

# **NEW YORK STATE BAR ASSOCIATION SEASONAL MEETING**

**27 OCTOBER 2009**

## **KEYNOTE ADDRESS BY CHIEF JUSTICE CHAN SEK KEONG**

Mr Michael Getnick, President of the New York State Bar Association, Mr Michael Galligan, Chairman of the International Section of the New York State Bar Association, delegates, ladies and gentlemen:

1. It is an honour to be invited to deliver the keynote address at this year's Seasonal Meeting of the New York State Bar Association International Section. I do so with pleasure. For those of you who have come from afar, I welcome you to Singapore as friends and fellow lawyers.

2. After listening to last night's scintillating speeches by the Minister for Law and Mr Galligan, I feel inadequate in trying to match their performance. As, by convention, I should not speak on subjects which are political or socially controversial, what am I left to speak about? Well, I can speak on rather unexciting subjects like the rule of law, judicial independence, the legal system, and subjects of a like nature. Even then, as Sir Francis Bacon warned about 400 years ago, "an overspeaking judge is no well-tuned cymbal". But I will try to hold your attention for the next 25 or so minutes.

3. I will begin by telling you two stories. In 1958, I was then a third year law student in our new law school at the University of Malaya. The then Chief Justice of Singapore, Sir John Whyatt, retired and another Chief Justice had to be appointed. The British government appointed another Englishman, Sir Alan Rose, then Chief Justice of Ceylon as the new Chief Justice of Singapore. Prof L A Sheridan, who was then the Dean of the law

school, went public and made a statement expressing disappointment that a Singaporean was not appointed the Chief Justice as there were local qualified lawyers for that post. At that time, there were three local judges on the High Court Bench. An English practitioner, the late Mr K E Hilborne, wrote a letter to the Straits Times criticising Prof Sheridan for meddling in affairs he knew nothing about. Tommy Koh, TPB Menon and I (courage in numbers) replied to Mr Hilborne criticising him for criticising Prof Sheridan who was merely exercising his right of free speech. We argued that the appointment of a Chief Justice was a matter of public interest. None of us knew the exact facts, but that did not prevent us from exercising our right of free speech.

4. My second story. On 18 January 1962, Minister Mentor Lee Kuan Yew, who was then Prime Minister of the State of Singapore, gave a speech to the University of Singapore Law Society. I recall that it was a dinner speech. Half way through the speech, MM Lee fell over on his back with a thud. We thought the worst. But apparently, he had only fainted. Anyhow, he recovered a few minutes later and proceeded to finish his speech. And what was his speech all about? I quote you a few extracts:

There is a gulf between the principles of the rule of law, distilled to its quintessence in the background of peaceful 19th century England, and its actual practice in contemporary Britain. The gulf is even wider between the principle and its practical application in the hard realities of the social and economic conditions of Malaya. You will have to bridge the gulf between the ideal principle and its practice in our given sociological and economic milieu. For if the forms are not adapted and principles not adjusted to meet our own circumstances but blindly applied, it may be to our undoing. ...

The rule of law talks of habeas corpus, freedom, the right of association and expression, of assembly, of peaceful demonstration, concepts which first stemmed from the French Revolution and were later refined in Victorian England. But nowhere in the world today are these rights allowed to practise without limitations, for blindly applied, these ideals can work towards the undoing of organised society. For the acid test of

any legal system is not the greatness nor the grandeur of its ideal concepts, but whether in fact it is able to produce order and justice in the relationships between man and man and between man and the State. To maintain this order with the best degree of tolerance and humanity is a problem which has faced us acutely in the last few years as our own Malaysians took over the key positions of the Legislature, the Executive and the Judiciary.

...

Justice and fair play according to predetermined rules of law can be achieved within our situation if there is integrity of purpose and an intelligent search for forms which will work and which will meet the needs of our society. Reality is relatively more fixed than form. So if we allow form to become fixed because reality cannot be so easily varied, then calamity must ... befall us.

