or not regulation can be successful is intrinsically linked to the state of technology. Singapore's aggressive move to put in place an ultra high-speed network with access speeds of at least 200 times the current entry-level broadband access speeds will spearhead innovation. This, in turn, may necessitate further re-examination of regulatory frameworks that are in place, to assess whether they can survive the technological innovations that are upon us.

BROADBAND IN SINGAPORE: THE STORY SO FAR

In June 1996, the Singapore Government announced an ambitious project to bring broadband access to the masses. Singapore ONE, or One Network for Everyone, features a fibre-optic backbone, with the "last mile" of access to individual subscribers' homes being provided through telephone wires (using xDSL technology) or cable modem technology. It was commercially launched in June 1998. By the end of 2005, some 1.3 million users were on broadband access.

The adoption rate in Singapore is high, although not as high as some other Asian countries. Furthermore, users grumble that access speeds are not as advertised, and that consumers in Korea and Hong Kong pay much less for much faster access.[2] Nevertheless, the push towards broadband must be characterised as a success.

The Singapore Government has however, not been resting on its laurels. The Next Generation National Infocomm Infrastructure ("Next Gen NII") has been announced.[3] This is expected to feature fibre-optics connections to the home through the Next Generation National Broadband Network ("Next Gen NBN").[4] Whilst the current infrastructure offers speeds of "up to 30Mbps" or about 535 times the speed of a "POTS" dial-up modem, the Next Gen NBN is expected to offer "ultra high-speed access" starting from 100 MBps to more than 1Gbps.

POSSIBLE IMPLICATIONS OF ULTRA HIGH-SPEED ACCESS ON REGULATION

Whilst it seems axiomatic that faster is better, the hypersonic speeds touted for the Next Gen NBN are quite difficult to understand – both in terms of what it really means to a person sitting in front of a computer, and why exactly he may want such access speeds.[5] A panel of experts convened by *The Business Times* could not fully explain

1 See at http://homes.eff.org/~barlow/Declaration-Final.html.

2 "The Price is Right for Singapore Broadband – Maybe" in *The Business Times*, 20 January 2003.

3 See IDA Press Release dated 23 March 2006, available at http://www.ida.gov.sg, and the speech by Minister for Communications, Information and the Arts, Dr Lee Boon Yang, on 3 March 2006, available at http://www.mica.gov.sg/pressroom/press_060303.htm.

4 The Next Gen NII comprises the Next Gen NBN, and the Wireless Broadband Network (WBN).

5 What it does mean is that a song downloaded from an online music store might conceivably be delivered to the purchased in five seconds, instead of two minutes? This is by no means a certainty because many users in Singapore still consume services hosted from outside of Singapore and regardless of the speed of the Singapore based network, a bottleneck would still access where Singapore's connectivity to the outside world is concerned.

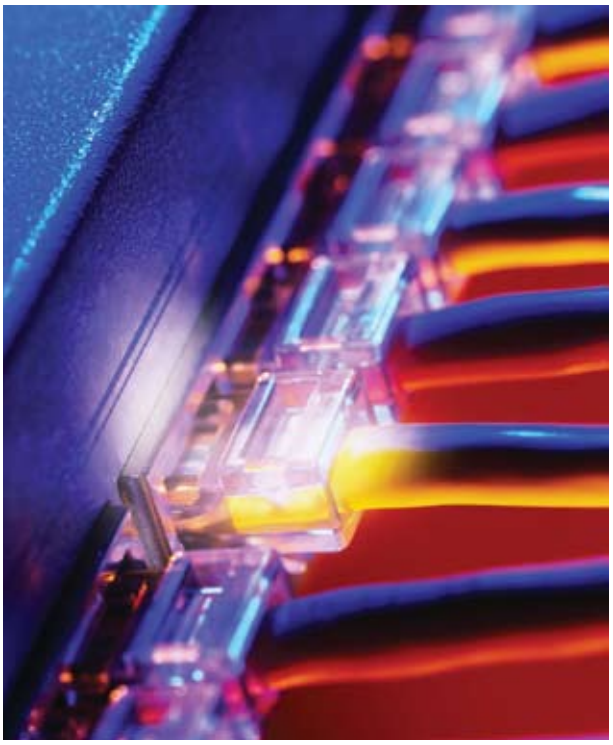
why such access speeds would be desirable.[6] The Government is not particularly concerned about the difficulty of predicting how such access might be used, given the long-term goals of the project. Nevertheless, it has predicted that telemedicine, telecommuting and security video applications may become commercially viable.[7]

Putting aside the "new" applications which are difficult to foresee, the rest of this article will discuss the impact which can already be spotted on the horizon when Internet access in Singapore becomes exponentially better and faster.

