THE LAW SOCIETY OF SINGAPORE

SURVIVAL KIT FOR THE FITTEST

A Special Supplement for Young Lawyers | 2015

MIC (P) 063/11/2014

LexisNexis®

www.lawgazette.com.sg

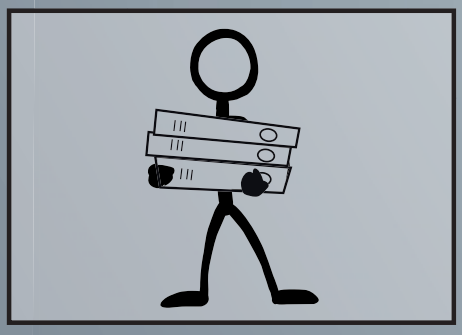
shaping tomorrow with you

FUJITSU

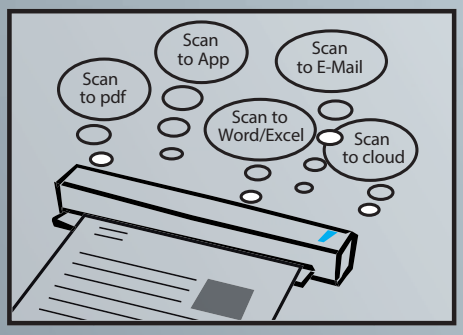
Think Simple, Think ScanSnap

Don't settle for less, when we offer the best.

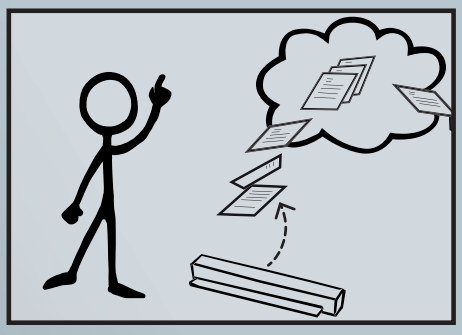
Simple, speedy and compact, Fujitsu ScanSnap series is your one-stop solution to an efficient paperless work environment. Expect versatile scanning solutions to suit any environment with its first class technology powered just for you.



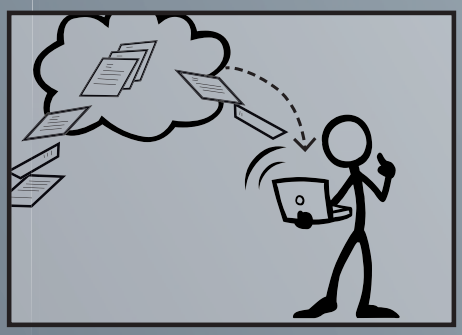
I need to carry my work with me, that includes all these documents!



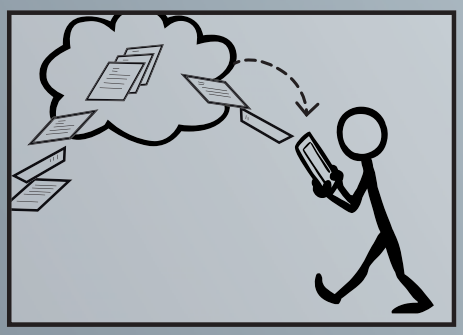
... how easy! Just press the blue button and scan to… everywhere!



Now I have my documents ready whenever or wherever I need them.



On my notebook when in a meeting or at my desk from my home office,



on my Android® tablet or iPad® at lunch break or on the airplane,

and even on my smartphone thanks to the ScanSnap App*! I just love it!

Interested? Have a look at www.fujitsu-scansnap.com

ScanSnap Hotline 6512 7610 scanner@sg.fujitsu.com www.fujitsu-scansnap.com

* Available for iPad® iPhone® and Android® 2 2 or later; details on our website

THE LAW SOCIETY OF SINGAPORE

The Council of The Law Society of Singapore
President: Mr Thio Shen Yi, SC
Vice Presidents: Mr Kelvin Wong
Mr Gregory Vijayendran
Treasurer: Ms Kuah Boon Theng

Mr Lok Vi Ming, SC (Immediate Past President), Mr Lim Seng Siew, Mr Adrian Tan, Mr Steven Lam, Ms Parhar Sunita Sonya, Ms Lisa Sam, Mr Anand Nalachandran, Mr Chiam Tao Koon, Ms Usha Chandradas, Mr Sunil Sudheesan, Mr Yeo Chuan Tat, Ms Katie Chung, Ms Wendy Lin, Mr Paul Tan, Mr Arvindran s/o Manoosegaran, Ms Simran Kaur Toor, Mr Grismond Tien

Editorial Board
Ms Malathi Das, Mr Rajan Chettiar, Ms Celeste Ang, Ms Simran Kaur Toor, Mr Benjamin Teo, Mr Cameron Ford, Ms Debby Lim, Mr Evans Ng, Mr Kishan Pillay, Ms Lye Hui Xian, Mr Marcus Yip, Mr Prakash Pillai, Ms Shen Xiaoyin, Mr Vincent Leow

LexisNexis®

Published by
LexisNexis
3 Killiney Road, # 08-08, Winsland House 1,
Singapore 239519
Tel: (65) 6733 1380
Fax: (65) 6733 1719
http://www.lawgazette.com.sg

Director, Sales, Singapore and OSEA
Angie Ong
Associate Director, Publishing, Singapore
Terence Lim
Editor
Chandranie
Designer
Mohd Khairil Johari
Advertising Account Managers
Wendy Tan & Perry Tan
Printing
Markono Print Media Pte Ltd

CONTENTS

Welcome from Chairperson, Young Lawyers Committee

Wong Yi
Chairperson
Young Lawyers Committee
The Law Society of Singapore

To the 2015 newly qualified Advocates and Solicitors of the Singapore bar,

Many congratulations on completing the training stint of your professional career, and being called to the Singapore Bar.

I remember the day of my own call – it was a mixed feeling of relief, of happiness, and of measured pride. Relief that the somewhat "perfunctory" training time period has ended, happiness of course to be fully qualified as a professional, and measured pride at joining the ranks of a time-honoured tradition.

The news in relation to the legal profession for young lawyers has not been all rosy in the past years. From the still lumbering economy to the cutting down of the list of approved overseas universities to the lack of training contracts, it makes this moment all the more one to cherish. I urge you to put the news in relation to lower starting salaries and subsequently smaller increments in perspective. Lawyering these days will still give you a rather comfortable life. Even in the heydays when increments were 20 per cent year on year and starting salaries were much higher in relation to other careers, lawyering would still not guarantee you a life of riches and luxury. In fact, the gap is fast closing in relation to other careers. If financial motivation is your only motivation, for that, in today's global economy and the trends, you are better off heading to Silicon Valley for a more realistic and better shot at changing your financial destiny.

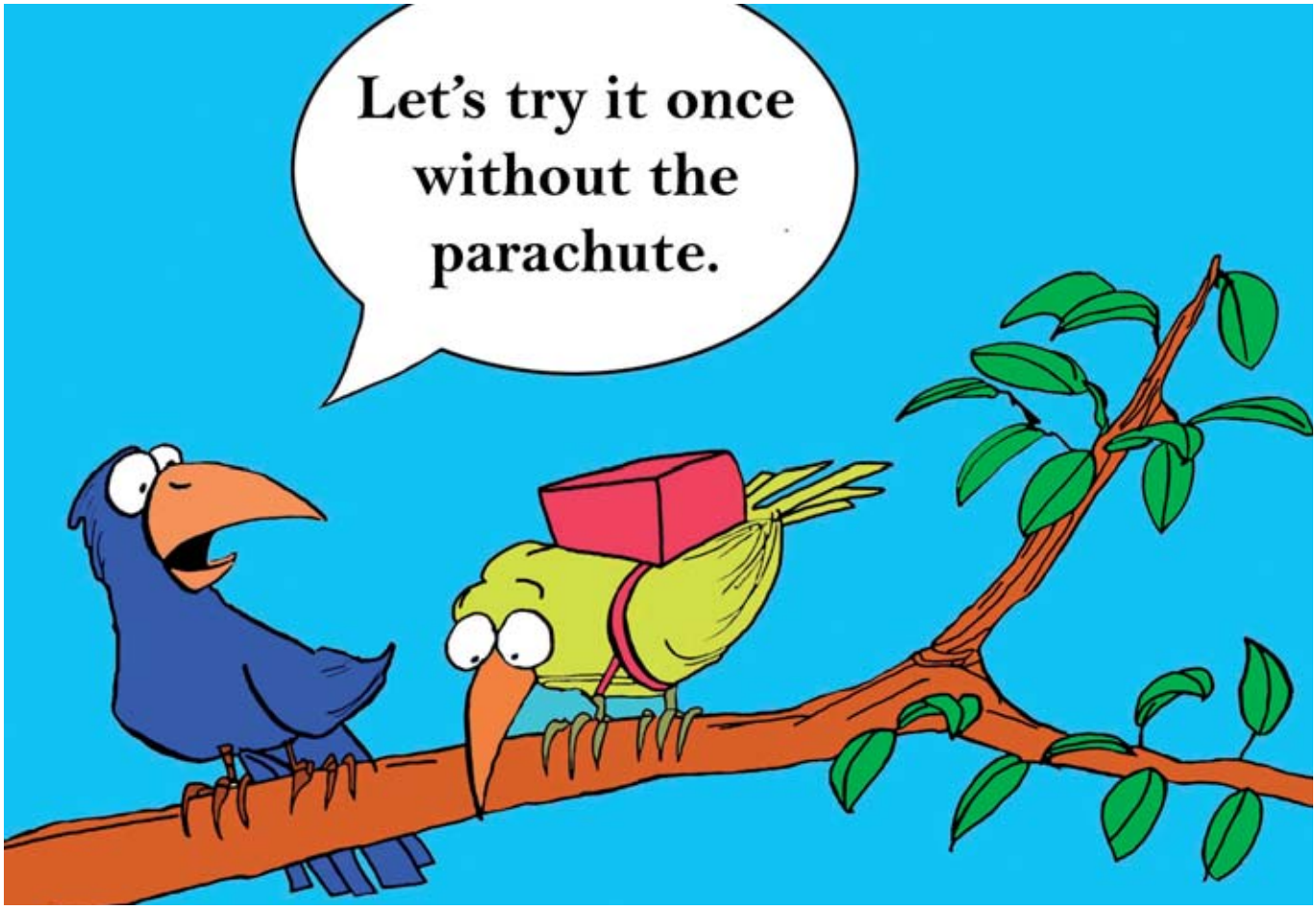
Today marks the transition from an apprentice trainee to a fully qualified professional, one that now takes on responsibilities fully and will be held to accountability. It may seem like just another day at work when you return to your offices on Monday, albeit with a room, a name card and a blackberry to boot. In essence, the work you will be undertaking, the hours you will need to put in, will not change after today. A professional journey is a long one. To be skilled and honed at your craft, it requires a lifelong dedication to the profession to better yourself, to continually keep abreast of developments, and to remain humble as you are only as good as your last (Courtroom) victory or successful negotiation.

