

IN SEARCH OF PURPOSE AND MENTORSHIP

[2018] SAL Prac 15

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I. “Hollowing out” of legal profession

1 Between 2008 and 2017, the number of practising lawyers in Singapore grew from 3,650 to 5,782. This substantial increase reflects the growth of the economy and the corresponding demand for legal services. But it hides a worrying trend. In 2008, about 34% of practising lawyers comprised the middle tier of lawyers with five to fifteen years of experience. In 2017, that figure had fallen dramatically to 19%.¹ Data from the Legal Services Regulatory Authority suggests that most lawyers leave between the fourth and ninth year of practice.

2 This “hollowing out”² of mid-tier lawyers is particularly surprising given that there are more career opportunities in Singapore today, with liberalisation resulting in more than 100 foreign law practices registered here, regional expansion of local firms³ and Singapore’s growing reputation as a legal hub. Opportunities are ripe for young lawyers who have gained some years of experience – yet there appears to be an exodus from that very category.

* I would like to thank my colleague, Ms Sarah Ong, for assisting me in the draft. The views expressed within are entirely mine.

1 In fact, even in absolute numbers, despite the strong growth of the legal profession overall, there were fewer lawyers in that middle category in 2017 (1107) than in 2008 (1240).

2 A term used by Chief Justice Sundaresh Menon in his 2016 Mass Call speech. See Sundaresh Menon CJ, “Address by the Chief Justice”, delivered at the Admission of Advocates and Solicitors (26 August 2016) at para 32.

3 Steven Chong SC, “Singapore’s Journey of Liberalisation”, article presented at the International Bar Association 3rd Asia-Pacific Regional Forum Conference (27 November 2012) at para 38.

3 Why is this happening? Being a lawyer has not lost its appeal. Every year, a significant number of our top pre-university students apply to the local law schools. There are currently about as many Singaporeans studying law abroad as in Singapore. Neither can it be dissatisfaction over compensation – young lawyers are among the best paid of their cohort, with the prospect of earning considerably more as they move up the career ladder. *The Straits Times* reported last year that long hours and rising work demands brought about by stiffer competition in the legal industry have strained junior lawyers and compelled them to quit the profession.⁴ But tough working conditions are not unique to the legal profession.

4 Without a comprehensive survey – and it is time we had one – it is impossible to understand the data with precision. In my view, the above trends have likely been driven, at least in part, by the changing nature of legal practice. While often described as an honourable profession, the practice of law is fundamentally also a business. In fact, it is highly competitive, and also lucrative for those who do well.

5 The business aspect of law is increasingly shaping the development of young lawyers and how they work. There is now greater emphasis on profitability and the correlated practice of tying young lawyers' remuneration to their billings. In 2016, Chief Justice Sundaresh Menon observed that the billing process has been “transformed into a powerful tool for measuring and controlling the work of employee solicitors”, with firms setting high billing targets and using that metric to assess work performance.⁵ Apart from generating a demanding workplace characterised by long hours and great stresses, Menon CJ also cautioned that the “priority of profit perspective” could harm

4 Ng Huiwen, “Junior lawyers feeling the strain – and leaving” *The Straits Times* (10 September 2017).

5 Sundaresh Menon CJ, “Address by the Chief Justice”, delivered at the Admission of Advocates and Solicitors (26 August 2016) at para 33.

young lawyers in two significant ways.⁶ First, it undermines their personal development, as a focus on the bottom line invariably leads to the de-prioritisation of mentoring and other nurturing activities. Second, a billing-centric attitude detracts from the immense professional satisfaction that a lawyer should be able to enjoy from helping a client through his difficult situation. Likewise, at the firm level, the focus on short-term economics also has repercussions, including fewer resources being available for investment in training, technology, *pro bono* services and profession-wide activities.⁷ All these ultimately affect the training and opportunities young lawyers receive.

6 These concerns are neither theoretical nor exaggerated. In a recent article,⁸ my former colleague Nicholas Poon suggested, based on surveys conducted with advocates, that there has been a disconcerting decline in the availability of oral advocacy opportunities in the High Court and Court of Appeal for junior lawyers. While no explanation was proffered for this observation, it would be unsurprising if this is a corollary of the business demand. Larger firms today generate the bulk of their revenue from more complex or financially significant cases, and are thus less likely to take up “smaller” ones. Given the high stakes involved, clients are less willing for junior advocates to lead cases or arguments. At the same time, the junior advocates’ exposure to matters in the State Courts that might have afforded them precious litigation experience has also decreased. This is a critical deficit. Good advocates are made and not born, and advocacy is a skill that requires both good mentorship and constant practice. Equally important, and often forgotten, is that the lead advocate must frequently make difficult decisions on case management and strategy. It is unrealistic to expect a

6 Sundaresh Menon CJ, “Address by the Chief Justice”, delivered at the Admission of Advocates and Solicitors (26 August 2016) at paras 34–36.

7 See Ben W Heineman Jr, William F Lee & David B Wilkins, “Lawyers as Professionals and as Citizens, Key Roles and Responsibilities in the 21st Century” *Harvard Law School Centre on the Legal Profession* (20 November 2014) at p 37.