Singapore has a nuanced approach to the regulation of Internet content.[8] The Internet Code of Practice, first made in 1996, seeks to strike an appropriate balance between regulation, and allowing sufficient latitude for technological and societal development on account of the Internet revolution. The fundamental premise, however, is the concept of "broadcasting" with a licensable broadcasting service being one which is "in or from Singapore".[9] As explained below, the arrival of hyperbroadband will put this regime under further strain.[10]

In addition, various regulatory frameworks which can apply in respect of Internet content may need a careful and detailed re-examination in the light of the practical impact of ultra high-speed access.

In fact, the revolution has already started. In October 2005, Apple announced that it had reached an agreement with the American Broadcasting



Corporation ("ABC") to provide some of America's most popular television programmes via its iTunes Music Store. These programmes are available within a day of the broadcast, and can be purchased for use on video-enabled iPods. Customers have responded with their credit cards,[11] prompting other networks to also provide their popular television shows for iPod users.[12] Whilst licensing restrictions currently proscribe the sale of these programmes

6 "Faster Broadband Network Need Not Stifle Creativity", *The Business Times*, 18 March 2006.

7 IDA Request for Concept dated 23 March 2006, available after registration from http://www2.ida.gov.sg/registration/BroadBand.nsf/fUserReg?OpenForm, at para 7.

8 See The Broadcasting (Class Licence) Notification (Cap 28, Notification 1, 2004 Rev Ed) made pursuant to the Broadcasting Act (Cap 28, 2003 Rev Ed).

9 See s 8 of the Broadcasting Act.

10 Regardless of ultra-high speed broadband access, the shoe-horning of Internet services onto a "broadcasting" paradigm is not entirely satisfactory. Whilst the definition of "broadcasting" in the Broadcasting Act is broad enough to encompass Internet transmissions, the traditional notion of "broadcast" is that the material that is being broadcast is actively "pushed" through the airwaves, and can be seen or heard by a person almost inadvertently. In reality, Internet transmissions are almost always "pulled" by the viewer/listener. Using software applications on his computer, the viewer/listen requests for information, whether textual or audio/video, from a server. This "pull" paradigm applies even in respect of podcasts as the users' computer performs a periodic check against subscribed "feeds" to ascertain whether there are new podcasts which can be pulled down to the users' computer. This means that the user is much more in control of what he sees than in the case of "traditional" medium like radio/television. This should inform/affect the type and scale of regulation that is appropriate.

11 Within 20 days, more than one million videos were sold through the iTunes online music store. See "Webscan" in *The Straits Times*, 13 November 2005.

12 "ABC Frees 'Desperate', 'Lost' Online", E!Online, 10 April 2006, available at http://www.eonline.com/News/Items/0,1,18767,00.html.

Things will move into high-gear if users can easily obtain high-quality, full-screen video streams. Current video streaming technology is still relatively primitive although it has advanced significantly from the time when a postage-sized, grainy image was all that could be expected.

to viewers outside of the United States,[13] this is merely a matter for commercial negotiation.[14]

When asked about the iTunes TV feature, a Media Development Authority of Singapore ("MDA") officer responded that "the MDA does not regulate what is downloaded from the Internet as long as the content complies with the laws of the land such as the Copyright Act and the Films Act".

Applicability of the Broadcasting Act

The Broadcasting Act (Cap 28, 2003 Rev Ed) requires a broadcast service provider within Singapore to be licenced, either by virtue of an explicit licence, or a "class licence" under s 9. No person can, from "within Singapore" establish a television or a radio broadcast station, without satisfying these licensing requirements. However, the geographical scope and limitation is clear. The provider must be "within Singapore".