I humbly proffer that patience and introspection are virtues that you will have to exercise in spades in the current lawyering context. Gone are the days when the lock step progression (unspoken) guarantees partnership in "x" number of years, and in the increasingly competitive community, be open-minded about accepting what your true abilities are, be receptive about switches to areas of law which may truly suit your personality and threshold of stress, and most importantly, be humble in accepting that an alternative career may not be that bad after all. You will not "lose" the "call to the bar", unless of course you get struck off the rolls.

On a personal level, remain true to yourself and take care of yourself. A full pay cheque twice or thrice of your training contract allowance may mean a swanky gym membership, but wellness has to come from your inner self and personal desire to maintain a sound body and sound mind existence. As clichéd as it sounds, it is paramount to get sufficient rest and maintain a healthy diet to prevent burn out. Being able to stay up till 5am to proofread a prospectus or draft a research memorandum should not equate to any form of training for you to similarly drink and party to 5am. Of course, this is a completely personal issue, and I fully respect any form of lifestyle you may want to adopt but remember that at the end of the day, objectively and logically speaking, to last your professional career as a lawyer is a marathon and not a sprint. You will need to take care of yourself and be responsible to those around you. The day of my call was the happiest day of my life. It became the second happiest day of my life when I got married, and third when my child was born. Point is, there are things in life that matter more, and to allow and worse still blame a career, a partner, or an office environment for ruining your health, social life and well-being when a large part is within your control, is a rather simplistic deflection of responsibility.

Once again, heartiest congratulations to all of you, and welcome to the profession. I wish you an enriching and fulfilling professional life ahead.

The Professional Relationship



The role of a supervising solicitor is important in the journey of transition of a law graduate to a lawyer. This journey is known as a training contract.

The supervising solicitor's role is to train the practice trainee in all aspects of the practice of the law. He is the first senior lawyer the trainee works with in his career. The solicitor has an impactful influence on the trainee's career and views about law practice. After 18 years, the gems of wisdom dispensed by my then pupil master, Ronnie Quek continue to have an impact on my law career to this day. I now understand what he went through during my then pupillage and the true meaning of what he said.

So, how should a supervising solicitor perform his role?

The practice trainee and solicitor's interaction with each other is a personal one in addition to being a professional one.

Rajan Chettiar
Rajan Chettiar LLC

It is a relationship. Like all relationships, certain ingredients must be present to make it work – rapport, confidence, respect, trust, commitment, understanding of each other and management of expectations.

Rapport

This starts from the trainee interview. His curriculum vitae sets out his various achievements. The solicitor can, through the questioning, interaction and observation, learn about

the trainee. The solicitor can also share about himself, his values, requirements and expectations. The communication and relationship then continues from there if both parties are comfortable with each other.

Confidence, Respect and Trust

These three come together. Confidence develops from first impressions. The solicitor inspires confidence from the way he acts, speaks and conducts himself as a lawyer. The trainee, beyond his dressing, needs to start acting as a lawyer. The whole packaging of a lawyer – his image and style of communication is as important as his legal knowledge and paper qualifications.

Confidence breeds mutual respect for each other. This then leads to trust which enables the supervising solicitor to entrust case matters to the trainee to work on. The trainee also heeds the solicitor's advice and guidance seriously.

Commitment

The solicitor needs to carve out time and commitment to train the trainee well. After all, the solicitor is moulding the future of the legal profession. I usually only take one practice trainee at a time as it would not be possible to handle more than one at a single time.

The solicitor must be willing to teach, guide and explain the intricacies of legal practice to the trainee. The trainee has knowledge of the theory of law and needs training in how the law works in the practical world. So, time and patience needs to be invested by the solicitor.

The solicitor must not only assign case matters to the trainee but has to supervise him. It is, therefore, more than just the trainee shadowing the solicitor in Court hearings. After the hearings, the solicitor should have debrief sessions with the trainee.

The training and the first two years of law practice are difficult periods in an associate's life. This is not the time to let your hair down and chill. Hard work is all there is to it.

Understanding

This must exist between both parties based on their personality, working style, requirements and expectations.

Managing Expectations

The expectations of the trainee is the same as that of a first year associate. After all, after about six months, the trainee does become an associate. The training contract is a serious undertaking for both. The supervising solicitor has to certify that the trainee has been exposed to the various aspects of legal practice before the trainee is allowed to become a lawyer.

Some of the frequent feedback from trainees is the lack of time spent by the solicitor with them and the lack of sufficient guidance given to them. The duty of the supervising solicitor is indeed onerous as he has to run his busy practice and manage the trainee as well.

Often, in bigger firms, the supervision of trainees is delegated to senior associates or other partners. Although this is a result of practical considerations such as workload and lack of time faced by the supervisors, it is not a desirable outcome and should not be encouraged. In view of the current glut in training contracts, it may not be possible for the supervising solicitor to limit himself to taking one trainee only.

The expectations placed on supervising solicitors are hence demanding. As in all relationships, the trainee too has a role to play. If both sides play their roles well, the training will be mutually beneficial.

The solicitor will guide and teach the trainee. He is not supposed to spoon feed the trainee. So, the trainee must consider the brief, analyse the issues and find solutions and offer views. Only with this can there be positive engagement between both sides and proper training take place. Many a time, trainees go to their supervisor for guidance every step of the way and expect to be told what to do without doing the initial work, research and homework. The solicitor does not have the time to engage in this manner with the trainee.

Supervising solicitors do understand that they are dealing with a different generation of practice trainees and legal associates. However, the basic requirements such as having a good work ethic and good attitude never change. If the study of law was very difficult, then the practice of law is certainly not a bed of roses; it is not for the faint hearted and the weak. It requires lots of passion, hard work and sacrifices. It is not a job that is going to give work life balance or much free time. A lot of care and dedication must be put in by the practice trainees. Good initiative is an important asset that the trainee must have. Ronnie had a piece of advice when I was training under him: "Treat the client's problem like yours. If it was your problem, wouldn't you go out of the way to find a way to solve it?" He also said that life is nothing but about working hard.

This article, although about the role of the supervising solicitor, is also applicable to your future bosses and to you, the new legal associate. Welcome on board and enjoy the ride. I hope you will stay for the full ride and not disembark too early in the journey!

The Joy of In-house Practice

Cameron Ford[1]
Rio Tinto, Singapore

Congratulations on your admission. It is a genuine pleasure to welcome bright young minds into our profession. There can be a comfortable camaraderie among us which I hope you will experience to the full.

There might come a time when you think of leaving the bosom of the firm and venturing in-house, and it might be useful to have some reflections from someone who has already trodden that path. I want to make it clear that I am not trying to talk anyone into or out of corporate practice. It is very personal to the lawyer at their time of life and particular to the in-house role. I am trying to present as balanced a view as I can, having seen both sides for a while now.

Temporarily In-house

I would thoroughly recommend spending some time in-house even if you never intend to leave private practice permanently. I wish I had done that at an earlier stage to have an appreciation of the different type of pressures in-house counsel work under and to know how to serve them better. The pressures on in-house counsel are not necessarily greater than those in private practice but they are different. The business units we serve usually want fairly instant answers and do not have much patience for delays for research or contemplation. Neither do they have any patience for heavily caveated advice of the two-handed type beloved of us lawyers – "on the one hand this, but on the other hand that". I read once that "on the other hand" has as much emotional significance to a lawyer as "I love you" does to a layman. As lawyers we understand that often there is no definite answer, but the business wants one.