5. In this speech, you can already discern the ideas of a political and legal realist. English law and English legal institutions are fine for England but not necessarily for Singapore because the political, social and cultural conditions are not the same. Adapt them for our needs, as blindly applied, they could be our undoing. In this speech, he was explaining to us, students and law academics, why he had to retain the laws on detention without trial for political offenders and secret society gangsters. By that time too, his government had abolished jury trials for all criminal offences except capital offences. In 1969, jury trials for capital offences were also abolished. If you study the Singapore statute book today, you will find MM Lee's precepts and values reflected in all the laws. But pervading all of the laws is the rule of law: the idea that political authority must be exercised subject to and in accordance with the law.

### **On the legal system in Singapore**

6. Let me now introduce you to our legal system to see what MM Lee did or did not do to the English legal system which we had inherited. The fundamental principles are the same, but our public law is quite different since this body of law must reflect the political, social and cultural values of

the people. Our English heritage can be traced back to the time when Singapore became a British possession soon after Sir Thomas Stamford Raffles set up a trading station near the Singapore River in 1819. Because it was a free port, the place was bustling with thousands of traders from the region by 1823. In that year, Raffles issued the following proclamation:

Let the principles of [English] law be applied not only with mildness, but with patriarchal kindness and indulgent consideration for the prejudices of each tribe as far as natural justice will allow, but also with reference to their reasoning powers, however weak, and that moral principle, which however often disregarded, still exists in the consciences of all men.

Raffles' civilising vision thus called for the application of English law and English justice to a society that was already, by that time, multi-racial, multi-religious and multi-cultural in its make up.

7. In 1824, the British acquired full sovereignty over the island because of its importance as a trading hub in the region. In 1826, the British Crown issued the Second Charter of Justice ("the Charter") to create the Court of Judicature to administer justice in Penang, Malacca and Singapore (*ie*, the British settlements in the region at that time). The Charter was later interpreted by the courts to have imported the entire body of English law (including the common law, equity, and statutes of general application) for application in Singapore. In 1878, a statutory provision was enacted which effectively required the application of the commercial law of England to local commercial disputes.<sup>1</sup>

8. In 1942, Singapore was invaded by the Japanese. The Japanese did not do away with our civil justice system. The civil courts continued to function. But the Japanese did away with our criminal justice system, and imposed military law. Their military law essentially was based on the idea of "penalties to abolish penalties". This was the legal theory of the legalist school which existed in China about 2,500 years ago. The First Emperor of

China was influenced by the doctrines of this school which emphasised that law was to be the basis of government, and everyone must obey the law. There is an account of the Emperor ordering the execution of his son when the latter broke the law. Punishments for breaking the law were so harsh that no one dared to break the law any more – hence penalties to abolish penalties. Normality resumed after the British returned in 1945. The legal framework imposed by the British continued, even after independence in 1965, as the need for change did not appear to be necessary. By the late 1980s, the need for change became apparent, and in 1993, Parliament enacted the Application of English Law Act to “retire” the Charter and the 1878 law.<sup>2</sup> That, together with the abolishment of appeals to the Judicial Committee of the Privy Council in 1994 gave Singapore complete control of its own laws.

9. Although Singapore’s founding by the British was an accident of history, and the British used Singapore as an economic and military base to serve their own interests, a rich legacy was left behind for the people of Singapore at the end of the colonial era: the rule of law, a mature legal system, legal institutions, the civil service, a university, hospitals and schools, and much more. Most significant would be the fact that Singapore inherited a conception of the rule of law and justice that has proved invaluable to the development of the nation. Also important would be the fact that the British introduced the English language, which has contributed greatly to Singapore’s ability to embrace globalisation.

