

A “CONSCIENTIOUS BAR”

Organisation, learning, and public service

Admission of Advocates & Solicitors

Monday, 28 August 2017

Address by the Honourable the Chief Justice Sundaresh Menon
Supreme Court of Singapore

I. An inaugural dinner and a challenge

1. About 50 years ago, on 18 March 1967, the Singapore Advocates and Solicitors Society (the predecessor to the Law Society of Singapore) held its inaugural dinner. It was a grand affair in the ballroom of the old Adelphi Hotel which was located just next door, on the site of what is today The Adelphi shopping complex. The speaker that evening was our founding Prime Minister, Mr Lee Kuan Yew and he made an urgent appeal. “Be”, he urged his audience, “a conscientious Bar”.¹ Be “a bar with conscience, a social conscience towards your own society”.²

2. He spoke at length of the challenges faced by our young nation. These included basic problems of law and order; the lack of talent in the ranks of the Government service; and the pervasive and ever-present spectre of corruption. The birth pangs of a new nation

were unmistakable in that speech, as Mr Lee implored his audience to help him find answers to those problems.³ We have moved on in many ways in the last 50 years. Certainly, we do not face the same existential exigencies. But at the core of Mr Lee's address that day was a message as simple as it was timeless, which is that as legal professionals, we have an obligation beyond ourselves; we have a duty to pursue justice beyond the letter of the law and, ultimately, to seek the welfare of the society of which we are part. On this day of your call to the Bar, I invite you to reflect deeply on what it means to you to be a member of the legal profession.

3. The great American scholar Professor Roscoe Pound famously defined a "profession" as a group of people "pursuing a learned art as a common calling in the spirit of public service".⁴ There are three parts to his definition: organisation, learning, and a spirit of public service, and I take each of these in turn.

II. Organisation: mentorship and management

4. I begin with organisation. Today, we use the expression "Bar" to refer to the legal profession as a whole. This is a sense of the word which traces its origins to the railing that used to separate the area where benchers – who are senior members of the Inns of Court in London – sat, from the main hall. Students who had attained a certain

level of standing were “called” to the Bar on occasion to participate in moots and other events. By the 16th century, the expression “Bar” came to refer to the railing which separated the area around a judge’s seat where barristers stood to plead and which marked the boundary between the public gallery and the place where the business of the court was transacted.⁵ This was how the expression “Bar” came to acquire its present day meaning. In being called to the Bar, you have gained not just a right of audience before the courts of Singapore, but also membership of the legal fraternity. It is a fraternity to which you owe obligations, and which, in turn, owes you obligations. What, then, are the responsibilities of the legal family to care for its own? There are two different but intertwined aspects which I have in mind. The first relates to *mentorship*; the second to *management*.

5. Let me start with mentorship. Legal education has long had a strong vocational component. It was originally the exclusive preserve of the Inns of Court, where students lived, dined, and picked up the skills of lawyering by a process of osmosis. Even after the introduction of academic legal education, vocational training was still seen as being vital and continued to be compulsory.⁶ One can well understand why, given how different the practice of law is from its academic study. But just as importantly, it is a way to ensure that the essence of what it means to be a practising lawyer is passed on by the seniors to their

juniors. In short, it is as much a key to professional *formation* as to the passing on of technical skills. It is for this reason that I have been anxious to ensure that the quality of vocational training is maintained at a sufficiently high standard.

6. At last year's Mall Call, I announced the formation of the Committee for the Professional Training of Lawyers. Over the past year, the Committee, under the leadership of Justice Quentin Loh, has been giving close consideration to the difficult issue of how the professional training regime in Singapore can be improved. Among other things, they have been studying the process by which training contract and retention offers are made, how the quality of professional training can be improved, and how the duties which law practices and supervising solicitors owe young lawyers can be strengthened.⁷

7. I am given to understand that the Committee has carried out 10 focus group sessions with different cross-sections of the legal community, from recent graduates to partners of firms of varying sizes. This has been done in order to gain a better sense of where the concerns with the overall professional training regime lie as well as to receive suggestions on how it might be reformed. The Committee expects to complete its work and issue its report within the next few months. I am confident that these recommendations will lead

to a series of timely reforms that will re-focus the profession's attention on the importance of mentorship. I very much look forward to receiving them in due course.