Spending some time in-house gives you an idea of the type of advice that is of real assistance to corporate counsel and the business. I once wrote a detailed, lengthy advice on what seemed to me then to be a fairly complex construction dispute, and I was particularly proud of how I thought I had unravelled the legal and factual mess and distilled the issues. The client thanked me politely and asked if they could have a conference to discuss. Years later, after I had moved in-house and received similar advices, I realised that the client probably skimmed the advice and, finding it too legalistic, thought that the only way they were going to get any real help was to meet and discuss.

I was on the receiving end of such an advice after moving in-house to one of the Australian banks. We had a stamp duty dispute of around $5 million – not a large dispute but not trifling either and engaged a firm together with senior and junior counsel to advise. Junior counsel gave us a written advice helpfully broken into two parts. The first part was 98 pages and the second was just over 100 pages. Three times I made it to around page 30 of the first part and then realised I had forgotten or not understood much of what I had read. I never made it past those pages. I can well imagine that he felt proud of his exhaustive advice and thought that he was serving us well. From an academic point of view and for possible use one day in the Court of Appeal, he could be justly proud. But to apprise his client of the issues and prospects, it was next to useless.

Working in-house for a time will also give a better idea of all of the different factors that motivate the business as well as the lawyers. It's very helpful when giving advice from private practice to be able to understand the way businesses approach decision making and the factors that influence them. It's not always about pure profit in a deal or pursuing what appears to be a good case in a dispute. You will probably encounter situations in private practice where the corporate client does not pursue an apparently good deal or dispute and you might be left wondering why. Typical considerations other than pure profit would be the overall relationship with the other party, the company's reputation in the market and beyond, its appetite for risk at that particular time and of that

particular type, the need to take a stand on a certain issue, and any moral, environmental and human dimensions. You gain an inside view of these factors when working in-house.

Permanently In-house

There are quite a few positives to working in corporate practice permanently. The hours are usually considerably shorter than in private practice in Singapore. Mostly, the hours range around from 8-9am to 6-7pm although you may have to take a call later at night or early in the morning from home occasionally. Smaller companies might expect more from you, especially if they have a small legal team where one lawyer or only a few are expected to do everything and to be on hand at all times. If you rise to General Counsel you would usually be expected to be available at any time to respond quickly and correctly to enquiries. As part of the senior executive management team, you would usually be required to be personally invested in the business almost as if it were your own. In that sense, it is not unlike being a partner in a firm.

It has to be acknowledged that the work-life balance is much better in-house than in private practice. I went in-house from the independent Bar where the hours are long because the work is there and the money goes into your own pocket. From the Bar I went to a bank where we all left shortly after 5pm. It was a real revelation to find that I had a whole new day – seven hours – after work and before bed beckoned. It was stunning – you have to think of things to do to fill the time. I was telling this to my former barrister colleagues a few months later and they just looked at me with total incomprehension, so alien was it to their experience. A quick survey of a few fellow corporate counsel now suggests that this is the main reason they stay in-house, despite the negatives mentioned below.

Allied with this is the general reduction of pressure in corporate practice from private practice. Most companies do not have specific targets of any type for the lawyers to meet, except perhaps cost reduction in lean times. The absence of time, billing and marketing targets can make a significant reduction in stress and working hours. A friend sums it up when he says he no longer fears little blinking red lights.

A corollary on the negative side of this, though, is that the absence of measureable targets can mean it is difficult objectively to prove your value to the company, particularly if you work in a larger team. When review and cost-cutting times come, as they inevitably do, you have to rely on more subjective measures of contribution and hope that the reviewers and slashers see them as you do.

As corporate counsel you are on the front line of commercial law, practising it in real, imperfect, gritty situations. Your company, for example, may be the one who allowed the snail to get into the bottle or served the bottle to the hapless customer. You have to answer the call telling you that a customer has almost swallowed a snail and asking what should we do. An instant answer of "call external counsel" is rarely welcome and you often have to decide what to do then and there. This can be exciting and of course stressful at the same time. The situation will rarely fall neatly into the four corners of the established cases or law and you have to decide which way to play it. In other words, you are using and adapting the law in its raw form – "raw law" – with little opportunity for refinement.

One difference between corporate and private practice often appreciated by those coming in-house is the absence of time recording. We quickly forget about it after leaving private practice but it certainly was a relief to be free from the overarching concern of time. You can feel a little lost to begin with, not knowing exactly how your work is measured. A friend who went in-house said he wasn't sure initially when he was free to go home because there was no time sheet recording the mandatory minimum. But this is one thing to which you very quickly adjust! And then there is fierce resistance when anyone suggests introducing time recording. I tried to cajole a team into using time sheets for a very limited period to be able to assess the type of work we were doing and how long it was taking us, but I was met with polite, passive, implacable resistance.

Many corporate counsel enjoy being closer to the business than they were in private practice. They enjoy the commercial aspects of the business as much as, if not more than, the legal aspects. Perhaps they are frustrated businessmen just as advocates are said to be frustrated actors. There is usually ample opportunity to be as close to the business as you choose and to be heavily involved in the commercial issues in a transaction or dispute.

In-house work can be quite varied if you are in the right organisation or business unit, but there is ample opportunity for monotony if you are not. It is possible to tire of the never-ending confidentiality agreements, variation agreements and the requests to "please review" documents which have already been executed. As to those, if we are brave enough we can adopt the approach of one General Counsel of saying "I'm a lawyer. I'm not a priest to bless your documents after the event". Whether the type of work is to your taste or not depends on your preference for variety or regularity at the particular time of your life.

It's not hard to think of the less attractive aspects of corporate practice. One of those is the tedium from the repetitive nature of some of the work. Of course that can happen in private practice as well, particularly in the early years, but there is greater scope for it in-house. The work is not always particularly intellectually challenging and you might need

some other source of mental stimulation. Some lawyers escape the tedium by moving into a commercial role where the work has the potential of being more varied and simply different from the legal work they might have been doing for many years.

This leads to another draw-back of corporate practice, namely the usually flat structure that legal departments have and the consequent limited chances for promotion. Most in-house legal departments have one or a series of short, pointed pyramids of only two to three layers – Corporate Counsel on the bottom, up to Senior Corporate Counsel then perhaps Chief Counsel in the larger companies and finally General Counsel. Structures in firms might also be pyramidal, but the top is broad and flat, occupied by many partners rather than by the one or a small handful of General Counsel as in companies.

Compounding this issue is that legal departments often recruit from outside for the more senior roles, so that many of those at Senior Corporate Counsel will never progress to Chief or General Counsel. In a firm, subject to any limitations the partners may have voluntarily placed on their number, there is theoretically no limit to the number of senior associates and partners who could be appointed, assuming the work is there. This means that almost every senior associate has the chance of being partner if they bring in and do the work.

This flat structure in-house means that there is no great opportunity for advancement, leading to the realisation I had after leaving the Bar that I had swapped a career for a job. That is fine if you are at the right stage of life and circumstance, but it can be dispiriting if you are not.

An interesting feature of corporate practice is that the working environment is mostly made up of non-lawyers. While this may sound insular or worse, it is true for most of us that there is comfort and camaraderie in being surrounded by other lawyers who think and speak in a similar way (even if they do not think and say the same things), have similar standards of professionalism and have common friends and foes. Quite a few in-house counsel I have spoken to miss this feeling of camaraderie, even the type we have with lawyers in opposing firms. If you are fortunate to work in a larger in-house department you might be able to retain some of this feeling, but even then it is not always the same. Of course, the positive side is that you are exposed to people from all backgrounds and nationalities, which can compensate to an extent. I realise this might sound elitist, especially to a non-lawyer, but it is not meant in that way at all as I think you will appreciate after working for some time.

Frustratingly, you will generally lose some of the respect of the business the moment you leave your firm and move in-house to support them. They often see their internal lawyers as having failed in private practice (a view that might be shared with a few still in private practice perhaps). One of our commercial people asked a newly arrived lawyer from a well-respected firm how she felt about being a second rate lawyer now. You could give the same advice today in-house that you gave yesterday as senior associate in a firm and the commercial people can want to check it with your old firm. This attitude can be frustrating, to say the least, and unfortunately is not confined to non-lawyers. I heard a partner from a respected firm say of someone that they had been a practising lawyer but they moved in-house.

As part of this attitude, many in the business see lawyers as road blocks or speed bumps. The demand is to be "commercial", code for "agree to what I want", and if the law simply does not allow, you are perceived as obstructionist and "uncommercial", one of the worst condemnations of corporate counsel. You also go from being a "fee earner" in a firm to being a "cost centre" in a company. In other words you go from being a bread winner to being a mouth to feed. This has a number of consequences, including the respect issue, not always enjoying the same benefits of the money-makers in the business, and being among the first under the microscope when costs must be cut.

Aligned with the lack of respect is the presence of at least one bush lawyer in any organisation. (A "bush lawyer" is someone who has never studied law but doesn't' let his ignorance impede his exposition of the law and his criticism of all lawyers and their advice). They can be handled but usually they will have been in the company or the industry for some time and will also be senior to you. This is where your tact, diplomacy and occasional firm words come into play, remembering that these people will have at least some say in your bonus and promotion prospects.