10. Due in no small part to Singapore’s reputation for efficiency and integrity as a services hub, Singapore law now has brand recognition in the region. Our commercial laws are as advanced as any in the common law world. So is our court system in processing and disposing of commercial disputes. Hence, Singapore law is often chosen as the governing law in cross-border transactions in Asia. It is also becoming popular as the preferred arbitral law in cross-border disputes. The Singapore International

Arbitration Centre is a premier centre in Asia for international arbitration and its reputation can only continue to grow. I would urge you lawyers from New York to bear what I have just said in mind, as there will be times when you may have to advise your clients on the selection of an alternative governing law or arbitral law for their transactions.

### **On the rule of law in Singapore**

11. Singapore has a robust criminal justice system under the rule of law. English law and English justice, the epitome of the rule of law as conceived by A V Dicey, was the foundation for the Singapore legal system. Indeed, every former British possession would have had the English model of the rule of law from the outset. How the first-generation political leaders of former British possessions did with the rule of law is the story of the differences in political, social and economic conditions of these territories today. Think of Australia, Canada, New Zealand, India and, maybe, Singapore.

12. Fortunately for Singapore, her pre-eminent first-generation leader was a Cambridge-educated lawyer, who knew what the rule of law entailed. He had a deeper understanding of the parliamentary form of government and Dicey's conceptualisation of the rule of law than many scholars, not to say politicians. More importantly, he was aware of the power of law as an instrument for political, social or economic change. Also, being an elected Asian leader, he believed that he also had the moral authority to act in the interest of the people. At the same time, he realised that there is a limit to the use of legal power. His basic philosophy of action was set out in the speech from which I have quoted certain extracts earlier.

13. If Singapore lacks anything in public governance, it is not law or the rule of law. It is a fundamental tenet of the government that the law must be obeyed, and the government is the first to obey the laws of the state. If

the political leaders do not respect the laws which Parliament has enacted, who else would respect the law? Singapore will become a failed state in no time. Indeed, complaints have often been made that the public authorities in Singapore follow the letter of the law and forget its purpose or its spirit. But bureaucrats are bureaucrats. In Singapore, the courts interpret and apply the law. Parliament and the executive may disagree with the decisions of the courts, but they do not question the authority of the courts to make those decisions. This is a sacrosanct principle of government in Singapore. If the executive does not agree with a court decision, it can change the law through Parliament, but it cannot retrospectively abrogate that decision of the court.

14. It seems to me that when Singapore is criticised for paying lip service to the rule of law, the critics are referring to their own version of what the rule of law is. The rule of law is an ancient ideal, discussed by philosophers such as Plato and Aristotle. Current political discourse shows that it has a number of meanings. Modern legal theorists classify it into three categories: the formal, the substantive and the functional. Other scholars have produced two versions: the thick and the thin; generally, the thick describes the rule of law in liberal democracies and the thin describes the rule of law in all other democracies.

15. Essentially, however, rule of law simply means the supremacy of the law, without reference to whether the law is just or unjust. The law must apply to all and be above all. It may be said to be a “form of government in which no power can be exercised except according to procedures, principles and constraints contained in the law, and in which any citizen can find redress against any other, however powerfully placed, and against the officers of the state itself, for any act which involves a breach of the law”.<sup>3</sup> This definition implies that all powers of the state have limits. The determination of whether the limits have been breached requires another impartial institution; this would be the judiciary. Thus, the rule of law, at the

minimum, requires judicial independence. The judiciary, in turn, requires an independent-minded legal profession to act for individuals to enforce and protect their rights. Singapore inherited this entire constitutional and legal structure when it became independent.

### **On the Constitution and judicial review**

16. Let me now introduce you to the main features of our constitutional order.

17. Singapore has a parliamentary form of government based on the Westminster model. The sovereign power of Singapore is vested in three organs of state: the legislature, the executive and the judiciary. It is a constitutional democracy based on the doctrine of the separation of powers. The Constitution declares itself the supreme law of the land.<sup>4</sup> This concept of constitutional supremacy can be traced to the Constitution of the United States, through the Malaysian Constitution and the Indian Constitution.