It has generally been impractical to locate a broadcast station outside of Singapore in order to "beam" transmissions for a Singapore audience, although in the 1980s, a radio station established itself on Batam island, near enough to allow it to focus on a largely Singapore audience. There is also some signal leakage in respect of some Malaysian and Indonesian channels which can be viewed, with varying degrees of signal strength, in certain parts of Singapore. Nevertheless, the general effectiveness of the regulatory framework remains – broadcast radio and television cannot easily or reliably be received by persons in Singapore without complying with the regulatory framework put in place by the MDA. This framework includes measures such as advisory committees for television and radio programmes, to provide feedback on the range and quality of TV and radio programmes.[15]

This regulatory framework for broadcast audio and television will be increasingly strained by technological developments. For some time already, there has been a proliferation of online radio stations, that "stream" radio broadcasts via the Internet, sometimes through a website, but also through associated media player software (like RealPlayer, iTunes or Windows Media Player).[16] The "streaming" means that the radio broadcasts are provided to listeners in Singapore "live", with perhaps a short time-lag due to processing and compression overheads, and the need to "buffer" a portion of the programme so that network congestion will not affect the listening experience. Players like RealPlayer even allow the user to pause or rewind the radio programme.

Things will move into high-gear if users can easily obtain high-quality, full-screen video streams. Current video streaming technology is

[13] Eager Singaporeans have, however, found ways to bypass the geographical location checks imposed by the iTunes Music Store. See "It's prime-time for iPod video" in *The Straits Times*, 23 October 2005.

[14] The fact that online sales may generate additional revenue for the Walt Disney Co (see "'Lost' and 'Desperate Housewives' Could Generate $1B Profit For Disney" in *Forbes*, 18 January 2006) may be impetus for studios to iron out licensing arrangements, especially since the experience thus far has been that the download revenue through iTunes sales has not cannibalised revenue through other income streams, like advertising or syndication.

[15] See generally, the MDA's website at http://www.mda.gov.sg.

still relatively primitive although it has advanced significantly from the time when a postage-sized, grainy image was all that could be expected. Extremely high bandwidth connections, working in tandem with highly efficient video compression technologies, will improve the quality of streaming video channels dramatically.

The Broadcasting Act (enacted in 1994) predicted that broadcasters from outside of Singapore may have an effect on Singapore, and allowed for orders to proscribe "unacceptable foreign broadcasting services".[17] However, it is not clear how these orders would operate. Should Google's video service or YouTube.com be proscribed on the basis of some programmes that are available through these services? Apart from the risk that we would be throwing out the proverbial baby with the bathwater, the legal implications of proscribing a foreign broadcasting service must be considered.

Under the Broadcasting Act, once a broadcasting service is proscribed, no person may, *inter alia*, provide content or equipment for that broadcasting service.[18] To do so would be a criminal offence. The film- and documentary-making studios that we have cultivated to set up shop in Singapore will not be able to sell programmes, whether directly or through international distribution networks, to a broadcaster that is deemed to be a proscribed foreign broadcasting service. Equipment manufacturers in Singapore, including electronics and networking equipment manufacturers, would also breach the Act if they supply equipment which may end up being used in connection with the proscribed foreign broadcasting service.

However, the fundamental efficacy or otherwise of proscribing Internet-based services that perform an aggregator role (such as Google's video service, YouTube's service, or iTunes) because of programming which is prejudicial to "public interest or order, national harmony or offends against good taste or decency"[19] must be critically assessed. Does it make sense to do so when the same content is likely to be available through alternative avenues, or when peer-to-peer networks may simply operate to host and provide such content? The creativity and innovation in this industry is quite limitless – Apple is said to be planning to include peer-to-peer "bittorrent" functionality in a future version of iTunes to enable Apple to garner enough bandwidth to effectively sell high-definition commercial videos through its iTunes service.[20] These files are very large and Apple's use of bittorrent technology, if true, will revolutionise the media distribution industry, especially if coupled with strong and effective digital rights management technology which will bring legitimacy and "respectability" to the use of bittorrents, which have hitherto been associated with the sharing of pirated or bootleg music and videos. Such dual-use technology and distribution channels will make it difficult to make use of legislative powers which are generally binary in nature in that they envisage that a broadcaster is either acceptable, or not.