8. I turn to management. There is ample research to show that lawyers, especially young lawyers, are under increasing strain. In the United Kingdom, over 90% of 200 young lawyers surveyed in April this year reported having felt under "too much emotional or mental pressure" at work in the preceding month.⁸ If this were not troubling enough, one in four described the stress they experienced as either "severe" or "extreme".⁹ In Australia, a recent study reported that lawyers suffer from "significantly lower levels of psychological and psychosomatic health and wellbeing than other professionals".¹⁰ There has been no equivalent study in Singapore, but the experience of other jurisdictions leads me to think that this is something we should consider with care.

9. In this regard, I commend the Law Society for initiating the Members and Assistance Care Hotline, or MACH for short. Mr Vijayendran, you have described the hotline as "a first port of call for lawyers needing help"¹¹ and I very much hope that it will guide those lawyers who feel lost at sea back to safe harbour.

10. But we can do more as a profession. I urge our law firms to

make it a priority to examine the kinds of safeguards they have in place for lawyers who might be struggling to cope with the volume and pace of work. There are examples from abroad that might perhaps illuminate the way for us:

(a) Hogan Lovells has engaged a third party organisation to offer a confidential support line service to its employees. It has also set up a wellbeing intranet site and employed an on-site counsellor whose services have been used by employees at all levels of seniority.¹²

(b) Clifford Chance has launched a mental health awareness scheme for its new recruits. Participants are put through resilience training with access to specialist speakers such as sports psychologists, neuroscientists and nutritionists.¹³

(c) In the United States, Norton Rose Fulbright has trained 20 of its employees as mental-health first-aid responders who are able to spot warning signs and offer assistance.¹⁴

(d) And, Kirkland & Ellis, also an American firm, piloted an “emotional fitness” training programme last year, which features workshops on how employees can reduce stress and improve their coping skills.¹⁵

11. But at a more basic level, we should not forget that it is

ultimately the human touch that leaves the most lasting impact. Partners and senior colleagues in the firms can do much to foster a culture of care and compassion by taking the time and the trouble to speak to their juniors and check how they are coping. By showing that we genuinely care, we are laying the foundations on which rests the future of a healthy and thriving legal profession.

12. And to you, the newest members of our profession, I say this: take care of yourselves. Every so often, take the time to reflect on whether you are well or whether you are unhappy. Remember that the flame that burns twice as brightly burns out twice as fast. So pace yourselves to stay the course. Your career is a marathon, not a sprint.

III. A “learned art”: competence and responsibility

13. I move to the notion of learning. At its core, to be a professional is to be committed to learning. As Professor Pound wrote, “[a]n unlearned profession is a contradiction in terms” – the pursuit of knowledge and its application is at the heart of what it means to be a professional.¹⁶ However, it is not just the acquisition of skill that distinguishes a professional – after all, persons engaged in a trade can be just as committed to learning and continual improvement.

14. Rather, to be a professional is to be engaged with the

performance of an art which has as its object the betterment of the human condition.¹⁷ This holds true for the original professions, including the law, as much as it does for the more modern ones like accounting, architecture, and engineering. This responsibility carries with it a concomitant obligation of competence. It is for this reason that all professionals are expected to exercise the care, skill, and learning reasonably expected of a member of the profession and can be called to account when they fall short.¹⁸ You will soon become acquainted with the Continuing Professional Development Scheme, and I urge you to take it seriously.

