

# Washington International Law Journal

---

Volume 17 | Number 3

---

6-1-2008

## Access to Justice for the Poor: The Singapore Judiciary at Work

Gary Chan Kok Yew

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wilj>



Part of the [Comparative and Foreign Law Commons](#), and the [Courts Commons](#)

---

### Recommended Citation

Gary C. Yew, *Access to Justice for the Poor: The Singapore Judiciary at Work*, 17 Pac. Rim L & Pol'y J. 595 (2008).

Available at: <https://digitalcommons.law.uw.edu/wilj/vol17/iss3/3>

This Article is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington International Law Journal by an authorized editor of UW Law Digital Commons. For more information, please contact [cnyberg@uw.edu](mailto:cnyberg@uw.edu).

# ACCESS TO JUSTICE FOR THE POOR: THE SINGAPORE JUDICIARY AT WORK

Gary Chan Kok Yew<sup>†</sup>

*Abstract:* This Article examines the concrete efforts and programs of the Singapore judiciary to maintain and enhance access to justice for the poor. This examination is undertaken via overlapping economic, procedural, and institutional approaches. The Article will examine three main contentions. First, that the Singapore judiciary's concrete efforts in maintaining and promoting access to justice for the poor have been fairly comprehensive and pro-active. Second, that abstract constitutional discourse on the right of access to justice and the associated rights of legal representation and legal aid are virtually absent in Singapore. Thus, the judicial practice for enhancing access to justice for the poor has, to a large extent, surpassed its constitutional rhetoric. Third, notwithstanding the concrete judicial efforts thus far, specific recommendations are made with a view to further enhancing access to justice for the poor by the Singapore judiciary.

## I. INTRODUCTION

This Article is primarily centered on access to justice for the poor and the roles and responsibilities of the Singapore courts. It is not concerned with poverty alleviation *per se*,<sup>1</sup> legal instruments to combat poverty,<sup>2</sup> or the efforts of the government and civil society to alleviate poverty in Singapore. This paper instead examines the following issues: the meaning of the terms “poverty” and “the poor,” the adverse effects of poverty on access to justice, the programs implemented by the Singapore courts, and possible judicial reforms necessary to enhance access to justice for the poor. Comparative

---

<sup>†</sup> LL.B (Singapore); LL.M (London); M.A. Southeast Asian Studies (Singapore); B.A. Philosophy (London); Associate Professor of Law, School of Law, Singapore Management University. An earlier draft of the paper was presented at the *Berlin 2007 International Conference: Law and Society in the 21st Century*, held from July 25-28, 2007. The author would like to gratefully acknowledge the funding by the Office of Research at the Singapore Management University as well as the valuable data provided by the Supreme Court and the Subordinate Courts of Singapore. The author also wishes to thank Eugene Tan for his great help in reviewing portions of an earlier draft. Any errors or shortcomings belong to the author.

<sup>1</sup> For works on poverty eradication and alleviation see JEFFREY SACHS, *THE END OF POVERTY* (2005) (discussing the goal of ending extreme poverty in the world by 2025) and C. K. PRAHALAD, *THE FORTUNE AT THE BOTTOM OF THE PYRAMID* (Wharton School Publishing, 2006) (describing private-sector involvement in eradicating poverty in developing countries).

<sup>2</sup> Recently, in Hong Kong, an application for judicial review was taken out by a cleaner and a Legislative Councillor to challenge the refusal of the Chief Executive in Council to fix minimum wages as provided for in the Trade Boards Ordinance (Cap. 63). See *Chan Noi Heung v. Chief Executive in Council*, [2007] (C.F.I.) (H.K.) (unpublished judgment), [http://legalref.judiciary.gov.hk/doc/judg/word/vetted/other/en/2006/HCAL000126\\_2006.doc](http://legalref.judiciary.gov.hk/doc/judg/word/vetted/other/en/2006/HCAL000126_2006.doc). The Honourable Hartmann J dismissed the application on the grounds that the Chief Executive in Council has not exercised his discretionary power to fix the minimum wages contrary to the objects of the legislation. *Id.* In that case, the Chief Executive in Council chose instead to take extra-legislative measures to combat poverty at the workplace. *Id.*

developments in other jurisdictions such as England, the United States, Australia, Hong Kong, and Malaysia will also be briefly discussed.

There are three main contentions examined in this Article. First, that the Singapore judiciary's concrete efforts in maintaining and promoting access to justice for the poor have been fairly comprehensive and pro-active. Second, that abstract constitutional discourse on the right of access to justice and the associated rights of legal representation and legal aid are virtually absent in Singapore. For this reason, the judicial practice of enhancing access to justice for the poor has, to a large extent, surpassed its constitutional rhetoric. Third, notwithstanding the concrete judicial efforts thus far, specific recommendations are made with a view to further enhancing access to justice for the poor by the Singapore judiciary.

#### A. *Socioeconomic Progress and Poverty in Singapore*

Singapore's socioeconomic progress from a Third World country to a First World nation since its independence in 1965 has indeed been remarkable.<sup>3</sup> Its Gross Domestic Product ("GDP") per capita (in purchasing power parity terms) was slightly more than US\$28,000 in 2004 (comparable to some OECD countries).<sup>4</sup> The average annual GDP growth of Singapore from 1965 to 2004 was an impressive eight percent.<sup>5</sup> Life expectancy and literacy rates have also risen in tandem, and the infant mortality rate has fallen drastically.<sup>6</sup> Singapore's strong economic fundamentals have also enabled it to emerge from the 1997 Asian financial crisis relatively unscathed as compared to other Southeast Asian nations.<sup>7</sup>

Despite its impressive socioeconomic performance, the Singapore island-state of approximately four and a half million people is not entirely free of poverty issues. The figures may vary but they tell a similar story: poverty exists in Singapore. In 1989, the Committee of Destitute Families

---

<sup>3</sup> See The World Bank, Country Groups, <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20421402~pagePK:64133150.html> (last visited Sept. 3, 2007) (showing Singapore is regarded by the World Bank as a developed and high income economy). The recent United Nations Human Development Report 2006 specified Singapore as a high-income and high human development nation. See generally UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2006, BEYOND SCARCITY: POWER, POVERTY AND THE GLOBAL WATER CRISIS (2006), available at <http://hdr.undp.org/en/media/hdr06-complete.pdf>.

<sup>4</sup> See UNITED NATIONS DEV. PROGRAMME, *supra* note 3, at 283. Note that the report also lists corresponding figures for Germany (US\$28,303), Italy (US\$28,180), and France (US\$29,300). *Id.*

<sup>5</sup> See Winston T. H. Koh, *Singapore's Economic Growth Experience*, in THE ECONOMIC PROSPECTS OF SINGAPORE 1, 1 (Winston T. H. Koh & Roberto Mariano eds., 2006).

<sup>6</sup> *Id.* at 1, 3.

<sup>7</sup> *Id.* at 5.

reported that 23,000 families in Singapore were living in poverty.<sup>8</sup> In 1991, an estimated 38,000 households fell below the minimum household expenditure level.<sup>9</sup> Approximately 11% of the resident population had household incomes of less than half the median of a meager S\$500 per month in 1997.<sup>10</sup>

The worldwide trend of a widening income gap<sup>11</sup> has also taken a foothold in Singapore.<sup>12</sup> According to the General Household Survey of 2005, while the average monthly household income between 2000 and 2005 rose for the top 80% of employed households, the income for the lowest 10% declined.<sup>13</sup> The problem is not, unfortunately, merely manifested in cold hard economic figures. There are also concomitant social repercussions such as the social impact of job retrenchments, the creeping social divide, and elitism.<sup>14</sup> Notwithstanding the above discussion, the incidence of poverty in Singapore has decreased markedly since its independence.<sup>15</sup> Further, the current state of poverty in Singapore is relatively manageable compared to the gravity and scale of extreme poverty encountered in parts of Sub-Saharan Africa, South Asia, and East Asia.<sup>16</sup>

---

<sup>8</sup> Sandra Davie, *Panel's Call to Govt To Ease Plight of 23,000 Poor Families*, STRAITS TIMES WKLY. OVERSEAS EDITION (Singapore), Mar. 13, 1993, cited in Garry Rodan, *Class Transformations and Political Tensions in Singapore's Development*, in THE NEW RICH IN ASIA 35 (Richard Robison & David S. G. Goodman eds., 1996).

<sup>9</sup> See William Lee, *The Poor in Singapore: Issues and Options*, 31(1) J. OF CONTEMP. ASIA 57, 57-58 (2001) (stating that the minimum level was set at S\$510 for a four-person household living in a one-room flat).

<sup>10</sup> See SING. DEP'T OF STAT., HOUSEHOLD INCOME GROWTH AND DISTRIBUTION 1990-1997, OCCASIONAL PAPER, ¶ 25 (1998).