The Films Act

This brings us to the Films Act (Cap 107, 1998 Rev Ed). The Films Act deals with the possession, importation, making, distribution and exhibition of films. Films are widely defined, and would include anything which "is capable

Under the Act, once a broadcasting service is proscribed, no person may, *inter alia*, provide content or equipment for that broadcasting service. To do so would be a criminal offence.

[16] One service, called "Shoutcast", lists at least 13000 radio stations. See at http://www.shoutcast.com.
[17] Section 29 of the Broadcasting Act.
[18] Section 30, *id*.
[19] Section 29(2), *id*.

of being reproduced or displayed as wholly or partly visual moving pictures." I shall focus on the possession and importation of films, since these are the aspects that are most likely to be affected if hyperbroadband facilitates the large-scale commercial transfer of video material over the Internet.

Under the Films Act, all films "imported" into Singapore must be placed in an approved warehouse pending censorship, and the issuance of a permit from the Board of Film Censors ("the Board") for its removal from the warehouse.[21] In addition, all films which are in the possession of any person must be submitted to the Board for the purpose of censorship. All films must also have affixed onto them the appropriate censorship certificate.

This entire regime does not translate well when we consider the large-scale transfer and sale of on-line or downloadable video content, including movies.

First, the Films Act is premised on the existence of a physical object on which the film is contained. This could be celluloid, magnetic tapes, or optical media like DVDs and VCDs. However, the online transmission of videos may never result in the storage of the video onto any magnetic, optical or other physical medium. Streaming video technologies deliver content to viewers' computers as a "live" stream, which can be viewed in "real-time" without the entire video being first transmitted to the viewers' computer. Instead, a certain amount of content is "cached" or pre-stored in a "buffer" to allow for uninterrupted viewing even when occasional network congestion would otherwise result in jerky "start-stop" video quality.

The CNN and the BBC video streams are two cases in point. The move by ABC to provide its prime time programming for free on the Internet, via streaming technology and with imposed advertising,[22] is another striking example of the traditional terrestrial or cable broadcasting being overtaken by internet-based technologies. In addition, "community" sites like YouTube and Google Video allow for the easy sharing of videos by using similar technology.[23] For rights-management purposes, streamed videos may be deliberately locked so that the user cannot access or manipulate the file easily.

As a result, regulatory anomalies are unavoidable. Hence, a film which is not available for sale in shops in Singapore, and was never available for general exhibition to the public, may be easily available via video-sharing community services. The broadband capabilities currently available result in a video that is sized at about a quarter of a typical computer screen. However, with enhanced broadband, and better compression technologies, we can expect that feature films can be made available for download, as full-sized videos, which can be easily shown onto consumer televisions through devices like the Microsoft Windows Media Center Edition,[24] or perhaps even for large-scale exhibition to an audience.

It is possible that the exhibition of a streamed movie does not fall within the four walls of the Films Act for the simple reason that the film is not within the "possession" of the person exhibiting

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21 Section 13 of the Films Act (Cap 107, 1998 Rev Ed).

22 *Supra* n 12. As with the iTunes Music Store, access is currently controlled via technological assessment of where the user is physically located. The system does not allow persons assessed to be outside of the US to access the "free" videos. This may also change in the future, as advertisers and studios become more familiar with the technology.

23 See at http://www.youtube.com and http://video.google.com respectively.

24 Windows XP Media Center Edition is a version of Windows XP designed to serve as a home-entertainment hub. When used in conjunction with home video equipment, it provides "smart" television functionality, and allows downloadable or streamed content to be displayed on televisions.

the film. The film is streamed to the relevant computer, "on the fly" and without any storage in a physical form in the hard-disk or other magnetic or optical media. As such, the film cannot be said to have been "imported" into Singapore,[25] nor can it be said to be in the "possession" of any person.[26] This crack in the regulatory regime is not currently a significant concern simply because the technical ability to stream a full-sized, high quality image for public exhibition purposes is still new.