15. But I should also emphasise that what is required of a lawyer extends beyond professional *competence* to deep knowledge of one's professional *responsibilities*.¹⁹ This was a point made by Mr Lee Kuan Yew in his speech when he said all those years ago that a "conscientious Bar" was one which was not only assiduous about its legal duties, but was also acutely aware of the responsibilities it owed towards wider society.²⁰ Almost 60 years ago, the Joint Conference on Professional Responsibility which was set up by the Association of American Law Schools and the American Bar Association published its report. It began with these words:²¹

A Profession to be worthy of the name must inculcate in its members a strong sense of the special obligations that attach to their calling. One who undertakes the practice of a profession cannot rest content

with the faithful discharge of duties assigned to him by others. His work must find its direction within a larger frame. All that he does must evidence a dedication, not merely to a specific assignment, but to the enduring ideals of his vocation.

16. I could not agree more. As a lawyer, one of the most difficult fault-lines that you will have to negotiate in your professional life is that between the duties you owe to your client and those which you owe to the court. But, as my colleague Justice Steven Chong said in a lecture he delivered in 2015, despite the seeming possibility of divided loyalties, these duties are in fact perfectly compatible because “it is the advocate’s core identity as an officer of the Court which is the fountainhead of all his ethical duties, including his duty to advance his client’s interests to the best of his ability.”²² Viewed in this light, it is clear that an ethical lawyer is one who advances his client’s case in a manner that upholds the standing and integrity of the legal system and our profession.

17. As new entrants to the profession, I want you to understand that lawyers are critical operators of the machinery of justice. To maintain the integrity of the system, they must not only know how to operate the levers of justice, but also, and perhaps more importantly, how *not* to operate it. As Professor Pound put it, sometimes what is necessary is the “guiding restraint of a professional spirit to prevent misuse of the machinery”.²³ Judicial resources are scarce, and it is

incumbent upon lawyers to do their part in ensuring their conservation.²⁴

18. This should not discourage you from doing your best for your client. However, there is a clear difference between the diligent pursuit of the merits of a case and misusing the machinery of the court to engage in wasteful or fruitless litigation or to obstruct due process.²⁵ In most cases, the line between the two will be plain to see. However, there might well be times when the way forward might seem to be fuzzy. It is for this reason that continuing legal education and mentorship are critical. In cases of genuine difficulty, speaking to a senior can help; but in the end, if the doubts prevail, that might suggest that there is greater virtue in not pursuing that course.

19. What all of this calls for is not just an understanding of the rules, codes, and strictures which govern the work of the profession, but a deep appreciation of the *reasons* that underlie them. This in turn rests on a solid grasp of the nature of the lawyer's calling and the role of the profession in our society.

IV. A spirit of public service

20. This brings me to the last of the three aspects of Professor Pound's definition of a profession: a spirit of public service. Today,

when we use the word “professional”, we often think of the sporting context, where it is used in contradistinction to the word “amateur” to refer to a person who is engaged in a specific activity as a paid occupation.²⁶ But this was not the original meaning of the expression. Since antiquity, the practice of a profession has first and foremost been about the provision of a service to the community for the public good; and to be a professional is to be committed to the good of others through the practice of one’s art, even when carrying out this commitment does not redound in personal benefit.²⁷

21. While this does not preclude the receipt of remuneration, the professional ethos – which says that service is paramount and that compensation is incidental – continues to govern the professions today.²⁸ As our High Court stressed in a 2013 case, *all* professionals owe a common ethical duty to charge their clients only a fair and reasonable fee for services rendered, and no more.²⁹ More importantly, it also entails that one does not think of rationing the quality of one’s service according to the remuneration one expects. Each task should be given the proper attention and effort it *deserves* rather than attention and effort tailored to the *price* it commands at an auction.³⁰

22. I should also emphasise that being committed to public service

does not necessitate being employed in the public sector. As the Joint Conference on Professional Responsibility said in its report, “[p]rivate practice is a form of public service when it is conducted with an appreciation of, and a respect for, the larger framework of government of which it forms a part, including ... voluntary forms of self-regulation”.³¹ The essential point I make is that a *spirit* of public service must imbue everything that you do as a lawyer. For instance, the proper presentation of your client’s case is a form of public service, because it is essential to the adjudicative process that there be fair and competent representation. Likewise, timely and appropriate legal advice is vital to the smooth running of both government and industry.