<sup>11</sup> See WORLD BANK, WORLD VIEW, 2007 WORLD DEVELOPMENT INDICATORS 4 (2007), available at <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:21298138~pagePK:64133150.html>. This is based on computations of fifty-nine countries in which forty-six recorded increasing income disparity. *Id.*

<sup>12</sup> See Aaron Low, *Household Incomes up, Bottom Third's Wages Down*, STRAITS TIMES, Jun. 29, 2006, available at <http://forums.vr-zone.com/archive/index.php/t-77598.html> (indicating in the General Household Survey that the Gini coefficient for Singapore has increased from 0.490 in 2000 to 0.522 in 2005).

<sup>13</sup> See SING. DEP'T OF STAT., GENERAL HOUSEHOLD SURVEY 2005: TRANSPORT, OVERSEAS TRAVEL, HOUSEHOLDS AND HOUSING CHARACTERISTICS 28 (2005), <http://www.singstat.gov.sg/pubn/popn/ghsr2/ghs05r2.pdf> (stating that the earnings of the low-income group have risen in absolute terms in 2006). The income disparity persisted despite the fact that average household incomes rose from 2000 to 2005. See *Id.* at 23. The average monthly household income from work for Singapore resident households in 2005 was S\$5400 and the median household income was S\$3830, an increase from 2000 figures. *Id.*

<sup>14</sup> See, e.g., Wikipedia, *Wee Shu Min Elitism Scandal*, [http://en.wikipedia.org/wiki/Wee\\_Shu\\_Min\\_elitism\\_scandal](http://en.wikipedia.org/wiki/Wee_Shu_Min_elitism_scandal) (last visited Sept. 3, 2007) (discussing the social implications that were vividly highlighted in an elitist blog posted by a Singaporean teenage daughter of a Member of Parliament).

<sup>15</sup> See Lee, *supra* note 9, at 58-59.

<sup>16</sup> See SACHS, *supra* note 1, at 20-24 (stating that the number of poor people in East and South Asia, as a whole, has, in fact, declined between 1990 and 2004). See WORLD BANK, *supra* note 11, at 4.

B. *Poverty and Its Impact on Access to Justice*

The traditional method of determining the level of poverty is based on the number of people falling below a threshold income. This measure, however, does not take into consideration two factors. First, the gap between the existing poverty level and the amount required to bring the poor to the threshold income level (known as “poverty gap”), and second, the extent of inequality in the distribution of income amongst the poor.<sup>17</sup>

The above measure of poverty and the two factors, though important, focus merely on income levels to identify poverty. Amartya Sen, a recipient of the Nobel Prize for Economics, argues that this is not sufficient—poverty must also be assessed by examining the “capability to function derivable from those incomes.”<sup>18</sup> In other words, a “poor” person is one who has inadequate income to generate the required levels of functionality. This Article adopts (and adapts) Sen’s definition of poverty in relation to access to justice in Singapore. In this case, the “capability to function” refers to the ability of the person to access justice within the parameters of the legal system of Singapore. Thus, the “poor” that this Article focuses on are those who have inadequate income that prevents them from obtaining access to justice as required by their given situation. To reinforce the point, the focus is the *relative* capability of the person to obtain access to the justice system vis-à-vis the opposing litigant. In this regard, attention should be paid to the costs of legal services and assistance in Singapore.

Singapore’s society is clearly concerned about legal costs, judging from media reports and parliamentary debates as well as comments or statements made by lawyers and judges.<sup>19</sup> In particular, the Parliament has debated the means test (the threshold income levels to assess the applicants’ eligibility) for state civil legal aid.<sup>20</sup> There is also a notable concern with the perceived high earnings of lawyers and law firms in Singapore.<sup>21</sup>

This definition of poverty as linked to access to justice may lead, however, to problems in the determination of the group of poor people in Singapore. Because a litigant’s ability to obtain access to justice in a given situation depends on the type and extent of the legal problems he or she encounters, it is impossible to pre-determine in advance a fixed threshold

---

<sup>17</sup> See AMARTYA SEN, *POVERTY AND FAMINES* 9-23 (1981).

<sup>18</sup> See AMARTYA SEN, *INEQUALITY REEXAMINED* 111 (1992).

<sup>19</sup> See Gary Chan, *Re-examining Public Policy—A Case for Conditional Fees in Singapore?*, 33 *COMMON L. WORLD REV.* 130-32 (2004).

<sup>20</sup> See, e.g., 70 *SINGAPORE PARLIAMENTARY REPORTS*, cols. 520-23, 526-27 (Mar. 9, 2001).

<sup>21</sup> See generally SINGAPORE DEP’T. OF STAT., *MINISTRY OF TRADE AND INDUSTRY, CENSUS OF THE LEGAL INDUSTRY AND PROFESSION* (2001) [hereinafter *CENSUS 2001*].

income below which a person is regarded as lacking access to justice. This is also one of the reasons that stipulating a threshold income and/or asset level to assess eligibility for legal aid is inadequate as a measure of poverty. In this regard, the use of contingency or conditional fee agreements, which are currently prohibited in Singapore,<sup>22</sup> potentially offers more flexibility to the litigant. Such agreements can provide the “sandwich” class, denied legal aid under the income and asset thresholds, with greater access to legal representation where the financial burden of having to pay the legal fees in the event of losing the case is onerous.

Generally, poverty has an adverse impact on access to justice. Litigating in the courts requires financial investment (i.e. lawyers’ fees, court fees, and other disbursements) which may not be ultimately recouped by the litigant, particularly if he or she loses the case. If an indigent litigant does not possess the requisite financial muscle, he or she might naturally be deterred from initiating court action, *ceteris paribus*. In addition, if he or she has already instituted an action, such a litigant may be coerced to discontinue the action due to insufficient funds, even if he or she has a strong case.

The financial resources and ability of the economically poor to make use of the legal system, as well as their ability to organize themselves for legal action, are generally low. The poor are *generally* “one-shotters” within the legal system as opposed to “repeat players,”<sup>23</sup> such as large corporations. A study conducted on persons aged eighteen years and above has indicated that there is some positive correlation between the ownership of investments and assets and the level of education.<sup>24</sup> A recent in-house survey by the Subordinate Courts revealed that a substantial majority of the litigants in person in the family court and the small claims tribunals are from the low

---

<sup>22</sup> Legal Profession Act, ch. 161, § 107(1)(b) (2001) (Sing.) (stating that the Singapore solicitor shall not “enter into any agreement by which he is retained or employed to prosecute any suit or action or other contentious proceeding which stipulates for or contemplates payment only in the event of success in that suit, act or proceeding”). In addition, according to section 107(3) of the same Act, he is also subject to the law of maintenance and champerty. See Professional Conduct Rules, r 37(b); *Lau Liat Meng v. Disciplinary Committee*, [1965-1968] Sing. L. Rep. 9; *Law Society of Singapore v. Chan Chow Wang*, [1972-1974] Sing. L. Rep. 636.

<sup>23</sup> See generally Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L & SOC. REV. 95 (1974) (giving a general discussion concerning repeat players and one-shot players within the legal system). It is important to note that Galanter does not equate the “haves” with repeat players and the “have-nots” with one-shotters. See *id.* at 103.

<sup>24</sup> See Mei Khee Ng & Yee Liang Yap, *Trends in Household Expenditure and Asset Ownership 1988-1998*, STAT. SING. NEWSL. (Household and Population Statistics Division, Singapore Department of Statistics), Jan. 2001, at 4-6; see also Lee, *supra* note 9, at 57 (stating that the poor in Singapore also consists of a disproportionately high percentage of the Malay ethnic group and the elderly).

income group and possess relatively low educational qualifications.<sup>25</sup> The problem is compounded when the indigent litigant is squared off against an opponent who is well-off and financially able to weather delays and bear the costs of litigation. In such a case, even if the well-off litigant has a weak case, he or she is unlikely to be deterred from prolonging litigation. One also has to bear in mind that litigation costs can be variable and uncertain, factors which are likely to further prejudice the indigent litigant more than the financially well-off party.

## II. ACCESS TO JUSTICE IN SINGAPORE: WHERE JUDICIAL PRACTICE TRIUMPHS OVER CONSTITUTIONAL DISCOURSE

The Singapore legal system is part of the English common law tradition with *stare decisis*, or judicial precedents, as a fundamental pillar in the development of local jurisprudence.<sup>26</sup> The Singapore judicial hierarchy is as follows: the highest court in the land is the Singapore Court of Appeal, followed by the High Court (the Singapore Court of Appeal and High Court are collectively called the “Supreme Court”), and then the Subordinate Courts.<sup>27</sup> The final right of appeal to the Privy Council in London was abolished in 1994.<sup>28</sup> Singapore judges play significant roles as arbiters of legal disputes within the adversarial litigation process and, more generally, in the administration of justice in Singapore.

### A. *Abstract Constitutional Discourse on the Right of Access to Justice Versus Concrete Judicial Practice in Singapore*

Commentators have examined the conceptual and abstract question of the legal status of the right of access to justice in Singapore—whether of a constitutional or common law character—as well as the concomitant rights of legal representation, legal aid, and issues relating to contingency fees.<sup>29</sup>

---

<sup>25</sup> Centre for Research, eInnovation & Statistics (CReST) of the Subordinate Courts of Singapore, Study on Parties in Person 2, 8-9 (July 2005) (unpublished paper, on file with the *Pacific Rim Law & Policy Journal*) [hereinafter CReST Paper].