However, websites in the US already offer movies for sale or time-limited rental.[27] With proper digital rights management technologies, it can be expected that users may even be able to purchase movies online, for retention after burning them onto recordable DVDs. This leads us to the second regulatory difficulty which the Films Act will have to cater for: the MDA assesses that it has no intention of interfering with what Internet surfers download from the Internet, "as long as the content complies with the laws of the land such as the Copyright Act and the Films Act". A person downloads a film via the Internet, and takes "possession" of the film by having it stored on a hard-disk or on other optical or magnetic media. When he does so, the provisions of the Films Act would require him to submit it for censorship. So whilst MDA appears to consider that downloads are acceptable, provided that there is compliance with the Copyright Act and the Films Act, the requirement for compliance with the Films Act actually means that every downloaded film, regardless of its length or its subject matter, must be submitted for censorship.[28] This is a gargantuan regulatory and administrative burden, which will likely overwhelm the Board if Internet users do in fact decide to submit every single downloaded movie trailer, or home made video clip to the Board for censorship action. This disconnect between what is practically feasible and what the law requires will further widen with the arrival of hyper-broadband, and if the movie studios solve the licensing concerns that currently constrain the wider adoption and use of the Internet as a distribution channel for movies.

The Undesirable Publications Act.

The last piece of legislation to be considered in this brief note is the Undesirable Publications Act (Cap 338, 1998 Rev Ed). This Act regulates not just books and periodicals, but also sound recordings.[29] The Act prevents the importation, distribution or reproduction of undesirable publications.

As more and more content is made available online, the ability of the Undesirable Publications Act to effectively keep out undesirable publications requires careful consideration. For example, "Philosophy in the Bedroom" by the Marquis de Sade, was gazetted as a prohibited publication in 1967 and remains so gazetted.[30] However, the publication is easily available on the Internet.[31] Similarly, in 1970, one version of the music from "Hair" was put on the list of prohibited publications.[32] However, another version of the

[25] Section 13(1) of the Films Act is clearly premised on there being a physical copy of the film as it deals with importation by sea, or by land or by air. None of these are applicable when there is neither a physical copy, nor any physical "importation".

[26] Other laws may proscribe the public exhibition of the film in question but this may not apply in respect of all films which have not be submitted for censorship.

[27] See, *eg*, at http://www.movielink.com and http://www.cinemanow.com.

[28] If, for example, the iTunes Music Store allows users to download and store onto their iPods television programmes and other "film" content, this would mean that all iPod users that make use of the facility would be under a legal obligation to submit their iPods for censorship.

[29] Section 2 of the Undesirable Publications Act (Cap 338, 1998 Rev Ed). The definition of sound recording however specifically excludes soundtracks of films. One possible reason could be that when the Act was passed, film soundtracks were music-only with no vocals, thereby obviating any possibility that they may convey objectionable or prohibited content. The situation today is however different, and it could well be that if the Act is to continue to regulate sound recordings including all music CDs, the exclusion of film soundtracks may have to be re-examined.

[30] See row 198 in the Undesirable Publications (Prohibition) (Consolidation) Order (Cap 338, O 1, 2001 Rev Ed).

[31] See, *eg*, at http://en.wikipedia.org/wiki/Marquis_de_Sade#His_works_online.

[32] See row 225 in the Undesirable Publications (Prohibition) (Consolidation) Order.

same soundtrack, with presumably the same lyrics that are considered to be offensive, is easily available for download from an online music store in Singapore, for immediate download.

Is a person who downloads the material an importer who has breached the prohibition in the Undesirable Publications Act against importing the prohibited publication? Just as for the Films Act, the definition and tenor of the Act implies that "import" relates to the bringing into Singapore of a physical object.[33] However, a person who, having downloaded the material to his computer, makes the material available to others would clearly be supplying, distributing or reproducing the material.[34] He would also have the material in his "possession" if it were stored in his computer, regardless of whether he can be said to have "imported" it.[35]