When to Move In-house

In a similar article in last year's supplement, I encouraged lawyers to wait three to five years before moving in-house permanently. This is to gain experience in the law and in dealing with other lawyers and clients, and also to get some experience in life to help deal with the non-legal aspects of in-house practice. Even in a larger legal team, you are pretty much on your own in-house, expected to be able to do all basic legal work without supervision and to handle the commercial demands with minimal assistance.

All the very best in your career. As said at the beginning, it is a genuine pleasure to welcome bright young minds into the profession.

Notes

1 Cameron is corporate counsel with Rio Tinto in Singapore and has been at the independent Bar in Australia and a partner in firm. He can be reached on cameron.ford@riotinto.com

An Extract from *A Civil Practice*

This article is extracted from *A Civil Practice – Good Counsel for Learned Friends* (Academy Publishing, 2011); © Singapore Academy of Law. Reproduced with permission.

Courtesy and Etiquette Outside Court

Communications

1. **Avoid intemperate or rude language in all communications, written or oral.** This includes written submissions tendered to the Court. Insulting or condescending language or tone is counter-productive. Provocative language displaces reason. A lawyer must at all times "maintain his or her personal integrity and observe the requirements of good manners and courtesy towards other members of the profession or their staff, no matter how bitter the feelings between clients. A solicitor must not behave in a manner which is acrimonious or offensive or otherwise inconsistent with his or her position as a solicitor.[1]

2. **Never respond to abuse with abuse.** If you receive a provocative or rude communication, defuse the situation by responding with politeness and professionalism. If you can't do that, walk away – metaphorically – and cool down until you can. Always keep a civil tone and refrain from responding to insulting or condescending language in kind. If you do, you have lost the argument. Retaliation and anger are self-destructive and counter-productive and ultimately do not serve the client's best interests.

3. **Foreshadow any communication which could be seen as less than courteous.** Sometimes it becomes necessary to send a strong or unpleasant letter. It is an oft-forgotten courtesy to make a phone call to the opposing lawyer to forewarn him and soften the blow. For example, if you receive a ridiculous offer of settlement, by all means reject it robustly without a counter-offer. But call your opponent to tell him that you will be doing that.

4. **Don't be a mere mouthpiece for your client.** Say "no" to the client who demands that you treat opponents with incivility and discourtesy. Say "no" to the client who demands that you draft an offensive letter, affidavit or submission because he has an axe to grind.

5. **Your opponent is not his client.** Disapproval of your opponent's client does not justify discourtesy to your opponent. Everyone is entitled to representation – in civil and criminal matters.[2] Don't view and treat your opponent with discourtesy just because his client is accused of heinous acts, even if you believe the accusations to be true. Understand that both of you are playing an essential part in the administration of justice. Sometimes the administration of justice requires us to represent those with weaker cases. Sometimes it requires us to represent the guilty.[3]

6. **Don't undermine stakeholders in the administration of justice.** A lawyer should uphold the dignity of the administration of justice, whether he acts for the successful party or the losing party. A lawyer may disagree with the

result or the interpretation of the evidence but he should refrain from making disparaging remarks about any part of the judicial process so that its integrity is upheld.

7. **Extend courtesy to all.** The courtesy and civility that you display to staff, colleagues and subordinates, whether in your firm or others', reflects greatly on you as well as on our profession.

8. **Always keep an open channel of communication.** Whether there appears to be an insurmountable impasse, quick phone call or – even better – a face to face meeting can work wonders where correspondence has failed or made matters worse. Never underestimate the value of communicating with a fellow lawyer in person. Much rudeness and discourtesy falls away in direct, one-to-one communication.

9. **Communication between lawyers is private.** A lawyer must not divulge to the Court any communication between him and another lawyer unless the consent of the other lawyer is first obtained. Apart from being basic courtesy, this is also a professional obligation.[4] Where it was agreed – expressly or impliedly – that the communication disclosed to the Court was to be kept confidential, the breach is compounded.

10. **Communication with the Court is open.** A lawyer must not unilaterally initiate communication with the Court in the absence of the other lawyer involved in proceedings unless the latter has been notified and given reasonable opportunity to be present or to reply. If a lawyer has unilaterally initiated communication with the Court, he or she must inform the other lawyers of the circumstances as soon as possible.[5]

11. **Copy correspondence to third parties with care.** Don't copy a letter of demand to the debtor's bankers simply to add pressure. Your client's claim has not yet been established and the debtor could have a defence. Copying a letter of demand this way is unfair and can be construed as an attempt to exert under pressure on the third party.[6]

12. **Observe e-mail etiquette.**[7] Consider whether a phone call would be more efficient and effective. Consider carefully whether to use capital letters in e-mails, whether in the body or in the subject line. Even though e-mail is less formal than ordinary mail, it is discourteous and undignified to use truncated language ("dis" instead of "this" or "2moro" instead of "tomorrow") in e-mail on professional matters. Re-read your e-mail for sense, grammar, spelling and tone, and check each e-mail address individually for correctness before you click "Send". Don't rely blindly on auto-complete: it cannot read your mind. Keep it short: if the e-mail you have drafted is text-heavy, consider whether a letter would be more appropriate. The letter can still be sent to your correspondent by e-mail as an attachment – but will be easier on his eyes. Even if the e-mail is not text-heavy, it is important to guide the reader's eye with judicious use of white space. Don't use graphics or coloured backgrounds: they are inappropriate in professional communication. If an e-mail is not urgent, say so: your correspondent will be grateful. Don't forward e-mails without the sender's permission. Think carefully before including a person in the addressee list who was not included in the original addressee list.

13. **"Reply to all" with care.** Check whether the original circulation list includes any people who clearly should not or need not receive a copy of your reply. When in doubt, delete an address from your reply. An omitted addressee can be added after the fact. An unintended addressee cannot be subtracted after the fact.

14. **Don't communicate with a represented opposing party.** You have a professional obligation not to do so, subject only to specific exceptions.[8] Even if your opponent consents to the communication, be careful. Such contact can lead to acrimony and accusation of improper behaviour.[9] If the opposing party initiates the communication, advise him immediately that you are obliged not to speak to him and ask him to speak to his own lawyer.

15. **Avoid legal jargon.** Jargon tends to confuse or intimidate or both.[10] Simple English is the most effective communication when communicating with a client or another lay person.

16. **Respond to written communication in a timely manner.**[11] This is basic courtesy, even if the response is merely a holding response. What if your client instructs you not to respond to a letter: are client's instructions ever sufficient justification for the incivility in simply ignoring a letter whether from a lawyer or a lay person? A simple response that says "We do not have instructions from our client to respond to this query" will not be contrary to your client's interests.[12]

17. **Return all telephone calls promptly.** It does not matter whether it is your client, another lawyer or a member of the public. And when someone returns your call, thank them.

18. **Reply using the same mode of communication.** Reply to an e-mail by e-mail. Reply to a letter by letter, even if e-mail or fax is also used. This is because it is only reasonable for the writer of the communication to expect your reply to come by the same mode that he used.

19. **Know what rights you are reserving when you reserve rights**. Don't include an automatic general reservation of your client's rights at the end of every letter you send. Especially if you are writing to the Court. A non-specific reservation of rights tacked on to the end of every letter is meaningless. Ask yourself what rights you are reserving. If you can answer that question, specify the rights. If you can't answer that question, ask yourself why you are including the reservation.

20. **Don't make lawyers whom you are calling wait on the line for you.** Don't get your secretary to wait until the other lawyer is on the line and then put the call through to you. You initiated the call, you should be waiting on the line.[13]

21. **Ask for permission before using a speaker phone.** And if you do use a speaker phone, tell the other party the identity of every person who is listening. Remember also to introduce yourself before speaking on a conference call – not everyone can remember or recognise your voice unaided.

22. **Never tape-record a phone call without permission from all participants.** This applies also to other oral communication.

Treat Fellow Lawyers with Fairness

23. **Be fair when you render a second opinion.** You have no obligation to inform the client's existing lawyer that you have been asked to render a second opinion. But you do have a professional obligation not to influence the client improperly to terminate that lawyer's retainer.[14] As a matter of courtesy, you should go beyond simply observing that professional obligation. Do nothing to undermine the relationship of trust and confidence between the client and the existing lawyer. Find out what advice the existing lawyer has given. Be aware that in your one or two hours with the client, you cannot have the depth of background that the existing lawyer has acquired over weeks or months. Be aware also that clients have been known to withhold important information. Express your views with candour, by all means, but with professional courtesy at all times. Temper your language in expressing a different view so as not to disparage the existing lawyer. One day, that lawyer may be you.

24. **Don't be a backseat lawyer.** Friends with legal problems often seek casual advice or friendly guidance from us. These casual remarks over a golf game or a dinner (or any social gathering) are not, of course, a formal second opinion. But even so, we must be aware that our casual remarks may become a weapon to be used against the lawyer on the record. Don't let that happen. Preface your remarks by acknowledging that the lawyer on the record has all the facts and has analysed the law whereas you have not.