<sup>26</sup> Gary Chan & Eugene Tan, *Introduction to the Singapore Legal System*, in BASIC PRINCIPLES OF SINGAPORE BUSINESS LAW 3, 17-20 (Andrew Phang ed., 2004).

<sup>27</sup> See Supreme Court of Judicature Act, ch. 322 (2007 Rev. Ed.) (Sing.), available at <http://statutes.agc.gov.sg/> (search “322” in the “Go to Cap. No.” box; then follow the “Supreme Court of Judicature Act” hyperlink). The Subordinate Courts consist of District Courts (including Family Courts), Magistrates’ Courts, Juvenile Courts, Coroners’ Courts, and Small Claims Tribunals. See Subordinate Courts Act, ch. 321, § 3(1) (2007 Rev. Ed.) (Sing.), available at <http://statutes.agc.gov.sg/> (search “321” in the “Go to Cap. No.” box; then follow the “Subordinate Courts Act” hyperlink).

<sup>28</sup> JUDICIAL COMM. ACT (1985) (repealed 1994).

<sup>29</sup> See generally Gary Chan, *The Right of Access to Justice: Judicial Discourse in Singapore and Malaysia*, 2 ASIAN J. COMP. L., art. 2, available at <http://www.bepress.com/asjcl/vol2/iss1/art2>; see

While the substantive constitutional right to legal counsel for a person arrested by the police is expressly provided for in the Singapore Constitution,<sup>30</sup> the Court's interpretation of the scope of the provision has thus far been a restrictive one.<sup>31</sup> Further, it appears that the rights to legal aid<sup>32</sup> and legal representation<sup>33</sup> do not enjoy constitutional protection in Singapore. According to the court rules, lawyers are assigned to accused persons by the Singapore Supreme Court in every capital appeal case,<sup>34</sup> but these rules are not applicable to all other criminal cases.<sup>35</sup> The right of access to justice in the form of judicial review of administrative acts may be ousted by the enactment of parliamentary legislation in Singapore.<sup>36</sup> Contingency fee agreements between lawyers and clients, which potentially increases access to justice to persons not eligible for legal aid but who nonetheless find the legal fees beyond their means, are currently prohibited in Singapore.<sup>37</sup> There has also been little judicial discourse in the case law on the general right of access to justice.<sup>38</sup> In the same vein, there has been little examination by Singapore courts of the associated rights to legal aid and the feasibility of contingency fee agreements.<sup>39</sup>

However, significant statements have been made outside of courtrooms in policy statements and speeches by judges of the Singapore

---

generally Li-Ann Thio, *Beyond the "Four Walls" in an Age of Transnational Judicial Conversations – Civil Liberties, Rights Theories, and Constitutional Adjudication in Malaysia and Singapore*, 19 COLUMBIA J. ASIAN L. 428 (2005-2006).

<sup>30</sup> SING. CONST. art. 9 (stating that, "[w]here a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.").

<sup>31</sup> See Chan, *supra* note 29, at 30-32.

<sup>32</sup> See e.g., *Airey v. Ireland*, 2 Eur. Ct. H.R. 305 (1979) (addressing the obligation of a state to provide civil legal aid under Article 6 of the European Convention of Human Rights and Fundamental Freedoms).

<sup>33</sup> See generally *Kok Seng Chong v. Bukit Turf Club*, [1993] 2 Sing. L. Rep. 388 (holding that the right of legal representation is based on the principle of natural justice so as to ensure that the litigant is able to present his or her case effectively to a tribunal).

<sup>34</sup> Sing. Sup. Ct. (Crim. App.) R. 11(a) (1997) (making only reference to capital cases). Rule 11 (b) applies to other criminal appeal cases where the Chief Justice considers it in the "interests of justice."

<sup>35</sup> *Id.*

<sup>36</sup> See *Chng Suan Tze v. Minister of Home Affairs*, [1988] 1 Sing. L. Rep. 132, 162-64 (discussing the objective test in reviewing ministerial discretion in issuing preventive orders under the Internal Security Act); see also *Teo Soh Lung v. Minister for Home Affairs and Others*, [1989] Sing. L. Rep. 449 (highlighting constitutional revisions relating to judicial review); see also Internal Security Act, ch. 143 (Act 2 of 1995 – Internal Security (Amendment) Act 1989) (Sing.) (amending the Internal Security Act limiting the right to judicial review).

<sup>37</sup> *Supra* note 22.

<sup>38</sup> See Chan, *supra* note 29, at 21-25, 39-40. See *Ong Ah Chuan v. Public Prosecutor* 1 Malayan L. J. 64 (1980) (holding that the rule of law incorporates fundamental principles of the common law, including access to justice).

<sup>39</sup> See Chan, *supra* note 29, at 32-39.



courts, including the former Chief Justice Yong Pung How, underlining the importance of promoting access to justice for the poor.<sup>40</sup> The Singapore Subordinate Courts' Justice Statement has also explicitly endorsed "access to justice" as one of its two primary aims.<sup>41</sup> Furthermore, recent public statements by the current Chief Justice Chan Sek Keong on fairness and justice suggest some optimism in the horizon for rights-based jurisprudence in Singapore.<sup>42</sup>

Whatever the content or scope of substantive rights, if the practical implementation of schemes to "concretize" these substantive rights is absent or seriously lacking, such rights will nonetheless appear to be mere rhetoric. Professor Deborah Rhode contended that, in the United States, the constitutional jurisprudence and ideal of equal justice is not reflected in the legal system as practiced.<sup>43</sup> She calls it the "shameful gap between our rhetorical commitments and daily practices concerning access to justice."<sup>44</sup> It is argued that, in Singapore, the situation is, to a considerable extent, the *reverse* of what Professor Rhode described of the U.S. system. As discussed *infra*, concrete efforts have been made by the Singapore judiciary to maintain and promote access to justice for the poor in society, despite the relative absence of explicit articulation by the Singapore courts of rights-based jurisprudence (in particular, the scope and limits of rights relating to access to justice). The implementation of programs and plans in Singapore seeking to maintain or promote access to justice are more pronounced than a reading of Singapore's constitutional jurisprudence on access to justice would suggest. Nevertheless, there are shortcomings or areas which may be improved upon.

---

<sup>40</sup> *Subordinate Courts 12th Workplan 2003/2004*, Anchoring Justice, Subordinate Courts Annual Report 1, 7 (2003). Former Chief Justice Yong Pung How said "the Judiciary must guard against the obstruction of justice, or more accurately, access to justice. We must strive to ensure that the public, and especially those who are *indigent*, can seek the redress available through the judicial process . . . ." (emphasis added). *Id.*

<sup>41</sup> See *The Justice Statement*, <http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=4397> (last visited Sept. 3, 2007).

<sup>42</sup> Welcome Reference for the Chief Justice, Response by the Honourable the Chief Justice Chan Sek Keong (Apr. 22, 2006), ¶¶ 4-5, 11-13 (transcript available at <http://app.supremecourt.gov.sg/default.aspx?pgID=1001>). The present Chief Justice Chan has explicitly stated that "[t]he fair administration of justice must ultimately trump court efficiency and convenience" in the event of a conflict. *Id.*

<sup>43</sup> DEBORAH L. RHODE, *ACCESS TO JUSTICE* 3 (2004).

<sup>44</sup> *Id.* at 5.

### III. THREE JUDICIAL APPROACHES TO ACCESS TO JUSTICE IN SINGAPORE: ECONOMIC, PROCEDURAL, AND INSTITUTIONAL

The public perception of the Singapore judiciary has been favorable. According to a public survey of 1000 participants carried out by Forbes Research Pte. Ltd. in 2001, an overwhelming majority of the public strongly supported the work of the Subordinate Courts.<sup>45</sup> Another public survey was carried out in 2006 on the Subordinate Courts.<sup>46</sup> The respondents consisted of a substantial majority of Singaporeans (91%) as well as a small percentage of permanent residents (9%). The results largely corroborated those contained in the 2001 survey and pointed to a high level of confidence in the judiciary.<sup>47</sup>

The performance of the Singapore judiciary has also been internationally acclaimed.<sup>48</sup> In terms of "legal framework," the Singapore judiciary placed second after Hong Kong in the Institute for Management Development's World Competitiveness Yearbook 2005.<sup>49</sup> Moreover, the Political and Economic Risk Consultancy, an international consulting firm providing business information to companies in East and Southeast Asia, has ranked Singapore second in Asia for the quality of its judicial system.<sup>50</sup>

Notwithstanding favorable public perception and international acclaim, it is nevertheless pertinent to ask whether the Singapore judiciary

---

<sup>45</sup> The main findings obtained from the Subordinate Courts survey showed, based on approximately 1000 interviews, that: 92% of respondents agreed that there is trust and confidence in the fair administration of justice in Singapore; 94% agreed that the Courts are effective in upholding law and order; 91% opined that the Courts administer justice fairly to all regardless of language, religion, race, or social class; 95% agreed that the Courts independently carry out justice according to the law; and 88% agreed that the Courts should continue to impose deterrent sentences, especially for offenders with any previous criminal records. (Survey on file with author.)

