

SPEECH

YANG BERTHORMAT

DATO SERI PADUKA HAJI KIFRAWI

BIN DATO PADUKA HAJI KIFLI

OPENING OF LEGAL YEAR 2006

TUESDAY, 28 MARCH 2006

Bismillahir Rahmanir Rahim

Assalamualaikum Warahmatullahi Wabarakatuh

Your Royal Highness, Princess Pengiran Anak Puteri Hajah
Muta-Wakillah Hayatul Bolkiah

My Lord, Judges of the Supreme Court

President of Brunei Darussalam's Law Society

Members of the Bar

Distinguished guests

Ladies and gentlemen

It gives me great pleasure to address Your Lordship again on this occasion. We are thankful to Allah Subhanahu Wata'ala for His blessings in making it possible for us to once again be present at this ceremony this morning and to renew our usual pledges of cooperation and mutual support for the upholding of the independence of the judiciary and the rule of law.

(A) Law Society of Brunei Darussalam

My Lord

The Law Society of Brunei Darussalam has just formally been set up. I would like to take this opportunity to congratulate the President and the Council members of the Law Society on their election to office. I would also like to remind the Council that their election to office comes with heavy responsibilities – both professionally and socially. Being elected to office is an indication of the respect which you command among your peers. It also means that you will be expected to carry out your duties as Council members diligently, honestly and with the integrity demanded of representatives of what is often referred to as “***an honourable profession***”.

To understand the magnitude of the Council’s task, I think it is necessary to remind ourselves of the characteristics of a profession and about what is it that differentiates a

profession from other occupations?

Up to the latter part of the 18th century, the word 'profession' was usually understood as extending only to three groups – the lawyers, doctors, and the clergy. The Industrial Revolution and the progress of science during the 19th century brought about an enormous increase in the numbers and types of professions. Indeed, the development of a wide range of recognized professions and of professional associations among their members is an important characteristic of modern society.

Many commentators have written about what differentiates a profession from other vocations. The Right Honourable Lord Alexander of Weedon QC cited the findings of the Royal Commission on Legal Services set up 25 years ago in England, which described a profession in the following words:

“When a profession is fully developed it may be described as a body of men and women:

- (a) identifiable by reference with some register or record;
- (b) recognized as having a special skill and learning in some field of activity in which the public needs protection against incompetence, the standards of skill and learning being prescribed by the profession itself;
- (c) holding themselves out as being willing to serve the public;
- (d) voluntarily submitting themselves to the standards of ethical conduct beyond those required of the ordinary citizen by law; and
- (e) undertaking to accept personal responsibility to those whom they serve for their actions and to their profession for maintaining public competence.

Another useful description was given by William Reece Smith Jr, the then president of the International Bar Association in his address to the 9th Commonwealth Law Conference. He said :

“...[F]irst ...since lawyers are highly educated in a complex discipline, they are allowed the privilege of self regulation : those who are uninitiated in the learning of the law are

considered unsuited to regulate the profession. Second, in recognition to the 'common calling' facet of the definition, members of the legal profession nurture a high degree of collegiality, civility, and mutual trust. And most important of all because lawyers play a public role as officers of the court and because the practice of law affords a comfortable and relatively affluent lifestyle, a lawyer is obliged to give something back to the community either through civic service or pro bono work or a combination of the two."

So, to be regarded as a profession is to have the characteristics set out by Lord Alexander. But more importantly, if I put the two quotes together, I think what it means is that there exists a social contract between a profession, including the legal profession and society – a social contract by which society confers social status upon professionals and permits them the liberty to regulate entry into the profession.

In return, society expects members of that profession to ensure competence and discipline of its own members and contribute to society by serving the public interest.

In short, it is not about glamour or fame. Neither should it be merely about the money and the glory. Being the elected representatives of the legal profession is about upholding the ideals of the profession and if any member of profession falls short of these ideals, then the Council will be expected to take action against such shortcomings irrespective of whether it is a minor or serious breach of the standards which the legal profession in Brunei Darussalam has set for itself.