Nevertheless, the Undesirable Publications Act is still premised on physical articles being available for seizure and inspection. Furthermore, if a person were to download material which he subsequently finds out is on the list of prohibited publications, there is no "safe harbour" provision to allow him to deliver the publication for vetting or to surrender the same to avoid the criminal liability that arises from being simply in possession of the prohibited publication. This is unsatisfactory because the Act does not clearly proscribe the download of the material even though it makes the subsequent ownership or possession of the material an offence. In the case of physical goods, the Undesirable Publications Act allows the person to deliver the publication to a police station if he was sent the material without his knowledge, if he was sent the material pursuant to an order he made before the prohibition came into force, or if he was already in possession of the material by the time the prohibition came into force.[36] Clearly, the Act is premised on the notion that physical importation of a physical object is the sole means by which publications can be imported into Singapore.

If the Undesirable Publications Act is to adequately deal with the further growth in the online sale of books and music, especially when these are facilitated by extremely high-speed internet access, it will need to be carefully analysed to properly translate physical world controls and mechanisms to deal with their online equivalents.

Time for Regulatory Convergence

If Singapore is to continue to maintain its existing controls over various forms of media,[37] there is a need to rationalise and perhaps consolidate and converge the various pieces of legislation that are discussed in this brief article.[38] Regulatory agencies will also need to coordinate their efforts and ensure consistency. Above all, regulators will have to carefully assess how, if at all, physical world controls can be transplanted to deal with a highly connected world where Singaporeans have quick and affordable access to high quality and high speed Internet connectivity. In doing so, regulators will have to keep abreast of the latest technological innovations, and developments in the actual exploitation of such innovation by industry.

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33 Sections 2 and 6(1) of the Undesirable Publications Act.
34 Section 6(1), *id*.
35 A separate offence against possession of undesirable publications exists in s 6(2), *id*.
36 Section 7, *id*.
37 For a recent defence of Singapore's censorship regime, see the speech by Dr Lee Boon Yang, Minister for Information, Communications and the Arts, "Media Free-For-All? No, our values can't be sacrificed", in *The Straits Times*, 13 November 2003.
38 A non-exhaustive list of the legislation that can be rationalised includes: the Undesirable Publications Act, the Films Act, the Broadcasting Act.

LEGISLATION WATCH

By JOYCE CHNG AND EMILY TEO, LEGISLATION DIVISION, ATTORNEY-GENERAL'S CHAMBERS

[Note: A complete and detailed list of legislation may be found online at http://www.sal.org.sg/media_newsltter.htm]

Bill introduced in March

The **Moneylenders (Amendment) Bill** (No 12/2006) amends the Moneylenders Act (Cap 188).

Subsidiary Legislation published in March and April

The **Companies (Central Depository System) (Amendment) Regulations 2006** (GN No S 164/2006, wef 17 March 2006) amend the Companies (Central Depository System) Regulations (Rg 2).

The **Passports (Authorised Officers) (Amendment No 2) Regulations 2006** (GN No S 169/2006, wef 22 March 2006) amend the Passports (Authorised Officers) Regulations (Rg 2).

The Controller of Immigration has, *vide* the **Notification relating to Immigration Depot** (GN No S 175/2006, wef 1 April 2006), designated Marina South Pier, 31 Marina Coastal Drive, Singapore 018988 to be an Immigration Depot for the examination, inspection and detention of persons under the Immigration Act (Cap 133).

The **Public Entertainments and Meetings (Arts Entertainment) (Amendment) Rules 2006** (GN No S 177/2006, wef 24 March 2006) amend the Public Entertainments and Meetings (Arts Entertainment) Rules (R 4).

The **Legal Profession (Qualified Persons) (Amendment) Rules 2006** (GN No S 217/2006, wef 7 April 2006) amend the Legal Profession (Qualified Persons) Rules (R 15).