<sup>46</sup> SINGAPORE SUBORDINATE COURTS, SURVEY ON ATTITUDES AND PERCEPTION OF THE SINGAPORE SUBORDINATE COURTS 2006, (Nov. 2006) (on file with author). The survey was based on face-to-face interviews with over 1000 randomly selected respondents. *Id.* The author has been informed by the Subordinate Courts of Singapore that the survey was carried out during the period from September 11 to October 8, 2006, by an independent research company, Nexus Link Pte. Ltd.

<sup>47</sup> *Id.* The following are statements asked during the survey about the Singapore judiciary with percentages representing respondents who "agree" or "strongly agree" with the statement: the confidence in the fair administration of justice (93%); the accessibility of the court's facilities (86%); the efficiency of the courts (89%); the fair administration of justice regardless of language, religion, race or social class (95%); and carrying out of justice according to law without influences of others (91%). *Id.*

<sup>48</sup> See Karen Blochlinger, *Primus Inter Pares: Is the Singapore Judiciary First Among Equals?*, 9 PAC. RIM L. & POL'Y J. 591, 616-17 (2000); Tan Ooi Boon, *Happy Retirement, CJ*, NEW PAPER, Apr. 10, 2006 ("From the day he became CJ in 1991, 'public access' were the two words foremost in his mind.")

<sup>49</sup> See SUBORDINATE COURTS ANNUAL REPORT 2005 53 (2005), <http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=4469>.

<sup>50</sup> See POLITICAL & ECONOMIC RISK CONSULTANCY LTD., ASIAN INTELLIGENCE (2006) (on file with the *Pacific Rim Law & Policy Journal*); see also JAMES GWARTNEY, ROBERT LAWSON, & WILLIAM EASTERLY, ECONOMIC FREEDOM OF THE WORLD REPORT 2006 (2006).

has indeed lived up to the expectations of enhancing access to justice for the poor. In order to respond to the question, this central Section adopts a three-fold approach. The activities, programs, and schemes undertaken by the Singapore courts with a view toward enhancing access to justice may be conveniently categorized as economic, procedural, and institutional (or organizational).<sup>51</sup>

In this context, the economic approach refers to direct fiscal measures undertaken by the Singapore judiciary to reduce the economic burden or lower the economic barriers to access to the courts encountered by indigent litigants. The procedural approach refers to court procedures and rules used to enhance access to justice for litigants. This may include procedural reforms such as amending court rules, developing the rules of *locus standi* through case law, and streamlining court processes to reduce delays in the judicial system. While institutional measures could embody procedural measures, they tend to be large-scale and often require an overhaul in the way the court's roles are conceived. This third category includes the workings of the small claims tribunals, court-based mediation, the use of technology, as well as judicial approaches towards legal aid, pro bono work, and litigants in person.<sup>52</sup>

Before discussing the three judicial approaches to access to justice, it should be noted that *absolute* access to justice is not necessarily a desirable objective. First, access to justice requires funding of legal services which would mean less investment in other important areas such as education and health. Second, a balance should be properly struck between promoting access to justice for the poor and ensuring that the indigent litigant acts responsibly before initiating action. Imagine a scenario where the government holds a largesse for implementing legal aid programs. This does not mean that the government should dole out monies indiscriminatingly to all persons below a specified income level with a view to enhancing access to justice for the poor. Indeed, a serious-minded government would be concerned with irresponsible litigation in the guise of vexatious and frivolous claims, an undesirable feature of over-litigiousness in society. Part of this problem of vexatious and frivolous claims may be resolved by the

---

<sup>51</sup> See Mauro Cappelletti & Bryant Garth, *Access to Justice As A Focus of Research*, 1 WINDSOR YEARBOOK OF ACCESS TO JUSTICE ix, x-xiv (1981). In a similar (though not precisely the same) fashion, Mauro Cappelletti and Bryant Garth described the access-to-justice movement as comprising three waves of reform, namely: 1) procedural availability of lawyers to the poor, 2) providing legal representation for diffuse interests, and 3) experimenting with new forms of representation and new dispute processing institutions.

<sup>52</sup> Commonly referred to as pro se litigants in the United States and unrepresented litigants in Australia.

filtering mechanisms of a competent judicial system. But costs may already be wasted midway through the judicial process. Thus, the government would also want to minimize waste at the earliest stage possible, such as when the litigant applies for legal aid from the state legal aid authority. State legal aid authorities may, for example, implement a merits test to assess the viability of claims sought by applicants for aid. Thus, in the final analysis, the actual implementation of access to justice programs involves a balancing of the qualitative objective of extending access and the quantitative aim of preventing unnecessary litigation and waste of costs. As one judge wittingly noted, “[j]ustice may be priceless. But it is not costless.”<sup>53</sup>

A. *Economic Measures Have Been Utilized to Control and Manage Litigation Costs*

The role of alleviating poverty generally belongs to the government. In this respect, the Singapore government has stoutly resisted implementing a general welfare system.<sup>54</sup> In fact, the Singapore government has criticized the vagaries and “crutch” mentality associated with welfare states.<sup>55</sup> Recently, it has resisted calls for greater increases in the amount of public assistance for the needy.<sup>56</sup> In the face of such criticism and dissatisfaction, the government has often emphasized its role in distributing monetary hand-outs to benefit the needy, and its focus on “workfare” instead of welfare to assist older low-income earners.<sup>57</sup> Since the 1980s, the government has established ethnic self-help groups such as the Chinese Development

<sup>53</sup> See Sir Ivor Richardson, *Courts and Access to Justice*, 31 VICT. U. WELLINGTON L. REV. 163, 171 (2000).

<sup>54</sup> Lee Hsien Loong, Prime Minister, Singapore, statement in Parliament (Nov. 13, 2006) (saying “[w]e have treated welfare as a dirty word. The opposition, I think the Worker’s Party, has called for a ‘permanent unconditional needs-based welfare system.’ I think that is an even dirtier five words . . .”) in 82 SINGAPORE PARLIAMENTARY REPORTS, cols. 745-48 (Nov. 13, 2006).

<sup>55</sup> See M. Ramesh, *Social Security in Singapore: Redrawing the Public-Private Boundary* 32 (12) ASIAN SURVEY 1093, 1103 (1992).

<sup>56</sup> The cash grant of S\$260 under the Public Assistance scheme was only increased by between S\$30 and S\$115 per month to take into consideration inflation and to counteract the hike in the Good and Services Tax from the existing 5% to 7%. See Jasmine Yin, *Money Not Enough: MP Neo*, TODAY ONLINE, Mar. 10, 2007.

<sup>57</sup> See, e.g., MINISTER OF FINANCE, SINGAPORE BUDGET STATEMENT 2007 28, ¶ 4.8, (2007), [http://www.mof.gov.sg/budget\\_2007/budget\\_speech/downloads/FY2007\\_Budget\\_Statement.pdf](http://www.mof.gov.sg/budget_2007/budget_speech/downloads/FY2007_Budget_Statement.pdf). The workfare scheme is envisaged to complement the existing Central Provident Fund (“CPF”) contributions by both employer and employee, a social security scheme to ensure adequate retirement savings. See *id.* The government will provide the low-income workers with income supplements to be paid partly in cash and partly into the CPF. *Id.* ¶ 4.10. At the same time, the workers will contribute less to the CPF so as to increase their take-home pay. Employers contribute less to the CPF so that the cost of employing the worker decreases. This is expected to increase worker employability. To counter the increase in the Goods and Services Tax (GST), GST credits are given out in the form of cash to Singaporeans, with lower-income earners obtaining a larger amount than persons in the higher-income category. *Id.* ¶ 6.3.

Assistance Council, Mendaki, and the Singapore Indian Development Association in order to raise the living standards and education of the respective ethnic groups.<sup>58</sup> It has also encouraged private and volunteer organizations,<sup>59</sup> as well as the community, to share the burden of providing social services to the disadvantaged.<sup>60</sup>

By contrast, Singapore's judiciary, comprised of unelected judges, does not assist directly in alleviating poverty. The Singapore judiciary (both the Supreme Court and Subordinate Courts) is, however, allocated a budget each year with which to achieve its targeted outcomes with respect to the administration of justice.<sup>61</sup> This Section focuses on fiscal measures the Singapore Judiciary has undertaken to enhance access to justice for the poor in Singapore.