All professions continue to owe society a debt for the bargain they made and the privileges they enjoy. Moreover, I would like to believe that the vast majority of lawyers, particularly those who have done well in Brunei Darussalam, regard public service as not only their duty but an honour to be associated with – and the Law Society may provide appropriate avenues for this. May I propose again that the Law Society of Brunei Darussalam should consider offering legal aid to poor defendants in certain non-capital cases.

My Lord

I join Your Lordship in wishing the Law Society of Brunei

Darussalam all the best and success in the discharge of their heavy burden.

(B) New Legislation

My Lord

This year marks an important milestone in our legal system. The introduction of the British Residency system in 1906 also introduced a new legal system which we continue to inherit today. The last 100 years have seen tremendous changes in the development and administration of our country. With changing times, the legal system must also change to continue to be relevant and to promote proper administration of justice.

In 2005 and early this year, several new laws have been made. As usual I would like to mention several notable Orders.

1. Children and Young Persons Order, 2006

An issue of perennial concern is the administration of justice

in respect of children and young persons. It has long been accepted that a child offender must be treated differently from an adult offender. In this regard, I am pleased to announce that His Majesty the Sultan and Yang Di-Pertuan has consented to a new Children and Young Persons Order. This Order, once enforce, will establish juvenile courts as part of our legal system. The Ministry of Culture, Youth and Sports with His Majesty's approval would fix the date of commencement of the Order when the required infrastructure and trained manpower are ready. Such courts will be given a wide range of powers when dealing with child offenders, including making orders for probation or for community service. Such court may also make an additional order requiring either or both the child or young person and his guardian to undergo counseling, psychotherapy or other programme for the purpose of rehabilitation or for enhancing, promoting or protecting the physical, social and emotional well-being and safety of the child or young person.

2. Child Care Centres Order, 2006 and Child Care Centres Regulations, 2006

To protect and ensure the welfare of children in the country,

His Majesty the Sultan and Yang Di-Pertuan has consented to the introduction of another new legislation called the Child Care Centres Order, 2006 and the Child Care Centres Regulations, 2006. This Order commences on the 8th March 2006. These legislations regulate the operation or management of a child care centre by licensing and deal with matters such as the period of its operation and daily programme schedule, medical care, nutrition and discipline, hygiene and environmental health and safety and emergency information.

3. Evidence Act (Amendment) Order, 2006

The impact of technological advances is all pervasive in our everyday lives. The courts must not be left behind and must take advantage of such advances. In this respect, the Evidence Act was recently amended to allow for the use of live video or live television link in giving evidence in any proceedings before a court. Evidence may now also be given in the form of charts, summaries, computer output or other explanatory material if it appears to the court that the material would be likely to aid the court's comprehension or the evidence that is to be given by any party is so

voluminous or complex that the court considers it convenient to assess the evidence by reference to such material.

4. Mutual Assistance in Criminal Matters Order, 2005

Brunei Darussalam is also aware of its international obligation in combating crimes together with other countries. In this regard, the Mutual Assistance in Criminal Matters Order has come into effect as from 1st January 2006. This Order allows Brunei Darussalam to extend cooperation in the investigation of criminal cases by foreign countries, in many instances even without any prior treaty arrangements.

5. Extradition Order, 2006

I am also pleased to announce that His Majesty the Sultan and Yang Di-Pertuan has also consented to the new Extradition Order, 2006. This Order replaces the Extradition Act of 1915 and ensures that Brunei Darussalam will never be a safe haven for criminals and fugitives from justice. This new Order brings our extradition law in line with current international law and practice and allows this country to fulfil its international commitments in this area.

6. Legal Profession (Amendment) (No. 2) Order, 2006

His Majesty the Sultan and Yang Di-Pertuan has also consented to the amendment of the Legal Profession Act to allow for Barrister, Solicitor or Barrister and Solicitor of a Supreme Court of any Australian State or Territory to be recognized as qualified persons for the purposes of the Act. I hope this would be good news to Brunei students and parents of Brunei students who want to read law in Australia.

7. Customs Orders (2005)

Brunei Darussalam as a part of ASEAN is fully committed in concluding a number of multi lateral trade Agreements and my Chambers through the International Law Division have been actively involved in the negotiations of these agreements especially on the relevant chapters such as the Dispute Settlement Mechanisms and intellectual property rights.