23. Beyond this, you should involve yourselves in deeper or more formal forms of public service. I encourage you to seek out opportunities to apply your learning to areas of social need. Consider taking up cases under the Law Society’s Criminal Legal Aid Scheme (“CLAS”) or even spend some time as a CLAS fellow; volunteer at a *pro bono* legal clinic; apply to be placed on the Supreme Court’s Young Amicus Curiae scheme; or involve yourselves in any of the many professional committees of the Law Society and the Singapore Academy of Law. These are all ways in which you can contribute tangibly to the welfare of our community.

24. One of the great challenges facing the young lawyer today is the search for meaning and purpose. I spoke last year of the attrition of mid-career lawyers through burnout. The reasons for this are not difficult to discern. Increasingly long working hours; increased mobile connectivity leading to an erosion of personal space; and mounting pressures from clients as well as from bosses have led many to question whether it is all worth it. This is an intensely personal question, and one that each of you must answer in your own way; but for my part, I think the answer cannot lie in the pursuit of ever-larger personal rewards. Such a goal is too thin and too anaemic to provide the moving force for a lifetime of labour. Instead, I hope you will find in your practice a devotion to something that is larger than yourself, for that is the only way in which you will be able to keep yourself going over the long haul.

25. Each year, the profession seems to be buffeted by more headwinds and the news coming out of the legal press can appear at times to be unremittingly gloomy. The challenges are real, and I do not want to make light of them. But I think it also important to remember how fortunate we are to be a part of this profession. It affords us the opportunity to provide an essential public service; and, together with our colleagues at the Bar, we are endowed with abilities, training, and talents that are highly sought after and which empower

us to benefit many. This is why we must be “conscientious” with our gifts. In time to come, I hope that each of you will find ways to serve the community in a myriad of ways, both within and outside the practice of law.

26. And one day, if you are so privileged as to have the opportunity to take up public office, give the matter serious thought. I myself was asked that question in 2006 and then in 2010, and I said yes on both occasions. I have never regretted each of those decisions. To have been given the opportunity to serve our nation and her people has, without question, been the greatest privilege of my professional life.

V. Conclusion

27. I close with three parting thoughts. First, to the senior members of the Bar, I ask you to think of the subject of legacy. In the closing minutes of his 1967 speech to the Advocates and Solicitors Society, Mr Lee turned to the senior members and said to them: “there is no greater compliment that a man can pay to himself and to his group than to pass the torch on to like-minded people, fired by the same ideals, but younger, more vigorous, more capable to meet a more contemporary situation”.³² That is still true today. After a lifetime of service, there is perhaps no greater gift we can bestow upon our community than to raise a generation who will also serve our

community, hopefully in ways greater than we were able to. This should spur the profession to take the business of mentorship most seriously.

28. Second, to you, the new entrants to the profession, I ask you again to reflect deeply on the responsibilities of membership of the legal profession. In 1980, Chief Justice Wee Chong Jin warned that the legal profession was, and had always been, a “demanding profession”. It demands not only competence, but also probity, integrity, and a devotion to public service. The last, he noted, was under threat in a modern society where “the accent is on success and [where] success is measured principally in terms of material wealth”. Turning to the young law students who had gathered to hear his lecture, he said this:³³

The challenge in the future to the legal profession here is to ensure that it remains a true profession and to ensure by conduct, performance and service to the public, that it also is and deserves to be a learned and honourable one. Its future lies in its own hands.

29. Today, I echo that sentiment. Your future, as well as that of our legal profession, is in your hands and I have no doubt that you will do us very proud if you embrace all the many opportunities you will have to do the good and right thing.

30. Last, to the families of those who have just been called, I bring

a word of thanks. The family is the first school of virtue which we all attend; and in many ways, it is the most important. All the matters of which I have spoken – the values of service, sacrifice and excellence – these are all things which we first learn, experience, and practice in the cradle of the home and take with us to the crucible of the workplace. The fact that these young men and women stand here, having been found fit for entry into this wonderful profession, is a testament to the excellent work which you have done. For that, I, and the legal profession as a whole, thank you.