18. The Constitution guarantees certain fundamental liberties, freedoms and prohibitions, such as personal liberty (*ie*, no deprivation of life or personal liberty save in accordance with law), equality before the law and equal protection under the law, prohibitions against slavery and forced labour, prohibitions against retrospective criminal laws and double jeopardy, prohibitions against banishment and freedom of movement, the freedom of speech, assembly and association, freedom of religion, and prohibitions against discrimination in the area of education on grounds of religion, race, descent or place of birth.<sup>5</sup> The freedoms are subject to various restrictions, such as those that are necessary or expedient in the interests of national security, public order, and morality, those that may be imposed by law relating to labour or education, and also defamation and

contempt of court.<sup>6</sup> These are express constitutional constraints. They are, however, unexceptional.

19. Freedoms, like legal power, have their legal limits. A country where there are unlimited or unrestrained freedoms is a country without law, much less the rule of law. The law must draw a line somewhere. In Singapore the lines drawn by the law are clear. They are found in the criminal statutes, and in the law of defamation and contempt of court. In regard to the latter, the contempt power is necessary to punish allegations that could undermine the court's authority or public confidence in the impartial administration of justice. Every common law court has this power. In the past, the Singapore courts have found it necessary to exercise this power from time to time. One of the more recent cases concerned three persons who came into the precincts of this building wearing T-shirts with a large picture of a kangaroo in judge's robes whilst there was an ongoing defamation case against a member of an opposition political party. That said, in Singapore, you may criticise any person or institution in any way you like provided you do not cross the line as laid down by law. And people in Singapore do freely criticise the government, its ministers and public institutions, including the courts.

20. The Constitution declares that any law inconsistent with the Constitution is null and void but it does not expressly provide for a procedure for nullifying and voiding such law.<sup>7</sup> But because the judicial power of Singapore is vested in the judiciary, the legislature and the executive have accepted the legitimacy of the courts to exercise this power.<sup>8</sup> The justification for this approach may be found in the judgment of the greatest Chief Justice of the United States, Chief Justice John Marshall, in *Marbury v Madison*,<sup>9</sup> which every constitutional lawyer is familiar with. I was first introduced to this case, and also *Brown v Board of Education*,<sup>10</sup> in 1958 in my constitutional law class.

21. Constitutional scholars of the US Constitution continue to debate whether the US Constitution has adopted a particular definition of the rule of law, *ie*, whether law is any law passed by the legislature or whether it must be a just law. In Singapore, we also have the same debate. We have a Privy Council statement made in a Singapore case that the Constitution does not justify all legislation, whatever its nature.<sup>11</sup> We also have a more recent statement of the Court of Appeal that the court should not be concerned with whether laws passed by Parliament are fair, just and reasonable.<sup>12</sup> These statements were made in the context of an argument against the constitutionality of the death penalty. I recall that in law school, we were asked this question: if Parliament passes a law that all babies born with blue eyes shall be sentenced to death, is that a law under the Constitution or is that a law at all? The problem with this hypothetical is that it assumes two facts. First, that Parliament is mad enough to enact such a law. Second, that any judge is mad enough to enforce it. But the very fact that we still debate this sort of question shows that the rule of law is very much alive and well in Singapore.

22. The courts have the power to review legislation and executive acts to determine whether they are unconstitutional. They also have the power to review executive acts to determine whether they are contrary to law. So long as the power of judicial review exists, the rule of law exists. Any aggrieved person can bring an action against the state to right a wrong done to him or her. The courts will hear his or her complaint in court proceedings that are open to the public and determine his or her claim according to law. All judgments that are fully reasoned are published.