### 1. *Imposition of Hearing Fees and Other Court Fees*

The imposition of hearing and court fees may have serious ramifications for access to justice, as evidenced in the English case of *Witham*.<sup>62</sup> There, the Lord Chancellor was empowered to increase court fees under the U.K. Supreme Court Act 1981.<sup>63</sup> The new regulations<sup>64</sup> removed provisions that had exempted and remitted fees for litigants. Upon reviewing the new regulations, the English court determined that the

---

<sup>58</sup> See Gillian Koh & Ooi Giok Ling, *Relationship Between State and Civil Society in Singapore: Clarifying the Concepts, Assessing the Ground* in CIVIL SOCIETY IN SOUTHEAST ASIA 167, 171 (Lee Hock Guan ed., 2004).

<sup>59</sup> See *id.* at 170-71. Apart from ethnic and clan groups, the private organizations include religion-based community welfare services, philanthropic foundations, and other non-governmental organizations.

<sup>60</sup> For works on government and civil society involvement, see generally Suzaina Kadir, *Engagement and Autonomy Within The Political Status Quo*, in CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA: EXPANDING AND CONTRACTING DEMOCRATIC SPACE, 324-54 (Muthiah Alagappa ed., 2004); Koh & Ling, *supra* note 58, at 171; Yayoi Tanaka, *Subtle NGO Control by a Developmentalist Welfare State*, in THE STATE AND NGOS: PERSPECTIVES FROM ASIA, 200-221 (Shinichi Shigetomi ed., 2002). For the relationship between the state and the voluntary welfare sector see David Seth Jones, *Welfare and Public Management in Singapore: A Study of State and Voluntary Sector Partnership*, 24(1) ASIAN J. PUB. ADMIN. 57 (2002).

<sup>61</sup> See Gov't of Sing., Budget 2007-Expenditure Overview, [http://www.mof.gov.sg/budget\\_2007/expenditure\\_overview/judicature.html](http://www.mof.gov.sg/budget_2007/expenditure_overview/judicature.html) (last visited Feb. 28, 2008). In fiscal year 2007, the Judiciary was allocated a total of S\$119.56 million consisting of S\$68 million (Supreme Court) and S\$51.56 million (Subordinate Courts). In fiscal year 2006, the total allocation was S\$124 million, consisting of S\$57 million (Supreme Court operations), S\$13 million (final payments for the construction of the Supreme Court Building) and S\$54 million (Subordinate Courts operations): see Gov't of Sing., Budget 2006-Expenditure Overview, [http://www.mof.gov.sg/budget\\_2006/expenditure\\_overview/judicature.html](http://www.mof.gov.sg/budget_2006/expenditure_overview/judicature.html) (last visited Feb. 29, 2008).

<sup>62</sup> R v. Lord Chancellor, Ex parte Witham, (1998) Q.B. 575 (U.K.).

<sup>63</sup> Supreme Court Act, 1981, c. 54, § 130 (U.K.).

<sup>64</sup> Supreme Court Fees (Amendment) Order, 1996, S.I. 1996/3191, L. 15, art. 3 (Supreme Court of England and Wales).

regulations were indeed *ultra vires* as they denied the applicant his constitutional right of access to justice.<sup>65</sup> There has not, however, been a similar constitutional challenge in Singapore.

Hearing fees were introduced in the Singapore Supreme Court in 1993<sup>66</sup> and in the Subordinate Courts in 1994.<sup>67</sup> The official rationale for the imposition of hearing fees was to ensure that the litigants would use court time responsibly and expeditiously.<sup>68</sup> Singapore has put in place measures to address concerns that access to justice may have been impeded or truncated by the imposition of such fees. First, the amount of hearing fees imposed depends on the level of court in which a civil case is litigated<sup>69</sup> and the number of hearing days required. Significantly lower fees are applicable for claims commenced in lower courts. No hearing fees are imposed in the first three days of hearing in the High Court and the first day of hearing before the Court of Appeal, district court, and magistrate's court.<sup>70</sup> There are also important exclusions of certain types of proceedings from the hearing fees levy.<sup>71</sup>

Second, the registrar of the court is empowered to adjust the fees of litigants in specific circumstances. Upon the application of a litigant, the registrar<sup>72</sup> may apportion the fees among all or any of the litigants.<sup>73</sup>

---

<sup>65</sup> R v. Lord Chancellor, Ex parte Witham, (1998) Q.B. 575, 586 (U.K.).

<sup>66</sup> Supreme Court (Amendment) Rules 1993 S. 213/93, Order 90A (Sing.); JEFFREY PINSLER, CIVIL JUSTICE IN SINGAPORE 123 (2000).

<sup>67</sup> Subordinate Courts (Amendment) Rules 1994, S 260/94, (Sing.); JEFFREY PINSLER, CIVIL JUSTICE IN SINGAPORE 123 (2000).

<sup>68</sup> JEFFREY PINSLER, CIVIL JUSTICE IN SINGAPORE 123 (2000); JEFFREY PINSLER, SINGAPORE COURT PRACTICE 2006 1780 (2006).

<sup>69</sup> The hearing fees for each day or part thereof *after* the first day are S\$250 (Magistrates' Courts) and S\$500 (District Courts). See Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 90A, r. 1(1). With respect to the High Court, where the "value" of the claim is S\$1 million or below, the hearing fee per day correlates positively to the number of hearing days: the fee for the fourth day amounts to S\$6000; the fee for the fifth day is S\$2000; between the sixth and tenth day, litigants pay S\$3000 per day; beyond the tenth day, the fee amounts to S\$5000 per day. *Id.* In the event the "value" of the claim exceeds S\$1 million, the corresponding amounts of hearing fees for the abovementioned hearing periods are S\$9000, S\$3000, S\$5000, and S\$7000 respectively. *Id.* For hearings before the Court of Appeal, the hearing fees for each day or part thereof subsequent to the first day is a fixed sum of S\$4000 (for "value" of up to S\$1 million) and S\$6000 (for "value" of more than S\$1 million) respectively. *Id.*; see also *id.* at Order 91 r. 1(3) (listing the rules for determining the "value" of the claim).

<sup>70</sup> *Id.*

<sup>71</sup> For example, actions for damages for death or personal injuries and causes or matters under the Adoption of Children Act, Guardianship of Infants Act and Women's Charter have been exempted. See Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 90A, r. 3.

<sup>72</sup> The Registrar of the Supreme Court of the Subordinate Courts (as the case may be), see Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 1, r. 4., is a legally qualified person appointed under section 61 of the Supreme Court of Judicature Act, Cap. 322, 2007 Rev. Ed., and section 12 of the Subordinate Courts Act, Cap. 321, 2007 Rev. Ed., respectively to exercise both judicial and administrative powers and duties.

<sup>73</sup> Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 90A, r. 5.

Alternatively, the registrar may waive or defer payment of the fees altogether to alleviate the litigant's financial burden.<sup>74</sup> Though the specific financial criteria are not explicitly stated in the Rules of Court, the aggrieved party is entitled to apply to the High Court to review the registrar's decision.<sup>75</sup> According to the registrar of the Supreme Court, the financial condition of the litigant will be taken into consideration in determining the requests for waiver or deferment.<sup>76</sup> In fact, in order to reduce the economic burden on the poor, there have at times been *general* reductions or waivers of hearing fees by the Singapore judiciary to account for adverse economic conditions affecting court users.<sup>77</sup>

In December 2002, hearing fees were revised upwards in reaction to the judiciary's concerns that an "inordinate number of court days" were required in an increasing number of cases.<sup>78</sup> The former Chief Justice Yong, however, explained that the upwards revision affected only a small portion of cases.<sup>79</sup> A large majority of the cases affected involved high-value businesses. The fee revision was also a necessary response to the increase in the total operating costs of the Supreme Court.<sup>80</sup> Significantly, the former Chief Justice added that "access to justice should not be denied to those who do not have the financial means."<sup>81</sup> As such, the registrar has the discretion to waive or defer the payment of fees in cases of genuine hardship."<sup>82</sup>

The amount of court fees levied is determined by the Chief Justice or the Senior District Judge with the concurrence of the Chief Justice.<sup>83</sup> As

---

<sup>74</sup> *Id.* at r. 1(3), r. 2(3).

<sup>75</sup> *Id.* at r. 6. As of May 9, 2007, however, the Supreme Court has confirmed that it has not received any requests for review of the Registrar's decisions. With respect to the Subordinate Courts, see *Loh Chong Yong Thomas v. Standard Chartered Bank*, [2007] S.G.D.C. 82, ¶ 6, in which an application for the waiver of court fees was made by the plaintiff (a practicing lawyer who was bankrupt). The application was dismissed by the deputy registrar, and the appeal to the District Judge in chambers was also dismissed.

<sup>76</sup> See E-mail from the registrar of the Supreme Court to author (May 9, 2007) (on file with the author).

<sup>77</sup> Hearings were waived for the first three days of hearings before a judge of the High Court pursuant to the Rules of Court (Amendment) Rules 2003 during the global economic downturn arising from the Iraq War and outbreak of Severe Acute Respiratory Syndrome ("SARS") to "[a]meliorate the impact of the current economic downturn facing litigants . . . ." See Media Release, Singapore Supreme Court, Waiver of Hearing Fees in the High Court (May 23, 2003), <http://app.supremecourt.gov.sg/default.aspx?pgid=424&printFriendly=true>.