25. **Don't take unfair advantage of a fellow lawyer's possible oversight.**[15] We are all aware of the obligation to give two working days' notice to a lawyer on the record before entering judgment in default against his client.[16] But if you know that the defendant is represented but his lawyer is not yet on the record, for example before appearance is entered, what is the harm in picking up the phone and giving the defendant's lawyer the same notice?

26. **Co-operate in the transfer of files.** Where a client changes representation, the outgoing and incoming lawyers have mutual responsibilities. As a matter of fairness and courtesy, the outgoing lawyer is obliged to co-operate to ensure a smooth transition so as to enable the incoming lawyer to take over the matter quickly and act effectively in the best interests of the client.[17] The outgoing lawyer is not entitled to refuse to transfer the file until his bill is paid.[18] The corollary is that as a matter of etiquette and fairness, the incoming lawyer is obliged to advise the client to pay the outgoing lawyer's fees[19] and to undertake to protect the outgoing lawyer's lien as to costs.[20]

27. **Negotiate in good faith.** When trading drafts back and forth in negotiations, always track all of your amendments so that the opposing lawyer is aware of them – even if you think some of them are innocuous. What you think is innocuous may be important to your opponent. And once he finds a change which is not tracked, however innocuous, you will have lost his trust for the rest of the document. Above all don't try to sneak in a substantive amendment without tracking it. Open, professional communication facilitates negotiations in contentious and non-contentious matters. It is detrimental – even fatal – to the process if the trust is broken by any actual or perceived trickery.

28. **Keep your promises.** A formal understanding must obviously be honoured and carries civil[21] and professional consequences[22] if it is not. Even if you have not given a formal undertaking but have simply given your word, whether oral or in writing, keep your word. Your word is your bond. If you do not intend to be bound by something you say, you must say so expressly. Your reputation for keeping – or breaking – your word will precede you.

29. **"Off the record" means off the record.** If a fellow lawyer tells you that a discussion is "off the record" or "without prejudice", you must either honour the confidence or

terminate the discussion immediately. If you continue the discussion, you have accepted the condition of confidentiality. And if it is you who wants to impose the obligation of confidence, say so at the beginning. A clear statement at the outset can avoid misunderstandings later on.

30. **Don't add "spin" to the record for tactical advantage.** When citing discussions with a fellow lawyer in later documents, set out what was discussed or agreed: nothing more and nothing less. Don't add spin. Don't create a "record" of events that did not occur by ascribing to the opposing lawyer a position not taken.

31. **Serve on a lawyer rather than his client, if you can**. Always check if the opposing lawyer has instructions to accept service of process before serving process. This is especially so if there has been prior communication on the subject. And even if the opposing lawyer does not have instructions to accept service, ask if you can arrange an appointment to serve his client.

Seniors and Juniors

32. **Set an example.** Seniors cannot preach to juniors about courtesy if seniors don't behave courteously themselves. To everyone. At all times.

33. **Be kind to a junior.** When you encounter an inexperienced or junior lawyer, don't be a bully or put him down. Don't ask him imperiously when he was called to the Bar. You were once that inexperienced and junior too. Maintain professionalism. Setting a good example will encourage him to follow suit. Gently inform him privately of his mistakes so long as that does not prejudice your client's interest. Do unto others as you would have them do unto you – and not as was done to you.

34. **Show respect to a senior.** Don't be bullish and assume automatically that a senior will try to exploit your inexperience. Respect his seniority, even if you think (or know) that you are smarter than he is. One day you will be that senior too.

35. **Peers communicate with peers.** Lead counsel calls lead counsel. Junior counsel calls junior counsel. If you are lead counsel and have to ask junior counsel to communicate with opposing lead counsel on your behalf, tell the junior to explain at the outset why you are not able to do so yourself: "Mr X is in Court/travelling and can't call/write and so has asked me to call/write to you".

36. **A junior travels to a senior's office.** So, if you are the junior, offer to travel to the senior's office. If there is a good reason for departing from this courtesy (for example, there are 20 boxes of files for inspection in your office whereas the other lawyer has one slender file), ask for the indulgence rather than assume it will be accorded.

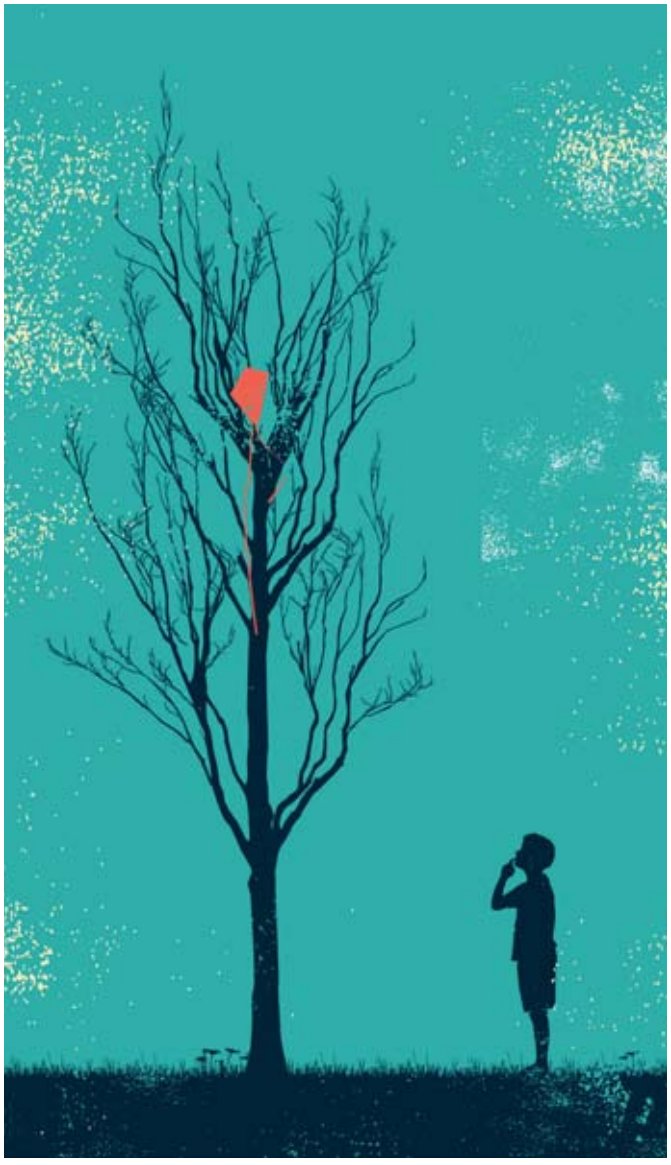
Notes

1. Law Society of Singapore Council's Ruling 2 of 1994 (October 1994).
2 See r 72 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
3 See r 74 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
4 See r 53 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
5 See r 63 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
6 See r 53A of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) and the Law Society of Singapore's commentary on r 53 issued 29 June 2009.
7 See generally Gerald Lebovits,"E-mail Netiquette for Lawyers" (2009) 81(9) *New York State Bar Association Journal* 64.
8 See r 48 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
9 Law Society of Singapore, *Practice Directions and Rulings 1989* ch 1/15(d).
10 See r 21 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
11 See r 20 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
12 See William Wan, "Towards a More Courteous Professional Relationship" *Singapore Law Gazette* (September 2004).
13 See "Etiquette Relating to Telephone Calls" in the Law Society of Singapore's *Practice Directions and Rulings 1989* ch 7/29.
14 See r 49 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
15 *Chamberlain v Law Society of the Australian Capital Territory* (1993) 118 ALR 54.
16 See r 70 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
17 See r 41 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
18 See r 41 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
19 See r 50 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
20 See r 41 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).
21 *Udall v Capri Lighting Ltd (in liquidation)* [1998] 1 QB 907.
22 See r 51 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed).

The Mentor

"Help me help you".

You stand ready to embark on your legal career as a fully-fledged member of the Bar. You aspire to be a good lawyer and have a successful career. Perhaps you intend to contribute to society. You probably hope to have some fun along the way and make lots of money doing so. Slightly further down the road, your goals might shift as your priorities and values evolve. You may recall reading an article in the 2015 Mass Call Supplement of the *Law Gazette* that did not make very much sense.



Kishan Pillay
TSMP Law Corporation

Regardless, there will be times when you could benefit from the advice and guidance of someone who has been there before you. At other times, you may just need a sanity check or some encouragement or chiding, as the case may be. Ultimately, it would be unwise to choose to go at it alone. You have little choice in the matter anyway since a mentor would, in all likelihood, be assigned to you.

Etymology

The term "mentor" has its origins in Greek mythology. In Homer's *The Odyssey*, Odysseus entrusted the care of his household and young son to a trusted friend, Mentor, while he went off to fight the Trojans. Mentor apparently did a decent enough job of guiding Odysseus' son, that the term "mentor" has entered our vernacular to mean an (usually) older and (hopefully) wiser adviser.

Précis

By this stage, you would have been assigned with a mentor of some form. This would be a senior whom you may or may not work directly with, and the scope and extent of the mentorship would naturally vary with the individual. However, the common thread is that all mentors aim to serve one general, overriding purpose – to guide you into your new role as an associate.

But what does good mentorship really entail, and what can you, as a mentee (yes, it is an actual word) bring to the table to get the most out of the experience?

The Relationship

At the outset, recognise that the mentor-mentee relationship is a unique one. It is personal at times, but it is professional at its core.