31. It gives me great pleasure, once again, to welcome all of you to the profession. I wish you every success.

32. Court stands adjourned.

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- ¹ Lee Kuan Yew, Speech at the 1st Annual Dinner of the Singapore Advocates and Solicitors Society, 18 March 1967, The Adelphi Hotel (“Speech at Inaugural Dinner”), http://www.nas.gov.sg/archivesonline/data/pdfdoc/lky19_670318.pdf? (accessed 13 July 2017).
- ² *Speech at Inaugural Dinner* at 8.
- ³ *Speech at Inaugural Dinner* at 9.
- ⁴ Roscoe Pound, *The Lawyer from Antiquity to Modern Times: With Particular Reference to the Development of Bar Associations in the United States*, (West Publishing Company, 1953) at pp 353–354.
- ⁵ *The Oxford English Dictionary* (Clarendon Press, 2nd Ed, 1989) (“OED”) at Vol I, p 941.
- ⁶ Andrew Boon and Julian Webb, “Legal Education and Training in England and Wales: Back to the Future?”, (2008) 58 *Journal of Legal Education* 79 at 82–29. In the local context, after the Law Faculty of the then-University of Malaya was established, all qualifying persons, regardless of whether they were foreign or local graduates, were required to spend a year as an apprentice to a local lawyer before they became eligible to practice: Alexander F.H. Loke, “Legal Education in Singapore” in *Essays in Singapore Legal History* (Kevin Y.L. Tan ed), (Marshall Cavendish, 2005) at p 164.
- ⁷ *Mass Call Address 2016* at para 38.
- ⁸ Thomas Connelly, “Research: Over 90% of young lawyers are suffering from work-related stress”, (10 April 2017), <<https://www.legalcheek.com/2017/04/research-over-90-of-young-lawyers-are-suffering-from-work-related-stress/>> (accessed 19 July 2017).
- ⁹ Max Walters, “One in four junior lawyers suffers ‘severe’ stress at work”, (10 April 2017), <<https://www.lawgazette.co.uk/law/one-in-four-junior-lawyers-suffers-severe-stress-at-work/5060631.article>> (accessed 19 July 2017).
- ¹⁰ Richard Simmons, “Lawyers have worst mental health of all professionals” (10 March 2016), accessible at <https://12b.thelawyer.com/issues/12b-online/lawyers-have-worst-mental-health-of-all-professionals/> (accessed 19 July 2017). In America, 61% of lawyers have said that they had struggled with anxiety at some point of their careers, while 46% have reported concerns with depression. Jeena Cho, “Can we finally talk about the elephant in the room? Mental health of lawyers”, (8 February 2016), <<http://abovethelaw.com/2016/02/can-we-finally-talk-about-the-elephant-in-the-room-mental-health-of-lawyers/>> (accessed 19 July 2017).
- ¹¹ Gregory Vijayendran, “Pastoral care for the profession”, *Singapore Law Gazette* (March 2017) <<http://www.lawgazette.com.sg/2017-03/1790.htm>> (accessed 19 July 2017).
- ¹² Prospero Partners, “Stress Awareness Month: How legal firms are starting the difficult conversations” (“*Stress Awareness Month*”) (20 April 2017), accessible at <http://www.properopartners.com/stress-awareness-month-legal-firms-starting-difficult-conversations/> (accessed 20 July 2017).
- ¹³ *Stress Awareness Month*.
- ¹⁴ Staci Zaretsky, “Some law firms try to ‘eliminate stigma’ from attorneys struggling with mental-health issues” (22 May 2017), accessible at <http://abovethelaw.com/2017/05/some-law-firms-try-to-eliminate-stigma-from-attorneys-struggling-with-mental-health-issues/> (accessed 20 July 2017).
- ¹⁵ Martha Neil, Kirkland & Ellis to offer ‘emotional fitness’ training at all law firm offices” (4 May 2016), accessible at <http://www.abajournal.com/news/article/kirkland-ellis-to-offer-emotional-fitness-training-at-all-law-firm-offices/> (accessed 20 July 2017).
- ¹⁶ Roscoe Pound, “What is a Profession? The Rise of the Legal Profession in Antiquity”, (1944) 19 *Notre Dame Law Review* 203 (“*What is a Profession*”) at 204–205.
- ¹⁷ *What is a Profession* at 205.
- ¹⁸ John W Wade, “Public Responsibilities of the Learned Professions”, (1960) 21 *Louisiana Law Review* 130 at 132.