<sup>78</sup> See Chief Justice Yong Pung How, Chief Justice's Response: Opening of the Legal Year 2003, ¶ 19 (Jan. 4, 2003) (transcript available at <http://app.supremecourt.gov.sg/default.aspx?pgid=504&printFriendly=true>).

<sup>79</sup> *Id.* ¶ 21.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* See also Revision of Hearing Fees and Filing Fees, Registrar's Circular No. 5, 2002, (Supreme Court of Singapore), <http://app.supremecourt.gov.sg/data/doc/ManagePage/99/2002%20-%205.pdf> (last visited Feb. 29, 2008).

<sup>83</sup> Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 91, r. 2.

with hearing fees, the registrar possesses the discretion to waive and defer the payment of the fees in whole or in part.<sup>84</sup> Moreover, lower court fees are levied for proceedings falling under specific legislation, such as the Mental Disorders and Treatment Act, the Adoption of Children Act, the Guardianship of Infants Act, or the Inheritance (Family Provision) Act.<sup>85</sup> According to the Singapore Supreme Court, fees are waived for the inspection of court files by particular categories of persons, namely applicants that work for certain public agencies and persons receiving legal aid from the Legal Aid Bureau.<sup>86</sup>

## 2. *Judicial Supervision over Litigation Costs*

In Singapore, a litigant's legal costs include solicitor-client costs, the litigant's own costs as well as the litigant's own disbursements.<sup>87</sup> The solicitor-client costs generally constitute a major component of legal costs.<sup>88</sup> Unlike in the United States, should the prospective litigant in Singapore lose his or her case, the fee-shifting rules (as in England) typically require that he or she bear the opposing party's costs,<sup>89</sup> which can be financially onerous.

Nevertheless, this fee-shifting requirement under Singapore law is not an invariable rule.<sup>90</sup> Moreover, legal costs in Singapore are not regarded as being unduly high. In fact, Asia-Pacific Legal 500, an information guide to law firms in the region, reported that lawyers' fees in Singapore are generally competitive.<sup>91</sup> However, as discussed below, lower income earners nevertheless find legal costs in Singapore financially burdensome.

<sup>84</sup> *Id.* r. 5.

<sup>85</sup> See Rules of Court, 2006, R.5, Rev. Ed. (Sing.), app. B, ¶¶ 117-31.

<sup>86</sup> These applicants are the Police, Internal Security Department, the Commercial Affairs Department, the Singapore Academy of Law, the Attorney-General's Chambers and the Insolvency and Public Trustee's Office. See E-mail from the Registrar of the Supreme Court to author (May 9, 2007) (on file with the author).

<sup>87</sup> Disbursements include court fees, for example, hearing fees and fees levied on the submission and registration of court documents.

<sup>88</sup> In a typical case, the disbursements would take up only a small proportion of the litigant's total costs.

<sup>89</sup> See the general "costs follow the event" rule in Rules of the Court, Order 59 r. 3(2); *Tullio v. Maoro*, [1994] 2 Sing. L. Rep. 489.

<sup>90</sup> The Court has the discretion to depart from the general "costs follow the event" rule. See *id.*; see also the recent English case of *R (Corner House Research) v. Secretary of State for Trade and Industry*, [2005] 1 W.L.R. 2600 (where the court granted a protective costs order in public law cases of general public importance to enable claimants of limited means access to the court without the fear of substantial costs order being made against them); cf. *Arkin v. Bouchard Lines Ltd. (Nos. 2 & 3)*, [2005] 1 W.L.R. 3055 (which held that third party professional funders for a claimant with limited means via a non-champertous agreement, with the expectation of reward if the claimant succeeded, were liable to pay costs to the successful defendants in the action).

<sup>91</sup> According to ASIA-PACIFIC LEGAL 500, "Singapore's legal market is extremely competitive. Fees remain at relatively low levels, particularly among Singaporean clients who, as a result, receive some of the



Under the Singapore civil justice system, the courts have the power to determine the party-party costs as well as solicitor-client costs in the taxation of costs.<sup>92</sup> The courts may supervise litigation costs, whether in the context of a costs agreement between disputing parties or outside the parameters of a costs agreement.

The courts supervise contentious business agreements on solicitor-client costs based on the principles of fairness and reasonableness as provided for in the Legal Profession Act.<sup>93</sup> In this context, the Singapore High Court in *Shamsudin bin Embun v. P T Seah & Co.*<sup>94</sup> held that in a case where the client seeks to impeach the fairness and reasonableness of a contentious business agreement for costs, it is the lawyer who bears the onus of proving its fairness and reasonableness.<sup>95</sup> In determining whether the agreement passed the criterion of fairness, the issue was whether, on the facts, the client understood the contents of the agreement. In the present case, the Court took note of the need to protect the client, a “poor old, retired pensioner who had always had a low station in life, [and who] was ignorant of the law and its arcane procedures.”<sup>96</sup>

The judicial power of supervision over costs on the basis of fairness and reasonableness extends even to situations where a prior agreement required the client to pay higher costs. In *Wong Foong Chai v. Lin Kuo Hao*,<sup>97</sup> the High Court stated that there was no conclusive presumption under the Rules of Court<sup>98</sup> that the amount expressly or impliedly approved by the client would be reasonable in amount.<sup>99</sup> Citing section 113 of the Legal Profession Act,<sup>100</sup> the judge held that the costs agreement was not immune

---

best-value legal advice in the world . . .” cited in 74 SINGAPORE PARLIAMENTARY DEBATES REPORT, col. 1211 (May 15, 2002). The CENSUS 2001 included a survey which incorporated data on the earnings of lawyers in relation to the median billable rate per hour in 2000. See CENSUS 2001, *supra* note 21, at 4. The median billable rate per hour was as follows: S\$200-S\$299 (for lawyers with fewer than three years of experience); S\$300-S\$399 (for lawyers with between three and twelve years of experience); and S\$400-S\$499 (for lawyers with more than twelve years of experience). *Id.*

<sup>92</sup> Taxation of costs refers to the determination by the court as to the amount of costs payable by one party to another or by a client to the solicitor, as the case may be. Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 59, r. 27-28.

<sup>93</sup> The court is empowered under the Legal Profession Act, 2001, c. 161, § 113 (Sing.) to enforce the agreement; where the terms of the agreement are deemed by the court to be unfair or unreasonable, it may be declared void.

<sup>94</sup> *Shamsudin bin Embun v. P T Seah & Co.*, [1986] 1 Sing. L. Rep. 510.

<sup>95</sup> *Id.* at 516.

<sup>96</sup> *Id.* at 518. The costs agreement was also adjudged “unreasonable” as the lawyer was “dilatatory” in the prosecution of the client’s case which was of “ordinary simplicity.” *Id.* at 519.

<sup>97</sup> *Wong Foong Chai v. Lin Kuo Hao*, [2005] 3 Sing. L. Rep. 74.

<sup>98</sup> Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 59, r. 28(2)(b).

<sup>99</sup> *Wong Foong Chai v. Lin Kuo Hao*, [2005] 3 Sing. L. Rep. 74, 82-84.

<sup>100</sup> Legal Profession Act, 2001, c. 161 (Sing.).

from investigation by the court.<sup>101</sup> Indeed, based on the facts of the case, as the amount of costs agreed to was “jarringly out of proportion” to that for similar work done by a lawyer, the presumption was rebutted.<sup>102</sup>

The judiciary also supervises legal costs outside the context of costs agreements. For example, legal costs are pre-determined under Order 59, Appendix 2 of the Rules of Court, where the amount of costs is positively correlated to the damages claimed or awarded in motor accident cases in respect to party-party costs.<sup>103</sup> There are also specific provisions relating to the litigants receiving legal aid from the Legal Aid Bureau as well as the litigants in person. To protect the legally-aided person, he or she should not be liable for both the court fees and the costs to the other party should the opposing party win.<sup>104</sup> As for the litigant in person without formal legal representation, the Singapore legal position is that such a person is entitled to such costs as would reasonably compensate him or her for time expended, together with all expenses reasonably incurred.<sup>105</sup>

As another example of the supervisory role adopted by the courts, it is statutorily provided that, if an action commenced in the High Court could have been initiated in the lower courts (district and magistrates’ courts), and the plaintiff recovers an amount not exceeding the relevant lower court limit, the plaintiff is only entitled to (lower) costs generally awarded on the lower court scale.<sup>106</sup> The explicit judicial rationale for such practice, apart from preventing abuse of the judicial process, lies in fostering a cheaper and more efficient process.<sup>107</sup> In *Cheong Ghim Fah v. Murugian s/o Rangasamy (No. 2)*, the High Court reasoned that lawyers should not incur unnecessary costs if a more economical and equally expeditious process of dispute resolution, such as in the Subordinate Courts, exists.<sup>108</sup>

In summation, the Singapore judiciary has put in place fairly comprehensive economic measures, whether by promulgating rules or through its court decisions, to control and manage litigation costs, including lawyers’ fees, solicitor-client costs, party-party costs, court fees, and hearing fees.