Acts brought into operation in March and April

1. Endangered Species (Import and Export) Act 2006 (Act 5 of 2006) (wef 1 March 2006 *vide* GN No S 97/2006)
2. Intoxicating Substances (Amendment) Act 2006 (Act 3 of 2006) (wef 1 March 2006 *vide* GN No S 107/2006)
3. Misuse of Drugs (Amendment) Act 2006 (Act 2 of 2006) (wef 1 March 2006 *vide* GN No S 108/2006)
4. Workplace Safety and Health Act 2006 (Act 7 of 2006) (wef 1 March 2006 *vide* GN No S 133/2006)
5. Supplementary Supply (FY 2005) Act 2006 (Act 12 of 2006) (wef 21 March 2006)
6. Residential Property (Amendment) Act 2006 (Act 9 of 2006) (wef 31 March 2006 *vide* GN No S 161/2006)
7. Statutes (Miscellaneous Amendments) (No 2) Act 2005 (Act 42 of 2005) (Items (2) to (7), (9), (11), (12), (13), (15), (16), (22), (25), (31), (34)(a) and (36) in the First Sched and the Third Sched wef 1 April 2006 *vide* GN No S 81/2006)
8. Road Traffic (Amendment) Act 2006 (Act 4 of 2006) (Sections 17, 22 and 23 wef 1 April 2006 *vide* GN No S 101/2006)
9. Mutual Assistance in Criminal Matters (Amendment) Act 2006 (Act 8 of 2006) (wef 1 April 2006 *vide* GN No S 165/2006)
10. Supply Act 2006 (Act 13 of 2006) (wef 1 April 2006)
11. Nurses and Midwives (Amendment) Act 2005 (Act 15 of 2005) (wef 1 April 2006 *vide* GN No S 180/2006)
12. National University of Singapore (Corporatisation) Act 2005 (Act 45 of 2005) (wef 1 April 2006 *vide* GN No S 189/2006)
13. Nanyang Technological University (Corporatisation) Act 2005 (Act 46 of 2005) (wef 1 April 2006 *vide* GN No S 190/2006)
14. Singapore Management University (Amendment) Act 2005 (Act 47 of 2005) (wef 1 April 2006 *vide* GN No S 191/2006)
15. Public Transport Council (Amendment) Act 2005 (Act 37 of 2005) (wef 3 April 2006 *vide* GN No S 213/2006 except s 14)

Revision of Acts

The Law Revision Commissioners have prepared and published a revised edition of the following Acts (wef 1 April 2006 *vide* GN No S 174/2006):

1. Boundaries and Survey Maps Act (Cap 25)

2. Diplomatic and Consular Relations Act (Cap 82A)
3. Land Surveyors Act (Cap 156)
4. Securities and Futures Act (Cap 289)
5. Stamp Duties Act (Cap 312)

This revised edition of Acts contain all the amendments which have been made to these Acts up to 1 March 2006, with the exception of the Diplomatic and Consular Relations Act and the Securities and Futures Act which contain all the amendments which have been made up to 1 April 2006.

Revision of Subsidiary Legislation

The Law Revision Commissioners have published, in loose-leaf form, the 2006 revised edition of the Rules of Court (R 5) made under the Supreme Court of Judicature Act (Cap 322) (wef 1 April 2006 *vide* GN No S 185/2006), incorporating all the amendments up to 1st April 2006.

FOR THE RECORD

28 June 2006	Wednesday	SAL Movie Night – "Superman Returns"
27 July 2006	Thursday	"Dim Sum Creations" at the Conrad Centennial Singapore Cost of workshop: $55 per person (Retail price: $100) Price includes a cooking workshop, welcome drink, sampling of dishes, as well as a buffet dinner voucher at Oscar's.

*Please note that SAL reserves the right to make any amendments to the calendar if warranted by circumstances beyond its control.
For inquiries on events, please contact Sherina Chan, tel: 6332 0078 or e-mail sherina_chan@sal.org.sg.

WORKING CAPITAL

Tasty Treats

Tuck into the sumptuous buffet spread of 60 á la carte dishes at Si Chuan Dou Hua Restaurant at Grand Plaza Parkroyal at $35.80+++ and enjoy one free serving of "Suckling Pig" per person. With every minimum of $50 spent per person, SAL members enjoy a complimentary glass of red wine. Both promotions valid until 22 July 2006.

Si Chuan Dou Hua Restaurant, Grand Plaza Parkroyal Singapore, 10 Coleman Street, Singapore 179809. Tel: 6336 3456.

Hey, Good-Looking!