It is hence not critical that you and your mentor end up being buddies, although that would be a bonus. On the other hand, your mentor should not be viewed solely as a supervisor or "mini boss". The mentor-mentee relationship goes further than that.

For starters, cultivate a relationship with your mentor. This can take a myriad of forms, and some trial and error is usually required before two people "click". Communication is key in this regard, together with some level of openness, respect and mutual trust. Some pointers:

1. Be polite. Surprisingly, this is not always par for the course.

2. Be open. There is a (rebuttable) presumption that your mentor has your back, so do not be too caught up with political correctness. Frankness is usually appreciated and being guarded can sometimes be misinterpreted as aloofness or, worse, arrogance.

3. Pay attention. Yes, you can actually learn by osmosis. It also helps to develop situational awareness.

4. Be active and engaged. It conveys that you are eager and willing, which is never a bad thing.

5. Lastly, show some interest in your mentor's personal life and let on some part of your own. It's not all about work!

"Managing Up"

A good mentor would value the importance of his/her role, and may even derive some satisfaction from the experience. Nevertheless, on your part, do appreciate and make the most of the time and energy invested by the mentor.

You can do this by taking charge from the get-go. Although you are in a subordinate role, you should not sit around and wait for work to be handed to you or for opportunities to fall into your lap. The occasional nuggets of wisdom dropped on you by your mentor may be useful, but much more is learnt and absorbed by actually participating in the process.

You are now a working professional, albeit a young one. Hence, although you require time to amass experience and domain expertise, you should not be lacking in drive, initiative and accountability. If you want your mentor to bring you on board for complex and interesting cases or transactions, you first need to prove that you are up to the task. You can do this by:

1. Not missing deadlines. This is non-negotiable. If you cannot make a deadline, let your mentor know early. Not two hours before the deadline, and certainly never after the deadline has already passed.

2. Admitting that you have made a mistake or do not know something (only after you have tried and tried to find the answer). Accountability and honesty are appreciated. But do try to get it right more often than not if you can.

3. Asking questions (this is linked to the point above). You should display intellectual curiosity and a general eagerness to learn by asking questions. Do exercise some discretion on this one. Contrary to what self-help books may say, there is such a thing as a bad question, and you will often be judged by the "quality" and nature of your questions.

4. Not shirking. There is a fine line between turning away work when you are near-full capacity, and coming across as lazy. This line should not be crossed.

5. Engendering trust. The work of a lawyer is demanding and exacting. It requires skill, judgment and no small measure of elbow grease. Often, there is little room for error and deadlines are tight. Clients, therefore, want in their corner a lawyer whom they can trust. This applies to you too.

Summing Up

The old adage "no man is an island" certainly holds true here.

While mentors are good for the occasional lunch treat or free round of after-work drinks, they have a much more significant part to play in this early stage of your career. Tap this valuable resource and always bear in mind that mentoring is very much a two-way street. There is much to be gained from having a mentor but it requires some work on your part.

Good luck!

Of Call, Coffee and Usain Bolt

Photo: YANGCHAO/Shutterstock.com

Jonathan Oon
TSMP Law Corporation
Member, Young Lawyers Committee
The Law Society of Singapore

To my newly called learned friends, STOP! Whatever you are doing, just STOP. If your experiences were the same as mine, you would have gone through a tumultuous six months' training period, suffered from a chronic lack of sleep, pushed your brains (seemingly) beyond human capabilities and doubled your usual walking speed to the restrooms. Time would have flashed by so quickly during this period that before you knew it, your training period had passed and now, yes right now, you are officially an Advocate and Solicitor of the Supreme Court of Singapore. So please stop, close your eyes, give yourself a pat on your back and savour this moment because you deserve it. Congratulations my friends, you have made it.

And where exactly have you made it to? Why, the starting line of your practice career of course! Traineeship was merely the heats, a hundred metre dash towards the finish line of a practising certificate. As you now limber up in the finals, the race changes to a full marathon – that is practice. Should you start with a sprint as you did in the heats, or should a wiser head prevail with a slower (but not snail slow!) but steadier pace? If I may so humbly suggest, perhaps the latter approach would be more feasible. After all, even Usain Bolt would be hard pressed to maintain a 9.58 seconds per 100 metre pace for a full 400 metres, not to mention a full marathon!

Much as this might be easy to say, it is really harder to do in reality. Why so? Because your heart and mind have already been conditioned to a Bolt-like sprint in the past couple of months. It doesn't help that when you get back to the office as a newly minted lawyer, everyone will seem to expect you to have somehow magically transformed into someone twice as intelligent and confident than you were the day before. Plus the liability, oh the liability! Before, you had immunity – a safety net below the tightrope you walked on. Remove the safety net and your steps become more tentative. The familiar excuse of "no liability" doesn't apply anymore my friends. Everything you say on the phone, in e-mail and every document you sign off on, you are personally liable for. That usually translates into checking and re-checking your work more frequently and thinking harder than before as to whether you have considered all possible angles to the issue that you are facing. Coupled with the increasing number of files you are saddled with, you will inadvertently work harder and longer (read: faster!) than you used to before.

Mmm … not sounding like a bed of roses anymore? Slower but steadier pace? Yes my friends, your skepticism is palpable and I don't blame you. The reality is that post-qualification life is, without a doubt, tougher than pre-qualification life. So how do you actually slow down somewhat? Well, let me tell you friends, it's a simple cliché – just simply remember to s-l-o-w down! Put it on a post-it note on your desk, set reminder alarms on your phone, send out whatsapp reminders to all your other long-suffering fellow first yearers. However you want to do it, just do it. Why? Because the reality is that you get sucked into the speed-race unknowingly and really, the only way to slow down is to periodically tell yourself to do just that.

Before you stop reading this article for stating the obvious, allow me to let you in on another great secret (got your attention again didn't I?). When the going gets tough, remember the old adage – one thing at a time. Yes my friends, we are doing legal work and that means that we can only do

one piece of work at any one point in time. Even when you have multiple files moving, different clients calling and (gasp!) different partners pushing you to get out the work, you can only do one piece of work at a time. The tendency of course, is to try to do as many different things at the same time or to spend time trying to decide what to do first and what to leave for later (and changing the order when someone applies the pressure!). Funnily enough, you will invariably save time when you are able to focus and do one thing at a time rather than multiple things – don't take it from me, try it out for yourselves. I'd guarantee this but for the fact that I'm a lawyer and I don't deal in absolutes ... most of the time.

I guess that there are many other little tips that I could share with you on how to survive the first few years of practice (get enough sleep, eat your vegetables, etc) but hey, that's what the seniors in your law firm are there for (apart from giving you work). If I could leave you with two important soundbites to keep in mind, it would really be: (a) "slower and steadier"; and (b) "one thing at a time". I do firmly believe that these mantras will help keep you calmer, more focused and more prepared to deal with the early stage of your practice career.

As we all know, statistics show that we have relatively fewer middle category lawyers compared to the junior and senior categories. Generally speaking, that shows that many junior lawyers leave practice after a couple of years. One of the biggest contributing factors to this phenomenon is the infamous "burnout". And why do lawyers burnout? My personal take on this is that junior lawyers fly out of the blocks ala Usain Bolt when they start practice, such that it is only natural that you soon come to a grinding halt (somewhere at the 800 metre mark perhaps). My friends, do remember that you have to look after yourselves. This is your professional career and you alone are the captain steering your ship. Don't run aground in your haste to make it from point A to point B – the journey can be treacherous. Take a slower and steadier approach and always remember to do one thing at a time (see the recurring theme here?) – once you pass the initial strong winds battering your sails, you'll find that the journey is a lot smoother, palatable and ultimately satisfying.

Oh, and don't forget your morning coffee – that usually helps a lot.

All the best!

Lexis® Singapore

Your Library – online and at your fingertips.

Lexis® Singapore is a legal online research platform tailor-made for legal practitioners, government and corporate users. It allows users to access the largest database of local legal content in an intuitive and friendly online environment.

Litigation library
- Commonwealth Cases and Legislation
- Atkin's Court Forms Singapore
- Civil Practice in Singapore and Malaysia
- Singapore Court Practice
- Evidence and Litigation Process
- Principles of Singapore Land Law
- and more

Corporate Library
- Encyclopedia of Forms and Precedents
- Halsbury's Laws of Singapore
- Woon's Corporation Law
- and more

Others
- Halsbury's Laws of England
- Halsbury's Laws of Australia
- Halsbury's Laws of Malaysia
- UK Cases and Legislation
- Australian Journals
- UK Journals
- India Practice Area – Litigation
- India Practice Area – Corporate
- and more

Features
- Comparison of case treatment across jurisdictions
- Easy access to commentaries, cases, legislation and forms covering Singapore, as well as key overseas jurisdictions in a single platform
- PDF documents suitable for court submissions readily available for download
- High quality content with enhanced functionality and hyper-linking capabilities
- Customisable subscription specially for the needs and size of your practice group:

For enquiries, please contact our Regional Contact Centre at:
MALAYSIA Tel: **1800.88.8856** Email: **help.my@lexisnexis.com** @HelpLNMY
SINGAPORE Tel: **+65.6349.0110** Email: **help.sg@lexisnexis.com** @HelpLNSG

LexisNexis®

Letter from a Young Lawyer

Choo Zheng Xi
Peter Low LLC
Vice-Chairperson
Young Lawyers Committee
The Law Society of Singapore

Alan Dershowitz, in his seminal book *Letters to a Young Lawyer*, warned that "Giving advice is among the most hazardous of undertakings". He goes on to explain: "I know because I have received much bad advice and because I have certainly given some".