---

<sup>101</sup> *Wong Foong Chai v. Lin Kuo Hao*, [2005] 3 Sing. L. Rep. 74, 84.

<sup>102</sup> *Id.*

<sup>103</sup> Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 59, app. 2.

<sup>104</sup> Legal Aid and Advice Act, 2001, c. 160, § 12(4) (Sing.). The legally-aided person is, however, entitled to the costs if he wins.

<sup>105</sup> Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 59, r. 18A.

<sup>106</sup> Subordinate Courts Act, 1999, c. 321, § 39 (Sing.).

<sup>107</sup> See *Uni-Navigation v. Wei Loong Shipping*, [1993] 1 Sing. L. Rep. 876, 880 (per Selvam J.C.).

<sup>108</sup> *Cheong Ghim Fah v. Murugian s/o Rangasamy (No. 2)*, [2004] 3 Sing. L. Rep. 193, 195.

B. *Litigation and Court Procedures Have Been Utilized to Enhance Access to Justice*

An examination of the judicial role in enhancing access to justice would not be complete without a discussion of litigation and court procedures as interpreted and applied by the courts. As Justice Andrew Phang of the Singapore Court of Appeal observed, the procedural aspects of a particular case can profoundly affect substantive justice and vice versa in a mutual and integrative process:

The quest for justice . . . entails a continuous need to balance the procedural with the substantive. More than that, it is a continuous attempt to ensure that both are *integrated*, as far as that is humanly possible. Both *interact* with each other. One cannot survive without the other. There must, therefore, be—as far as is possible—a fair and just procedure that leads to a fair and just result. This is not merely abstract theorising. It is the *very basis* of what the courts do—and ought to do. When in doubt, the courts would do well to keep these bedrock principles in mind. This is especially significant because, in many ways, this is how, I believe, laypersons perceive the administration of justice to be. The legitimacy of the law in their eyes must never be compromised. On the contrary, it should, as far as is possible, be enhanced.<sup>109</sup>

Such procedural measures are found in legislation, rules of court, and the administrative circulars and practice directions issued by the courts. Procedure involves judicial case management, streamlining litigation, and court procedures. This Article focuses on the manner and extent to which the procedures, as interpreted and applied by the courts, affect the level of access to justice of the poor in Singapore. The central issues examined in this Section are: 1) the extent that the poor are capable of organizing themselves to obtain remedies under existing litigation procedures (such as the use of relator actions, rules of *locus standi*, and representative actions) and 2) the extent that courts have reformed and developed procedural rules and guidelines and have streamlined the judicial processes to enable the poor to obtain greater access to justice, bearing in mind that procedures should not get in the way of the litigants' substantive claims and rights.<sup>110</sup>

---

<sup>109</sup> *United Overseas Bank Limited v. Ng Huat Foundations Pte. Ltd.*, [2005] 2 Sing. L. Rep. 425, ¶ 8.

<sup>110</sup> See *Sivaras Rasiah v. Badan Peguam Malaysia*, [2002] 2 Malayan L. J. 413, 422 (Gopal Sri Ram J.C.A.).

1. *Relator Actions Are Not Useful for Enhancing Access to Justice for the Poor*

In relator actions, one or more members of the public who wish to protect public interests can sue in the name of the Attorney-General.<sup>111</sup> Insofar as access to justice for the poor is concerned, relator actions against the *government* appear to be non-starters, though the technical procedural requirements of such an action are specifically provided for in the Rules of Court.<sup>112</sup> This is because relator actions, which require the Attorney-General to initiate an action for the purpose of vindicating public rights against the government, are arguably contrary to the role of the Attorney-General as the government legal adviser.<sup>113</sup> Not surprisingly, relator actions against the government are rare in Singapore.

While there has been no clear pronouncement by the Singapore courts on relator actions, the viability of relator actions in the context of public interest litigation has been explicitly thrown into doubt by the Malaysian courts. Although Malaysian court decisions are not binding on the Singapore judiciary, the logic of the dissenting justices in the Malaysian decision below, insofar as relator actions against the government are concerned, is compelling. The argument is particularly persuasive given that the constitutional provisions concerning the duty of the Attorney-General as the government legal advisor are similar in Singapore and Malaysia.

In *Government of Malaysia v. Lim Kit Siang*,<sup>114</sup> the Respondent, an opposition politician, sought an injunction to restrain a company from signing a highway construction contract with the Malaysian government on the basis of allegations of corruption. The Malaysian Supreme Court had earlier granted an interlocutory injunction<sup>115</sup> but an application was subsequently sought to set this injunction aside.<sup>116</sup> In *Lim Kit Siang v. United Engineers (M) Bhd (No. 2)*, the Malaysian high court dismissed the

---

<sup>111</sup> See, e.g., Singapore Government Proceedings Act, 1985, c. 121, §§ 8-9, on actions relating to public nuisance and trusts for public, religious, social and charitable purposes.

<sup>112</sup> Rules of the Court, Order 15, r. 11.

<sup>113</sup> CONST. SING. art. 35, §7. According to article 35, section 7 of the Constitution, "It shall be the duty of the Attorney-General to advise the Government upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President or the Cabinet and to discharge the functions conferred on him by or under this Constitution or any other written law."

<sup>114</sup> *Government of Malaysia v. Lim Kit Siang*, [1988] 2 Malayan L. J. 12.

<sup>115</sup> *Lim Kit Siang v. United Engineers (M) Bhd (No. 2)*, [1988] 1 Malayan L. J. 50, 53 (Tan Sri Lee Hun Hoe C.J. (Borneo), Tan Sri Wan Suleiman and Tan Sri Wan Hamzah S.C. JJ.). The order for injunction was made with liberty to the parties to apply. *Id.*

<sup>116</sup> *Id.*

application.<sup>117</sup> On appeal, the majority judges<sup>118</sup> in *Government of Malaysia v. Lim Kit Siang* refused to grant the injunction, regarding the action by the respondent as vexatious, frivolous, and an abuse of the judicial process.<sup>119</sup> The dissenting judge, Seah S.C.J., argued persuasively that a relator action is not applicable in public interest litigation to test the legality of governmental action.<sup>120</sup> This is because the Attorney General, as the principal legal advisor of the Cabinet and/or Minister of the Government of Malaysia, is not expected under the Federal Constitution to consent to the initiation of such court proceedings.<sup>121</sup> Indeed, the Attorney General is mandated to defend the action as part of his constitutional duty.<sup>122</sup> Abdoolcader S.C.J., the other dissenting judge, opined that the “question of a relator action must necessarily remain attractive as a theoretical possibility with no conceivable hope generally for practical purposes of advancing to concrete action beyond that.”<sup>123</sup> It should also be observed that V.C. George J. in the Malaysian high court case of *Lim Kit Siang v. United Engineers (M) Bhd. (No. 2)*<sup>124</sup> referred to relator actions in the name of the Attorney General as “archaic and impracticable.” In view of the above considerations, relator actions are likely not feasible as a means for enhancing access to justice for the poor in litigation against the government.

However, relator actions against non-government bodies such as the Law Society and private pro bono organizations to vindicate a right of access to justice are not precluded by the same legal reasoning applicable to relator actions against the government. In the Malaysian case of *Attorney-General at and by the Relation of Pesurohjaya Ibu Kota (Commissioner Of The Federal Capital), Kuala Lumpur v. Wan Kam Fong (“Wan Kam Fong”)*,<sup>125</sup> relator actions were explicitly endorsed against the Defendant, a private entity that was carrying on a restaurant business without a license. The court held that the Attorney General was empowered under the English common law to bring a relator action pursuant to section

---

<sup>117</sup> *Lim Kit Siang v. United Engineers (M) Bhd (No. 2)*, [1988] 1 Malayan L. J. 50, 64 (V.C. George J.).

<sup>118</sup> *Government of Malaysia v. Lim Kit Siang*, [1988] 2 Malayan L. J. 12 (Salleh Abas L.P., Abdul Hamid C.J., and Hashim Yeop A. Sani S. C.J.).

<sup>119</sup> *Id.* at 12.

<sup>120</sup> *Id.* at 36.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 45.

<sup>124</sup> *Lim Kit Siang v. United Engineers (M) Bhd. (No. 2)*, [1988] 1 Malayan L. J. 50, 59.

<sup>125</sup> *Attorney-General at and by the Relation of Pesurohjaya Ibu Kota (Commissioner Of The Federal Capital), Kuala Lumpur v. Wan Kam Fong*, [1967] 2 Malayan L. J. 72.

three of the Civil Law Ordinance, 1956.<sup>126</sup> Significantly, the Defendants had contended, in a similar vein to the arguments made in *Lim Kit Siang*, that relator actions could not succeed since the Malaysian Constitution provided that the Attorney General was the adviser of the government.<sup>127</sup> However, this argument was rejected by the judge.<sup>128</sup> The defendant in *Wan Kam Fong* was not a government body, unlike in *Lim Kit Siang*.