23. I have earlier referred to laws on detention without trial. The common complaint is that they are arbitrary laws. As a matter of law, they are not arbitrary laws in the sense that any detention order made under these laws is subject to judicial review, and the courts will determine whether it is made in accordance with the law. *Habeas corpus* is a judicial remedy that

is still available to any detainee. There is, however, a complaint that detention orders made on national security grounds can be reviewed only on procedural and not on substantive grounds. The complaint here is not the lack of the rule of law, but about a so-called democratic deficit. The complaint is that the law may be abused for political purposes.

24. Over the years, Parliament has engrafted onto the Constitution a number of unique features to meet our own political, social and cultural values. The first feature is the elected presidency, which was borne of the need for a constitutional body to check any profligate spending of Singapore's financial reserves by an incumbent government or an incoming government. The idea is that, in principle, each government must spend within its means during its term of office, and may not spend the reserves that had been earned by previous governments without presidential approval. The veto power vested in the elected president is meant to prevent political parties from making rash and reckless promises to the electorate in its electoral manifesto, without the financial means to implement them. The veto also prevents an incumbent government from spending beyond its means. Voting in both general and presidential elections are compulsory. The government has a five-year term, but the President serves a six-year term in order to straddle at least two governments. The rationale for this arrangement is fairly obvious.

25. The second feature is that the Constitution guarantees representation in Parliament of minority races (through the concept of "Group Representation Constituencies"), opposition party candidates (through the concept of "Non-Constituency Members of Parliament"), and the independent and non-partisan views of civil society (through the concept of "Nominated Members of Parliament").<sup>13</sup> The Constitution also provides for a Presidential Council for Minority Rights ("PCMR") to examine every piece of legislation passed by Parliament and subsidiary legislation to determine whether it is a "differentiating measure", *ie*, a law that

disadvantages any racial or religious community and fails to equally disadvantage other such communities.<sup>14</sup> The rationale is that all racial or religious communities must share the same advantages or disadvantages arising from any legislation. This is in addition to the constitutional guarantee of equal protection under the law.<sup>15</sup>

26. Another provision in the Constitution declares that it is the special responsibility of the government to constantly care for the interests of the racial and religious minorities in Singapore, and also to exercise its functions in such manner as to recognise the special position of the Malays, and to protect their interests, including the Malay language.<sup>16</sup> These special provisions on racial and religious minorities in Singapore, together with the Maintenance of Religious Harmony Act,<sup>17</sup> which created the Presidential Council for Religious Harmony with the function of reporting to the competent Minister on matters affecting religious harmony in Singapore, ensure that no religious disharmony can reach a stage where riots arising from religious conflicts can arise. Furthermore, the Maintenance of Religious Harmony Act allows the Minister to make a restraining order against any priest, monk, pastor, imam etc, from causing feelings of enmity, hatred and ill-will or hostility between different religious groups. As you can see, religious discord will not be tolerated under any circumstances because it is a very serious threat to the security of Singapore.

### **On judicial independence in Singapore**

27. Let me now speak on another aspect of the rule of law – judicial independence. The Constitution vests judicial power in the judiciary and thereby entrenches it as an independent arm of the government.<sup>18</sup> Every judge of the Supreme Court, before he or she assumes office as a judge, must take an oath to protect and defend the Constitution.<sup>19</sup> It is not an oath to protect and defend the President, the legislature or the executive; it is an

oath to protect and defend the Constitution. The remuneration and tenure of judges of the Supreme Court are protected by the Constitution.<sup>20</sup> A judge of the Supreme Court can only be removed from office by the decision of a panel of not less than five of his or her peers which may include judges or former judges from other Commonwealth courts.<sup>21</sup> The conduct of a judge of the Supreme Court cannot be discussed in Parliament except on a substantive motion of which notice has been given by not less than one-quarter of the Members of Parliament.<sup>22</sup>

28. Given the constitutional protections afforded to judges of the Supreme Court, any allegations of a lack of judicial independence have to relate to the judges as individuals. At present we have 15 judges of the Supreme Court and three recently appointed judicial commissioners (judges of the Supreme Court who are appointed for specific periods). This means that any such allegations would have to be referable to one, some, or all of the 18 judges and judicial commissioners. What is the basis of these allegations? From what I have read, they consist of bare and recycled reports about “executive influence over the judiciary”,<sup>23</sup> whatever that means. Some are based on the courts deciding in favour of government ministers in defamation cases against opposition politicians and the foreign media. Commonwealth judiciaries like ours have a common tradition that judges do not defend their judgments in public. They let their judgments and the reasons for their decisions speak for themselves. This is where I will leave this particular issue.