I hope that, through what I'm about to write in welcoming you to the second oldest profession known to mankind, I can at least share some functional advice with you.

You enter the profession at a time when exhortations to commit hours of your practice to the public good are rife, and fortunately so. From the President of the Law Society to the Chief Justice, the call to lawyer for the underprivileged and providing access to justice by doing *pro bono* work is the "new normal".

In practice, however, you will struggle to live up to those exhortations.

For litigators, there will be dark days of your life when you are trying to cobble a mareva injunction together on your birthday. For corporate lawyers, you might find yourself trying to complete documentation for a signing on your significant other's anniversary.

In these moments, the last thing on your mind will be how you can be a beacon of light onto the path of the legally benighted layman.

Yet, to your clients, that is exactly what you are.

For a layman, navigating the justice system is an experience often fraught with frustration and anxiety at not knowing what is to come. They are Kafka's Josef K, adrift in a system that they do not understand.

As a lawyer, with the unique privilege of rights of audience at the Bar, you are the qualified legal professional who is the embodiment of access to justice. Regardless of how newly qualified you are, you are infinitely more qualified than the layman chancing his life and liberty on the strength of his wits alone.

But, as Dershowitz reminds the young lawyer, "Good character consists of recognizing the selfishness that inheres in each of us and trying to balance it against the altruism to which we should all aspire".

So, I give you at least one "selfish" reason you should try your hand at *pro bono* representation, whether you're a corporate lawyer or a litigator.

The law exists as a function of how society is structured. Having put yourself through the holy terror of a legal education, I'm guessing that you might be somewhat curious to engage in that societal discourse and answering some attendant questions that arise thereunder.

Constitutional and criminal law might have interested you in asking the question: what is the substantive content of the constitutional guarantee of the right to counsel? What is this golden thread of the criminal law known as "innocent until proven guilty" that is lionised in the annals of legal history? More immediately, how do presumptions and mandatory sentencing in the statute books rub up against the harsh realities of the difficult cases which make bad law?

I don't promise you that taking on work for the underprivileged will provide you the answers to these questions any more than I purport to give you anything more than functional advice.

But, as any half decent litigator would tell you, it's asking the right questions that makes all the difference.

2015: The Year That Everything Changed for *Pro Bono* Criminal Work

Introduction

Ng Shi Yang
CLAS Fellow 2015
Associate, WongPartnership LLP

Before I begin, I would like to extend my heartfelt gratitude to the Pro Bono Services Office ("PBSO") of the Law Society of Singapore, for inviting me to share my thoughts and experiences on doing *pro bono* criminal defence work. I am humbled to be able to share in my capacity as a Fellow under the Criminal Legal Aid Scheme ("CLAS"), and above all, a junior litigator.

Writing for the occasion today is somewhat poignant as it was merely two years ago that I was in your position. I remember feeling somewhat ambivalent as I was torn between competing emotions. On the one hand, I remember heaving a sigh of relief that I had finally become a qualified lawyer. I can therefore now work the same hours, but get paid significantly more. On the other hand, I recall a sense of dread precisely because of those **same hours**. Overall, though, I spent most of the ceremony reminiscing on my university years, and the subsequent two-year journey to getting called. By anyone's standards, the journey would have been necessarily challenging. On that count, I would like to extend to all of you my heartiest congratulations on making it here today.

A brief self-introduction would be apposite at this juncture. I graduated from the University of Birmingham in 2011, and thereafter undertook both of my practice training stints at a local Big 4 firm. I was called to the Bar in August 2013, and thereafter joined WongPartnership LLP. In January 2015, I was seconded to the CLAS Fellowship for six months, where I am based at the time of writing this supplement. The Fellowship – presently in its inaugural year – is the nascent form of Singapore's very own Public Defender's Office, where we (the Fellows) are paid to do *pro bono* criminal defence work on a full-time basis.

Before going further, I ask you to consider your motivations for enrolling in law school in the first place. I want you to think back to the interview(s) or cover letter(s) you wrote in your law school application(s), in response to the mothership question

The inaugural batch of CLAS Fellows (clockwise from bottom right) – Ms Sujatha Selvakumar, Ms Cai Chengying, Ms Alice Tan, Mr Charles Lim, Mr Foo Juyuan, Mr Ng Shi Yang. Not in picture: Ms Lee May Ling

of "why law?" Most (if not all) of us would have prepared responses along the lines of "upholding justice" or "helping the under-privileged" or "a voice for the man on the street". As you sit here today, how close are you to these ideals that motivated you to become a lawyer over five years ago?

As it stands, many esteemed members of our Bench and Bar have contributed much literature expounding the virtues of doing *pro bono* work. My sharing will, therefore, be tailored for people in our demographic – the newly-qualified lawyer.

Briefed Work v *Pro Bono* Work

A fundamental tussle for the lawyer's time exists between briefed work and *pro bono* work. By and large, legal practice has evolved from vocation to business entity. Invariably, decisions are driven mostly by commercial consideration. The net result is that doing (more) billable work takes precedence, and *pro bono* work takes a backseat.

Objectively speaking, such firm policy is not unfair. It is only right that we are attentive to clients who have paid the firm good money. I do not have the statistics to know whether the number of cases I have done puts me in the median band of our demographic, but I do wish that I could have done more.

Practical Benefits of Doing *Pro Bono* Work

I enjoy the intellectual rigours of private practice, but physical and emotional fatigue sets in every so often. Most of you would be able to identify with this. Doing *pro bono* work may not be rewarding financially, but it pays in other ways. An emotional handshake, a sincere word of thanks, and tears of gratitude – from not only the accused person but their family members – these things become heartfelt when you know it comes from helping someone deal with issues of life and liberty. Knowing that you have used your professional skills to save a life is immensely satisfying. In a way, I feel that doing *pro bono* work gives me an emotional reset. It renews and increases my stamina to stay in legal practice. With the glut upon the legal industry, young lawyers can be certain that they will be stretched even further. Such stamina, therefore, becomes more necessary than ever.

Apart from off-setting practice fatigue, there are very real and tangible benefits to be gained. As a young litigator, you have (full) autonomy of the *pro bono* cases that you take up on your own. This means you drive the file from start to end, from instruction-taking, the formulation of case strategy, to advocating in Court. Full file autonomy is a luxury for a young lawyer in most practices. Clients do not go to my firm to have **me**, instead of my boss, conduct their case. It only follows that clients would not be too pleased if a junior lawyer started appearing in Court for the case for every hearing, whether the hearings are administrative or substantive in nature.

We as juniors mostly play second or third-chair roles. We prepare research memos and first drafts, and maybe take client instructions. The reality is that even if you were competent, you may not get the opportunity to appear as first-chair for interlocutory applications, mitigations and – the Holy Grail – trials, because of client expectations. These opportunities may come only when you are considerably senior. Two senior partners (of different firms) recently shared their worry that most of their newer junior partners have never first-chaired a trial. Both shrugged at the inevitability of the situation. The status quo looks set to stay, and does not bode well for us junior ones professionally.

On the other hand, you will be the first chair in the *pro bono* matters that you take up on your own. Your supervisor may serve as a knowledge pool for you to bounce ideas off, but you run the show. You therefore have the opportunity to pick up the complete set of skills that would otherwise have been a learning milestone attainable only in the distant future. With the glut in mind, a young lawyer becomes infinitely more valuable to the firm when he has such skills under his belt.

The Enhanced CLAS – A Game-changer

The suggestion that young lawyers take up *pro bono* work **in addition** to briefed work may sound implausible. This is where the Enhanced CLAS (the "Scheme") becomes a potential game-changer. Launched in January 2015, the Scheme introduces several new features to increase the number of accused-in-persons who can receive legal aid from CLAS. In particular, three of these new features make the Scheme **a paid training tool** for new lawyers in criminal litigation. The Scheme will help to mitigate the competing interests between briefed and *pro bono* work. These features are:

1. Plead guilty cases are now covered by the Scheme. Previously, plead guilty cases were not covered by CLAS unless the accused was under 18-years-old or has a mental illness. This meant that *pro bono* cases offered by CLAS were largely claim trial cases, which essentially excluded junior lawyers from volunteering due to inexperience. Conversely, junior lawyers with limited experience in criminal litigation can now cut their teeth by taking up plead guilty cases, which are generally more manageable than claim trial cases.

2. If a junior lawyer is keen to take up the case but lacks mentorship, he may request to be paired with a senior volunteer. Previously, a junior lawyer would not be able to take up a case if his supervisor at the firm is not a criminal law practitioner. This new feature removes that barrier to entry. Additionally, after clocking several plead guilty cases, junior volunteers may volunteer for claim

trial cases if they feel sufficiently equipped to handle claim trial cases on their own.