Stop by Hollywood Secrets between now and 22 July 2006 and SAL members enjoy a 20% discount on hair services and a 10% discount on manicure and pedicure services!

- Hollywood Secrets, Paragon #05-31, 290 Orchard Road, Singapore 238859. Tel: 6738 2983.
- Hollywood Secrets, International Building #01-09/10, 360 Orchard Road, Singapore 238869. Tel: 6735 3375.
- Hollywood Secrets, Scotts Shopping Centre, #03-19/22, 6 Scotts Road, Singapore 228209. Tel: 6736 3940.
- Hollywood Secrets, Far East Plaza, #03-133, 14 Scotts Road, Singapore 228213. Tel: 6734 4688.

LEGAL EDUCATION AND TRAINING CALENDAR FOR JUNE 2006 TO SEPTEMBER 2006

DATE	EVENT	SPEAKERS/TRAINERS	ORGANISER
22 Jun (Thu) 1.30pm – 5.30pm	STARS eLodgment	BiziBody	LTC
26 Jun (Mon) Session 1: 9.00am – 11.30am Session 2: 2.30pm – 5.00pm	System Administrator for EFS	CrimsonLogic	LTC
27 – 29 Jun (Tue – Thu) 9.00am – 5.00pm	Microsoft Office Specialist Certification – Access XP	NTUC Learning Hub	LTC (Partnership Program with NTUC Learning Hub)
3 Jul (Mon) 10.00am – 4.00pm	Deciphering Cash Flows for Lawyers™	Mr Adrian Au, Evolvere Inc	SAL
25 Jul (Tue) 2.30pm - 4.00pm	Recent Developments in the Law of Data Protection, Digital Signatures and Electronic Evidence	Mr Stephen Mason, British Institute of International and Comparative Law	SAL
28 Jul (Fri) 2.30pm – 5.30pm	Medical Law	Professor John Devereux, University of Queensland	SAL
1 Aug (Tue) 2.30pm – 4.30pm	Seminar on Competition Law	Professor Richard Whish, University of London	Competition Commission of Singapore & SAL
21 Aug (Mon) 10.00am - 4.00pm	Demystifying Business Valuation for Lawyers™	Mr Adrian Au and Mr James Tan, Evolvere Inc	SAL
30 – 31 Aug (Thu – Fri) 9.00am – 5.00pm	Mediation: Strategic Conflict Management for Professionals	Mr Loong Seng Onn Ms Carol Liew	SMC
7 Sep (Thu) 2.30pm – 5.30pm	Digital Forensics	Mr Hri Kumar, Drew & Napier and other speakers to be confirmed	LawNet & SAL
11 Sep (Mon) 10.00am - 4.00pm	Demystifying Initial Public Offerings for Lawyers™	Mr James Tan, Evolvere Inc.	SAL
13 – 15; 22 Sep (Wed – Fri; Fri) 9.00am – 5.00pm	Associate Mediator Accreditation Course	Mr Loong Seng Onn Ms Carol Liew	SMC
29 Sep (Fri) 9.00am – 5.00pm	Journal of Contract Law Conference – "Contract and the Commercialisation of Intellectual Property"	Professor Ray Nimmer, University of Houston; Professor John Carter, Ms Kristen Stammer, University of Sydney; Professor George Wei, Singapore Management University; Mr Donald Robertson, Freehills; and Professor Charles Rickett, University of Queensland.	Freehills, Singapore Management University & SAL

For SAL events: Please note that all information is correct at the time of printing. While every effort is made to retain the original arrangements, changes may sometimes be necessary. An updated version of this calendar is available at the following website: http://www.sal.org.sg/events_calendar.htm.

For enquiries and more information, please contact the respective organisers:

- LawNet Training Centre (LTC): Ms Helen Leong at 6332 4256 or Ms Aida Bte Abdul Rahman at 6332 4382 or e-mail ltc@sal.org.sg.
- Singapore Academy of Law (SAL): Ms Serene Ong at tel: 6332 4032 or les@sal.org.sg.
- Singapore Mediation Cente (SMC): Ms Survinder Kaur at tel: (65) 6332 4213 or survinder_kaur@sal.org.sg.