29. But, I would like to say something about the law of defamation versus free speech because it is a much misunderstood subject. Here we are not talking about the right of free speech *per se*, or responsible criticisms or speech. We are talking about irresponsible speech that damages the reputation of other people. At common law, any person is free to do anything or say anything he or she likes, unless prohibited by law. The law of defamation penalises defamatory speech because it

damages a person's reputation. Both the right of free speech and the right to reputation are valuable rights. The law of defamation seeks to balance the right of free speech with the right to reputation, and it does so by providing the defendant with four defences to defamation, viz, justification, fair comment, qualified privilege and absolute privilege. Free speech is restricted to the extent that it is held to be defamatory.

30. Our law of defamation is based on the common law of England which was developed over a period of more than 100 years. The law has been expressly continued in the Constitution for the purpose of restricting the right of free speech. Many lawyers do not seem to know the significance of this – that the drafters of the Constitution decided, in their wisdom, to place a higher social value on reputation than on free speech, where they conflict. The law of defamation is really about balancing the value of free speech and the value of reputation in a democratic society. How this balance is to be struck depends on the political, social and cultural values of each society as reflected in its laws. These values differ from society to society and at different times of their development.

31. For these reasons, the “public figure test” of qualified privilege, laid down in *New York Times v Sullivan*,<sup>24</sup> does not apply in Singapore, or for that matter in any Commonwealth jurisdiction. That test is confined to the United States by virtue of the First Amendment to the US Constitution. In England, the law applies what is called the *Reynolds* privilege (a form of qualified privilege created from the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Human Rights Act of the United Kingdom) from the case of *Reynolds v Times Newspapers Ltd* (“*Reynolds*”),<sup>25</sup> and confers qualified privilege on discussions on matters of public interest. The Australian courts apply a different test. So do the New Zealand courts. Each jurisdiction applies its own test as informed by its own political, social and cultural values. In the case of *Reynolds*, one of the more eminent law lords said:<sup>26</sup>

There are at stake powerful competing arguments of policy. They pull in different directions. It is a hard case in which it is unrealistic to say that there is only one right answer. And in considering the decisions in other jurisdictions it is right to take into account that cultural differences have played an important role.

Based on this, it may be the case that the critics have missed the point, and that criticising the Singapore courts is really criticising them for recognising the political, social and cultural values of Singapore society as expressed in its laws.

### **On criminal justice**

32. Let me now describe our criminal justice system. Our primary criminal laws are found in the Penal Code and the Criminal Procedure Code,<sup>27</sup> both of which were based on Indian legislation. Together with the Evidence Act,<sup>28</sup> which was also based on Indian legislation, they form the basic structure of our criminal justice system. Originally, the procedural rules and rules of evidence made criminal trials a sport – with the accused telling the prosecution “Catch me if you can” and the judge, saying “Yes, catch him if you can”. This corresponded to the “Due Process Model” as differentiated from the “Crime Control Model”. The two models were constructed by Herbert L Packer, a Stanford University professor of law, in 1964 as representing the competing value systems in American criminal justice.<sup>29</sup>

33. The Due Process Model, put simply, reflects liberal values and favours the accused. It is structured like an obstacle course, consisting of a series of impediments that take the form of procedural safeguards that serve as much to protect the factually innocent as to convict the factually guilty. The Crime Control Model, on the other hand, reflects conservative values and gives priority to the repression of crime as order is necessary in

a free society. It is designed to process the factually guilty quickly through efficient investigative procedures so that they would plead guilty.