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- ¹⁹ See, generally, Ross L Malone, “The Lawyer and His Professional Responsibilities” (1960) 17 Washington and Lee Law Review 191 (“*Lawyer and Professional Responsibilities*”).
- ²⁰ He stressed that a “conscientious Bar” was not one which “assiduously, in pursuit of their professional, turn up the law books, take every technical point in favour of their client” and, thinking that they had discharged their obligations, walked away thinking that justice had been done. Instead, it was one with a “social conscience”: see *Speech at Inaugural Dinner* at 8
- ²¹ Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association, *Report of the Joint Conference on Professional Responsibility*, (1966) Student Lawyer Journal 27 (“*Report of the Joint Conference*”) at 27.
- ²² Steven Chong, “The Ethics of Criminal Practice”, *Singapore Law Gazette* (April 2015), <<http://www.lawgazette.com.sg/2015-04/1281.htm>> (accessed 19 July 2017) at para 6. This principle has also been codified in the latest version of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) (“PCR”), where it is provided at rule 4(a) that a “legal practitioner has a paramount duty to the court, which takes precedence over the legal practitioner’s duty to the legal practitioner’s client.”
- ²³ *What is a Profession* at 208. Professional restraint can be exercised in a number of ways. For instance, a lawyer has a professional duty to advise his client on whether the potential rewards of litigation are worth their expense (and maybe even to decline to pursue a course of action which is disproportionate: see and the cases of *Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline* [2008] 2 SLR(R) 455 and *Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang* [2014] 2 SLR 191).
- ²⁴ See the decisions of the Singapore Court of Appeal in *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 at [185] and [215] and *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [47] and [50].
- ²⁵ *Zhou Tong* at [20].
- ²⁶ *The OED*, Vol XII at p 573.
- ²⁷ See, generally, *The OED*, Vol XII at p 573; *What is a Profession* at 210–228 and James L Baillie and Judith Bernstein-Baker, “In the Spirit of Public Service: Model Rule 6.1, the Profession and Legal Education”, (1991) 13 Law & Inequality 51 (“*In the Spirit of Public Service*”) at 52–53 and *Ethics and the Legal Profession* (Michael Davis & Frederick A Elliston eds) (Prometheus Books, 1986) at p 25.
- ²⁸ In the early centuries of the Roman Republic, there was an absolute prohibition against the receipt of remuneration. This rule was gradually relaxed over time but remuneration was still capped: see *In the Spirit of Public Service* at 52–53.
- ²⁹ See the decision of the Singapore High Court in *Lim Mey Lee Susan v Singapore Medical Council* [2013] 3 SLR 900 (“*Susan Lim*”) at [52].
- ³⁰ See George Herbert Palmer and Alice Freeman Palmer, *The Teacher: Essays and Addresses on Education*, (Houghton Mifflin, 1908) at p 6. In this way the professional stands in contrast with a tradesman, for whom there is no equivalent restriction on remuneration: see Lord MacMillan, *Law and Other Things* (Cambridge University Press, 1937) pp 118–134 at p 127, cited in *Susan Lim* at [36].
- ³¹ *Report of the Joint Conference* at 22.
- ³² *Speech at Inaugural Dinner* at 13.
- ³³ Wee Chong Jin, “The Legal Profession in Singapore – Past, Present and Future” (1980 Braddell Memorial Lecture) [1980] 2 MLJ lvii.