As a follow-up to the conclusion of these multilateral trade agreements, my Chambers had been assisting the various Government agencies in the introduction of new legislations to implement Brunei Darussalam's economic commitment under these agreements. This includes assisting our Royal Brunei Customs and Excise Department in the introduction of two legislations under the Customs Act namely the Customs (ASEAN Common Effective Preferential Treatment) Order, 2005 and Customs (Goods Under the Early Harvest Programme) (Framework Agreement on Comprehensive Economic Co-operation Between ASEAN-China) Order, 2005.

8. Disaster Management Order, 2006

Another new law to provide for effective disaster management for Brunei Darussalam has been passed by His Majesty the Sultan and Yang Di-Pertuan. This law is known as the Disaster Management Order, 2006. This Order establishes the National Disaster Council and the National Disaster Management Centre and provides the framework for the management of preventive measures, preparedness, response and recovery from any event

including a terrorist attack.

(C) Right of Witnesses and Victim's of Crime

In 2004, I mentioned briefly that we shall always be more responsive to the needs of victims of crimes. I wish to mention this issue again which in my view merits special attention namely the rights of witnesses and victims of crimes. In recent decades, the balance has gone far enough with safeguarding the rights of accused persons. Now the new challenge is to establish effective mechanisms designed to protect the victim, when he or she is involved in the judicial process as a witness. The criminal justice system is intimidating to most people in particular witnesses and victims of crimes who have to give evidence in court. It is not enough for them to understand the law and legal process. Witnesses and victims should have appropriate protection and assistance and should be given appropriate information on the investigation, prosecution and disposal of criminal cases. It is in the public interest to ensure that witnesses are satisfied with the criminal process. A criminal prosecution will be rendered ineffective if witnesses refuse to testify in court.

The interests and needs of victims and witnesses were now being given far more attention in certain Asian and Pacific jurisdictions than has ever previously been the case. This change in emphasis had been most clearly demonstrated in legislative changes in each jurisdiction that have highlighted the need to fully inform witnesses in a timely fashion at all stages of the criminal process. "Witness Assistance Officers", "Victims Aid Officers" or dedicated teams of specialists were now established across the region to manage and cater for the special needs of victims and witnesses. Victims' telephone hotlines, the use of screens in court, closed circuit television and close co-operation with victim support groups were now common features in jurisdictions throughout the Asia and Pacific region.

(D) Judicial and Legal Service Commission

My Lord

I support and share Your Lordship's concern on the need for Judicial Officers to be honest and of high integrity.

I am sure Your Lordship would agree that it is also in the public interests for us to maintain well-experienced, honest and efficient officers in the Attorney General's Chambers. In our neighbouring countries there is a body referred as the Legal Service Commission (Singapore) or the Judicial and Legal Service Commission (Malaysia) which look after both the Judicial Officers from the Judiciary and the Legal Officers from the Attorney General's Chambers. There should therefore be a body to be referred as Judicial and Legal Services Commission looking after both the welfare of Officers from my Chambers and Judicial Officers from the Courts.

My Lord

I would like to thank all my officers from the various Divisions in the Chambers namely Criminal Justice, Civil, International Law, Legislative Drafting and Registry for their hard work.

I would also like to thank all Ministries and Departments in particular the Prime Minister's Office for all their support,

help and cooperation.

I would also like to thank the Commissioner of Police and his officers as well as the other law enforcement agencies namely the Narcotic Control Bureau, Anti Corruption Bureau, Royal Customs and Excise Department, Immigration Department, Royal Brunei Armed Forces and Internal Security Department for their assistance and cooperation and in their continuing effort in the preservation and the maintenance of law and order.

May it please Your Lordship, this brings me to the end of my address.

I hope the good relations between my Chambers and the Judiciary as well as with the private practitioners and the newly established Brunei Law Society will continue in the years to come. We are all responsible to uphold the integrity of our Legal System.

Lastly, I wish Your Lordship and everyone present here this morning a successful and prosperous year.