34. Singapore has moved from the Due Process Model in the direction of the Crime Control Model in the 1970s. We do not have the requirement of a Miranda warning, and a witness or a suspect when questioned by the police is bound to state the facts except only that he or she may decline to state any fact or circumstance which would have a tendency to expose him or her to a criminal charge or to a penalty or forfeiture.<sup>30</sup> A suspect, when charged for an offence at a police station is administered a caution to state any fact he or she intends to rely on in his or her defence, and if he or she fails to do so, he or she may be less likely to be believed if he or she mentions that fact at trial.<sup>31</sup>

35. Voluntary confessions and self-incrimination statements are to that extent admissible in evidence.<sup>32</sup> A retracted confession may be accepted in limited circumstances by the court as the truth.<sup>33</sup> When an accused is called upon to make his or her defence, he or she may decline to do so. But if he or she elects to give evidence he or she must do so on oath or affirmation in the witness box, failing which the court could make an adverse inference against him or her.<sup>34</sup> For certain offences, such as drug-trafficking offences, presumptions of fact exist that have to be discharged by an accused.<sup>35</sup> The golden thread of English criminal justice remains; the prosecution must prove its case beyond reasonable doubt, although discharging the burden has been made easier by the afore-mentioned rules.

36. The Crime Control Model may be more accurately described as the "Efficiency Model".<sup>36</sup> Efficiency and strict enforcement of the criminal law are our strong points. But practicality and pragmatism are also our strong points. The guiding principle is economy, efficiency and functionality. The law is fashioned to detect and punish criminal behaviour. A balance has to

be struck between the right to life and liberty and the right to order and a safe society.

### **On the civil justice system**

37. I do not have to say much on our civil justice system, which is modelled directly on the English system. Much of our civil laws are similar to English law, particularly our commercial laws.

38 Our court processes are fully computerised, and are among the most efficient in the world. Our electronic filing system is the most advanced system in the world, and it will become more advanced, as we move to a fully paperless system. Because of all these developments, the Singapore public enjoy a level of judicial efficiency that ranks among the most advanced jurisdictions in the world.

### **On foreign law practices in Singapore**

39. Let me now say something about foreign law practices in Singapore. When the Asian Dollar Market (which was really the US dollar domiciled in Singapore) was established in the 1970s, the Monetary Authority of Singapore (“MAS”) invited all US and other international banks here to bring in their own lawyers to provide the legal services they needed for their US Dollar loans. The English law firms came, but not the New York law firms. We still welcome US law firms to set up practices in Singapore. Today we have 97 registered foreign law practices in Singapore, of which 20 are from the United States.<sup>37</sup> Last year, the government granted Qualifying Foreign Law Practice (“QFLP”) licences to six foreign law firms. These licences allow foreign firms to practise Singapore law, except in the area of litigation. Two of the licences were given to US law firms.

40. New York and English lawyers face little or no competition from other lawyers in other regions, competing only among themselves. How long will

this last? I would say for a long time to come, if the US dollar remains the international currency of finance and banks like Goldman Sachs and J P Morgan are still the masters of the financial universe. Will China's rise as an economic and financial power make a difference? I doubt it. Chinese law and the Chinese legal system have a long way to go before they become acceptable for international financings.