3. An honorarium is now provided for volunteer lawyers. Only disbursements were covered previously. The sum varies between plead guilty and claim trial cases. While the intent of the honorarium is to recognise the efforts of the volunteer lawyer, the more applicable implication is that employers can now view the taking up of *pro bono* cases as a paid form of training for inexperienced lawyers. This mitigates the drain of resources that may have deterred volunteering.

CLAS periodically sends emails informing its volunteers of the cases available for take-up. Simply sign up with CLAS to be included in the mailing list.

The CLAS Fellowship – A Pure Criminal Litigation Experience

The CLAS Fellowship is also another possible avenue to delve into *pro bono* criminal work. The last five months for me as a Fellow feel like a paid sabbatical in criminal litigation. Set in a collegiate and non-commercial environment, we Fellows do only criminal matters, and take the driver's seat for all our cases. We get to tap on the vast pool of knowledge and experience of senior and eminent members of the criminal bar. Their doors are always open to us Fellows, whether for a serious discussion on case strategy, or a casual chat on everything work-related and not. Their expertise is admirable, and their passion infectious. Needless to say, this exposure makes for very condensed training in criminal litigation.

Another unique aspect of the Fellowship is the numerous study trips we undertake to both governmental and private agencies that we encounter over the course of our work. The objective of these study trips is to give us a deeper understanding of the various parts of the Singapore criminal justice system, which consequently equips us with deeper and wider knowledge as defence counsel. Some of these agencies include the Attorney-General's Chambers, various arms of the Singapore Police Force (such as the Central Narcotics Bureau and the Commercial Affair's Department), Changi Prison, the Health Sciences Authority, the Institute of Mental Health, the Probation Office (under the auspices of the Ministry of Social and Family Development), and the Ministry of Law. We are also planning future trips to the Singapore Boy's Home and halfway houses. These study trips also give us backdoor access to senior decision makers in these agencies. Their candour when answering difficult or even controversial questions reinforces the notion of a level-playing field, and that all of us have an equally important stake making the criminal justice system work.

A particularly memorable study trip was when we were given an extensive tour of the State Courts. After the main stops, we were given an exclusive tour of the lock-up area within the State Courts, which we were told is out of bounds to even lawyers acting for accused persons. Seeing first-hand the condition of the area, and the officers at work, rectifies for us some of the common misconceptions that we may have had prior to the trip. At the end of the trip, we took afternoon tea with senior judicial officers. All in all, the Fellows feel very privileged to be given these opportunities to learn more, first-hand, of our counterparts in the Singapore criminal justice system.

Applications for the Fellowship open in the fourth quarter annually. The Fellowship is open to lawyers who are freshly called up till PQE three years. No prior experience in criminal litigation is required. So do contact CLAS to find out more.

A Call to Action

I hope this sharing has allowed you to revisit the ideals that you may have espoused as a law school hopeful all those years ago, and perhaps reignited those sentiments. Make no mistake about it: it is easy to lose sight of or have those sentiments eroded by demands at work. It will be easy to relegate ***pro bono* work** to simply a fashionable phrase that you bandy about at tea sessions. This is why the Scheme is a game-changer – if you wish to, you may now find volunteering an easier pitch than before.

I would say that we new litigators live in very interesting times. With the glut looming over the industry, and the Scheme and Fellowship entering the fray, I invite you to give serious thought to volunteering with CLAS to enhance your professional skill set and achieve satisfaction. Rather than have your career charted largely by market forces, I invite you to take this opportunity to shape your legal practice into something more than just a job, and elevate it to become a vocation. Doing *pro bono* work will go a long way in taking us in that direction, because it infuses a large dose of humanity into legal practice that sometimes becomes obscured due to commercial considerations.

This is a call to action. We are the future of the profession, and its tone and culture will be shaped by our actions today. This endeavour is a generational effort, and its success will hinge on the compounding effect of our individual actions. Current mindsets are entrenched and will not change overnight, but we can take the first brave step towards the future we want to build. I, therefore, urge you, criminal litigator or not, to take full advantage of the Scheme. Take the first step by signing up for your first CLAS case, and be the cohort that takes the profession to the next level. This is how we, as the future of the profession, will claim that 2015 is the year that everything changed.

A Journey to Volunteering

Jolie Giouw
ATMD Bird & Bird LLP

I did not enter law school with lofty aspirations of helping the poor or disadvantaged – my journey into law stemmed from pragmatic considerations. As a humanities student in junior college, it was the "natural" choice, and also the path of least resistance in obtaining parental blessings. Embarking on this journey, I wanted to make the most out of my time in university by taking part in student activities. One of these was the NUS Pro Bono Club, where I had the opportunity to be involved in many *pro bono* activities; from taking minutes as a student volunteer at the community legal clinics, updating pamphlets and brochures to educate the public on their legal rights and common issues they may face, to organising events such as outreach programmes on violence against women. I also did an internship with the Legal Aid Bureau which was probably the most fulfilling and meaningful internship I did in school. I attribute that three-week experience at the Legal Aid Bureau for really inspiring me to properly do *pro bono* activities as a lawyer.

Upon graduation and starting to practise corporate law in a Big-4 firm, I started to sink into the life that many young lawyers find themselves in. Crawl out of bed. Drag self to work in peak hour crowd. Commence never-ending battle with work. Collapse in taxi. Rinse and repeat. There seemed to be no time, or energy, for even family and friends, much less to entertain thoughts about doing *pro bono* work. Fortunately, it was also the firm, which was a standing partner firm with the Law Society's legal clinic scheme, which got me re-oriented with the legal clinics. A few firm-wide e-mails were circulated over a couple of months before I finally dipped my toes in to sign up for one session with much apprehension.

Having worked mainly in corporate law after graduating, I felt completely inadequate in giving advice to strangers. In particular, they were those most in need of sound legal advice and may not have the means to seek a second (and perhaps, more qualified) opinion. I thought back to my student volunteer minute-taking days at the legal clinics, where all the lawyers seemed so knowledgeable and experienced. They seemed to be able to offer legal advice and suggestions on all areas of the law, and all the concerns that may be raised by the applicants who walked in. Thankfully, I came to realise that the volunteer lawyers generally receive case synopses before each session and the Law Society provides very strong support.

Several years have passed since the first clinics I did as a first-yearer, where I was filled with trepidation and absolute horror that I may have caused irreparable harm to the recipient of the advice given. Since then, I have tried to volunteer on a fairly regular basis (despite deadlines at work, the peak hour commute, last minute business trips and many other factors that may serve to discourage volunteers), and have also

become increasingly familiar with the issues and questions that arise. From these clinics and the more in-depth knowledge acquired, I have also been involved in other law awareness activities, to help more people to be aware of our legal rights, as well as other legal matters that may affect our lives.

I have seen a wide range of applicants who visit the clinics and have learnt to communicate with people from all walks of life. It is not always smooth sailing – I have experienced applicants who walk in angry and unreceptive, who do not appreciate the time and effort you are spending. It is important not to take this personally and to understand their frustration which is really not directed at you. However, the majority will more than make up for these rarer cases, leaving you fulfilled, because you have spent your time on something meaningful and worthwhile. I have learnt to explain legal concepts such that non-legally trained persons can appreciate how it affects them, or that addresses the concerns they may have. I have had to explain, more than I would like, how the law may not be able to help them, and they should perhaps seek other avenues of assistance. Through these, I have also come to realise the limits of the law. I have understood, looking at photos of an old lady beaten up and lying in hospital, with a police report and a personal protection order in hand, that at the end of the day, for all practical purposes, the order is just a piece of paper – the perpetrator may be deterred and penalised for his act, but it does not change the pain suffered by the victim. But this does not mean that we do not encourage people to do all they can within their means to protect their rights, and themselves.

The nature of legal clinics is such that there is only so much one can do and offer in the limited time. There was many an occasion where I wished I could do more. Is it therefore pointless for these individuals to travel to clinic locations, only to receive 20 minutes of advice, which may not even offer any practical help to their situation? I would like to believe that none of those who came seeking help left with nothing. Often, the right answer to many situations really is to offer a clearer picture of what can or needs to be done in order for the individual to proceed. We may suggest organisations that applicants may be able to approach for more targeted assistance, or sometimes offer reassurance that the actions taken by the applicant thus far were the right steps to take. A listening ear from a legal professional does much to allay the fears and concerns for he who may be feeling lost or helpless.

The people I speak to at the legal clinics are vastly different, and have vastly different concerns, from my clients I meet at work on a day to day basis. I have invited interns whom I may have the fortune of mentoring at my firm along with me on evenings when I volunteer at the legal clinics so that they too, can have the opportunity of being exposed to a different side of being a lawyer that they would not otherwise be able to experience in the firm. I hope to remind these young students and aspiring lawyers, that law is really about society and its people, and much less about endless documentations and proofreading.

The opportunity to volunteer at legal clinics, amongst other things, has been a humbling experience. I have learnt from each of these clinic experiences, and have taken away so much more, and grown as an individual, than I could ever have given any of these individuals in any session. Having said all of that, to quote Theodore Roosevelt, "do what you can, with what you have, where you are". We are in a position to be able to use a skill that we were fortunate enough to have acquired in school, to help other people who may not have the same knowledge or expertise – and there is no reason to not, at least, try, to do what we can.

MARKETING AD