8 Nicholas Poon, “The Decline of Oral Advocacy Opportunities: Concerns and Implications” [2018] SAL Prac 1.

lawyer to assume such heavy responsibilities when he has spent most of his career assisting and carrying out instructions. Ultimately, the limited opportunities for an advocate to grow and improve through first-hand experience may lead to a tendency to play it safe, and he may consequently never reach his full potential.⁹

7 We also should not ignore the human element. The truth is that money changes people – how they think, behave and work. I have witnessed lawyers whose work ethic and dealings with clients change upon shifting from fixed salaries to compensation tied to billing. Relationships become more transactional – clients who can pay become more deserving of time and attention. Lawyers will also be drawn to more lucrative areas of practice and eschew developing expertise in new fields. In a similar vein, older partners may be reluctant to incur capital or development expense when the benefits may only be realised after they retire. A short-term approach is favoured – to focus on what is money-making today and invest less in new areas where profitability is not certain. When the rule is to eat what you kill, the incentive is to hunt and not farm.

8 All this has a direct impact on young lawyers. If the priority is immediate financial performance, there is less incentive to train and mentor, or allow young lawyers to grow their passion for the law. Firms may also shy away from *pro bono* work, thus depriving young lawyers of valuable opportunities to use their legal skills to serve the larger community. This would be a pity. My interactions with young lawyers suggest that they are eager and willing to do all these. It is not about long hours, but what they are spending those hours on, and whether they believe they are on the right track to becoming competent lawyers and responsible individuals. But young lawyers are not likely to be in a position to lead such change – that has to come

9 See Nicholas Poon, “The Decline of Oral Advocacy Opportunities: Concerns and Implications” [2018] SAL Prac 1 at paras 28–34, where four implications of limited advocacy opportunities are canvassed.

from the more senior members of the profession and our institutions.

9 It is therefore timely that the Committee for the Professional Training of Lawyers has recommended revamping the professional training regime for new lawyers.¹⁰ Besides lengthening the training period from six months to a year, the committee also proposed a series of new “training-centric” initiatives. These include mandating training to focus on developing specific skills, requiring supervising solicitors to undergo mentorship training, implementing an audit review mechanism to ensure quality control of the training provided at law firms, among others. The Singapore Academy of Law has also obtained pledges from some 21 law firms to provide more opportunities to young advocates.¹¹ The above initiatives signal a renewed effort towards apprenticeship.¹²

10 I hope the legal profession will embrace them enthusiastically, but I fear their promise will be limited if short-term commercial concerns are allowed to overwhelm the need to develop and retain talent.

II. The public service

11 Public service legal organisations are not profit-oriented, but have one important consideration which may impede training and development – efficiency. At the Attorney-General’s Chambers (“AGC”), for example, the significant increase in our caseload has driven us to organise such that we

10 “Report of the Committee for the Professional Training of Lawyers” (29 March 2018).

11 Melody Zaccheus, “21 law firms vow to create more chances for young lawyers” *The Straits Times* (16 October 2018).

12 We can adopt other measures. In the ongoing litigation in the US in respect of the admission practices of Harvard University, the Presiding Judge allowed certain groups of students to testify but directed that the lawyers who would question the students have five years or less of professional experience. There is no reason why our courts cannot make similar directions.

can do more with fewer people. Deputy Public Prosecutors (“DPP”) specialise in different categories of offences and divisions are structured to deal with the volume of cases efficiently. But that sometimes comes at the expense of receiving the broad training, variety and mentorship which are essential for our officers’ development.

12 So, we make a conscious effort to invest in the development of our lawyers on both a professional and personal level. DPPs and State Counsel are taking ownership of, and making decisions on, their cases. We are enabling our officers to deal with a wider variety of work earlier in their careers. This year, we established an Advocacy Group which not only deals with complex litigation cases, but also provides a platform for volunteer officers to “cross train”, *ie*, work on matters in other divisions. They are expected to do such work on top of their own caseloads, but that has not stopped many officers from stepping up and embracing the challenge enthusiastically. Our AGC Academy has also developed in-house training programmes which are customised to the legal and management competencies required of our officers, depending on their division and level of seniority. Our programmes are also open to other lawyers in the public service.

13 Our efforts are not limited to the traditional scope of “lawyering”. Working under the umbrella of the Legal Service Commission allows our officers to be posted to organisations which deal with policy work, such as Government ministries, or community work, such as the Legal Aid Bureau. Our officers are also sent for overseas and commercial attachments to gain a broader perspective of the legal and corporate world. These initiatives create additional pressure on manpower, but we pursue them because we believe that such investment in our officers is critical.

III. Conclusion

14 Business considerations are necessary and important, but we must never forget that the law is first and foremost a

profession dedicated to building a just society. It will only succeed if every generation of lawyers is motivated to forge a lasting career in the law and also committed to inspiring successive generations of practitioners. To echo the words of Menon CJ, law firms and public legal establishments must view themselves as “educational institutions” which are duty bound to help their young lawyers become “the very best version of themselves”.¹³

13 Sundaresh Menon CJ, “Address by the Chief Justice”, delivered at the Admission of Advocates and Solicitors (26 August 2016) at para 37.