41. Still, Chinese law firms will grow in size, if not in revenues, and eventually will match the global New York and English law firms. China has the potential to harvest the current and future expertise of thousands of Chinese lawyers who would have acquired sufficient transactional experience in New York, London and other financial centres to provide the expertise and services that are currently provided by the New York or English law firms. Last year, I had a discussion with a top English corporate lawyer who is familiar with the Chinese legal system. He said that the vast output of commercial and other laws that China is producing reminded him of Emperor Justinian's project to reform Roman law. The difference would be that Justinian was reforming an established system of law, whereas China is creating new laws that are untested. Still, China belongs to the civil law tradition and civil law jurisdictions outnumber common law jurisdictions by two to one. New York law and English law currently dominate international financial services. That, however, may change, but not for some time. But I will not be surprised if, in the next decade, the first joint law venture between a Chinese law firm and a New York law firm will be announced. But, I suspect that it will be an English law firm that will steal a long march on the New York firms.

## **Conclusion**

42. I have seen many changes in the political and legal landscape of Singapore in the last 50 years. It is inevitable that with globalisation, the power of the Internet, and the new world order, Singapore will also change.

In Rodgers & Hammerstein's musical "The King and I", the King is puzzled by the changes his kingdom has undergone. He sings a song which ends with these words:

When I was a boy  
World was better spot  
What was so, was so  
What was not, was not  
Now I am a man  
World have changed a lot  
Some things nearly so  
Others nearly not.

43. Singapore has changed a lot in 50 years, some things nearly so, others nearly not. You can now go to a theatre or a concert at our iconic durian (the Esplanade) for high culture, our nightclubs for low culture, and the Substation for sub-culture, and other places for other kinds of culture. You can now take a ride on our MRT trains and travel around the whole island. You can savour the world's cuisines in our restaurants and the people's food at our food courts. Incidentally, it is not an offence to chew chewing gum; it is only an offence to sell it. It is an offence to litter the street with it, but it is a much more serious offence if you stick it to the door of an MRT train and immobilise it.

44. See Singapore for yourself and experience its spirit and vibrancy. Enjoy your stay here, and have a successful Seasonal Meeting. Thank you for listening.

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<sup>1</sup> Civil Law Ordinance (Ord No 4 of 1878) s 6.

<sup>2</sup> Application of English Law Act (Cap 7A, 1994 Rev Ed).

<sup>3</sup> Roger Scruton, *A Dictionary of Political Thought* (Macmillan, 1982) at p 415

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4 Constitution Art 4.  
5 See Constitution Part IV.  
6 See Constitution Part IV.  
7 Constitution Art 4.  
8 Constitution Art 93.  
9 *Marbury v Madison* 5 US 137 (1803).  
10 *Brown v Board of Education* 347 US 483 (1954).  
11 *Ong Ah Chuan v PP* [1980–1981] SLR 48  
12 *Jabar v PP* [1995] 1 SLR 617  
13 Constitution Arts 39 and 39A.  
14 Constitution Part VII.  
15 Constitution Art 12.  
16 Constitution Art 152.  
17 Maintenance of Religious Harmony Act (Cap 167A, 2001 Rev Ed).  
18 Constitution Art 93.  
19 See Constitution First Schedule.  
20 Constitution Art 98.  
21 Constitution Art 98.  
22 Constitution Art 99.  
23 See <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119056.htm>.  
24 *New York Times v Sullivan* 376 US 254 (1964).  
25 *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127; Human Rights Act  
1998 (c 42) (UK).  
26 *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 at 209.  
27 Penal Code (Cap 224, 2008 Rev Ed); Criminal Procedure Code (Cap 68,  
1985 Rev Ed).  
28 Evidence Act (Cap 97, 1997 Rev Ed).  
29 Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U PA  
L Rev 1.  
30 Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 121(2).  
31 Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 122(6).  
32 Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 122(5).  
33 See Jeffrey Pinsler, *Evidence, Advocacy and the Litigation Process*  
(LexisNexis, 2nd Ed, 2003) at p 104.  
34 Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 196.  
35 See the Misuse of Drugs Act (Cap 185, 2008 Rev Ed).  
36 See Peter Duff, “Crime Control, Due Process and ‘the Case for the  
Prosecution’. A Problem of Terminology?” (1998) 38 B J Criminology 611.  
37 Figure is accurate as at 21 October 2009.