The positive outcome from cases such as *Wan Kam Fong* appears to be that relator actions, though impracticable with respect to actions against the government, remain applicable to vindicate a right of access to justice against a non-government body, provided that the existence of a public wrong caused by the defendant can be established. With respect to the Singapore Law Society in particular, one of its aims is to “protect and assist the public in Singapore in all matters touching or ancillary or incidental to the law” under the Legal Profession Act.<sup>129</sup> It is also required under the same statute to “make provision for or assist in the promotion of a scheme whereby impecunious persons on non-capital charges are represented by advocates.”<sup>130</sup> In view of these statutory provisions, in the event that the Law Society decides to terminate or scale back drastically its criminal legal aid programs, an argument may be made by an indigent litigant that he or she has been denied access to justice due to the breach of the statutory obligation by the Law Society. The problem with this reliance on relator actions, however, is that the burden of the government in providing access to justice may be perceived to have been unfairly shifted to other non-government organizations or bodies. Hence, the relator action per se is not a persuasive and rational procedural technique to enhance access to judicial remedies for the poor.

---

<sup>126</sup> *Id.* at 73. On the facts, however, there were certain procedural defects relating to the filing of the relator’s prior consent to act and hence, the writ was set aside. *Id.*

<sup>127</sup> *Id.* See also MALAYSIAN CONST. art. 145(2). Article 145(2) of the Malaysian Constitution reads: “It shall be the duty of the Attorney General to advise the Yang di-Pertuan Agong or the Cabinet or any Minister upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Yang di-Pertuan Agong or the Cabinet, and to discharge the functions conferred on him by or under this Constitution or any other written law.” The Yang di-Pertuan Agong is the head of the Executive in Malaysia.

<sup>128</sup> Raja Azlan Shah J. noted: “If the contention of [the defendants’ lawyer] truly represents the law of this country, it would be deplorable. It would mean that the Attorney-General who is the guardian of public rights is not competent to bring a relator action to restrain interference with a public right or to abate a public nuisance or to compel the performance of a public duty. Nothing could be more unjust.” *Attorney-General At And By The Relation Of Pesurohjaya Ibu Kota (Commissioner Of The Federal Capital), Kuala Lumpur v. Wan Kam Fong*, [1967] 2 Malayan L. J. at 73.

<sup>129</sup> Legal Profession Act, 2001, c. 161, § 38(f) (Sing.).

<sup>130</sup> *Id.* § 38(g).

2. *Liberal Locus Standi Rules May Be Utilized to Allow the Poor to Access the Courts in the Event of Infringements of the Law*

Where relator actions cannot be utilized, the potential applicant would have to establish *locus standi* to commence a court action on behalf of the poor or a group of poor persons. The rationale underlying rules on *locus standi* is that judicial resources and time are limited and need to be appropriately allocated to litigants. Further, the rule seeks to prevent the opening of floodgates to litigation, particularly frivolous and vexatious claims.<sup>131</sup>

The traditional English common law rules of *locus standi* require: 1) some interference with a private right of the applicant in conjunction with the infringement of a public right; or 2) where there is no infringement of a private right, there must be some special damage suffered by the applicant arising from the interference with a public right (as encapsulated in the case of *Boyce v. Paddington Borough Council*<sup>132</sup> and endorsed in *Gouriet v. Union of Post Office Workers*<sup>133</sup>).

This traditional principle was followed by the majority judges in the Malaysian case of *Government of Malaysia v. Lim Kit Siang*,<sup>134</sup> as mentioned above, to deny *locus standi* to the applicant, whether as a politician, a road or highway user, or a tax payer. Hashim Yeop Sani S.C.J., one of the majority judges, noted there that if there is a lacuna in the law, the legislature, not the courts, should step in to fill the gaps.<sup>135</sup> The Court reached such a result despite the existence of prior Malaysian decisions<sup>136</sup> extolling the liberal approach to *locus standi* as well as Abdoolcader S.C.J.'s caution<sup>137</sup> against the judiciary taking such retrogressive steps and closing the door to the ventilation of a public grievance. It is suggested that this strict approach in *Lim Kit Siang* should be rejected in favor of the more liberalized and current approach in England and Singapore.

---

<sup>131</sup> In India, there are explicit judicial pronouncements concerning the need to relax *locus standi* rules in order to allow the poor to have a "voice" in court through their proxies. *S. P. Gupta v. President of India*, (1982) 69 A.I.R. 149 (India).

<sup>132</sup> *Boyce v. Paddington Borough Council*, (1903) 1 Ch. 109 (U.K.).

<sup>133</sup> *Gouriet v. Union of Post Office Workers*, (1978) A.C. 435 (U.K.).

<sup>134</sup> *Government of Malaysia v. Lim Kit Siang*, [1988] 2 Malayan L. J. 12, 25, 41.

<sup>135</sup> *Id.* at 41.

<sup>136</sup> *Tan Sri Haji Othman Saat v. Mohamed bin Ismail*, [1982] 2 Malayan L. J. 177; *Lim Cho Hock v. Government of the State of Perak*, [1980] 2 Malayan L. J. 148.

<sup>137</sup> *Government of Malaysia v. Lim Kit Siang*, [1988] 2 Malayan L. J. 12, 45.

In England, it should be observed that the erstwhile Order 53 of the U.K. Supreme Court Rules,<sup>138</sup> which enabled a private citizen to apply for judicial review on the basis of “a sufficient interest in the matter to which his application relates,” had already ushered a more liberalized approach to *locus standi*.<sup>139</sup>

In a similar vein, the Singapore Court of Appeal in *Chan Hiang Leng Colin v. Minister for Information and the Arts*<sup>140</sup> held that the applicants (Jehovah’s Witnesses) had *locus standi* to apply for certiorari as well as a declaration that the order of the Minister of Information and the Arts prohibiting certain International Bible Students’ Association publications was invalid.<sup>141</sup> The Court of Appeal held that the applicants had sufficient interest as citizens of Singapore to challenge the order on the grounds of an alleged violation of a constitutional provision.<sup>142</sup> The Court found that the fact that a constitutional violation would affect other citizens does not detract from a citizen’s interest to ensure that his own constitutional rights are not violated.<sup>143</sup> For the applicants to establish sufficient interest in the matter, the Court determined that the low threshold test of “prima facie case of reasonable suspicion”<sup>144</sup> or an “arguable case”<sup>145</sup> that the minister had acted irrationally would be applicable.

On the other hand, the Singapore Court of Appeal decision in *In Re An Advocate and Solicitor ex parte The Law Society of Singapore for Judicial Review*<sup>146</sup> did not involve a constitutional provision but the statutory duty of the Law Society of Singapore (“Law Society”) under the Legal Profession Act. In that case, the Law Society sought an order of mandamus against the

<sup>138</sup> Note that the United Kingdom has revoked Order 53: The Civil Procedure (Amendment No. 4) Rules 2000, S.I. 2092 L. 16. The rules for application for judicial review are now contained in Part 54 of the Civil Procedure Rules 1998, S.I. 3132 L. 17. *Id.*

<sup>139</sup> See *Inland Revenue Commissioners v. National Federation of Self-Employed & Small Business Ltd.*, (1982) A.C. 617 (U.K.).

<sup>140</sup> *Chan Hiang Leng Colin v. Minister for Information and the Arts*, [1996] 1 Sing. L. Rep. 609 (Court of Appeal).

<sup>141</sup> *Id.* at 614. However, the Court of Appeal held that the issues raised by the application pertaining to national security are not justiciable. See *id.* at 617.

<sup>142</sup> *Id.* at 614; See also SING. CONST. art. 15(1) (conferring the right to profess, practice and propagate religion).

<sup>143</sup> *Chan Hiang Leng Colin v. Minister for Information and the Arts*, [1996] 1 Sing. L. Rep. 609, 614.

<sup>144</sup> *Id.* at 616; see *Public Service Commission v. Lai Swee Lin, Linda*, [2001] 1 Sing. L. Rep. 644; *Wong Keng Leong Rayner v. Law Society of Singapore*, [2006] 4 Sing. L. Rep. 934, ¶ 77; *Teng Fuh Holdings Pte. Ltd. v. Collector of Land Revenue*, [2007] 2 Sing. L. Rep. 568, ¶¶ 35, 41 (applying the holding in the context of an application for leave to apply for order of certiorari and mandamus under Order 53 of the Rules of Court).

<sup>145</sup> *Chan Hiang Leng Colin v. Minister for Information and the Arts*, [1996] 1 Sing. L. Rep. 609, 616.

<sup>146</sup> *In Re An Advocate and Solicitor ex parte The Law Society of Singapore for Judicial Review*, [1987] 2 Malayan L. J. 21.



disciplinary committee (set up under the provisions of the same Act) to direct the latter to hear and investigate charges against an advocate and solicitor.<sup>147</sup> The Court of Appeal determined that the Law Society had “sufficient interest” and therefore the *locus standi* to apply for the mandamus as one of the society’s purposes is “to maintain and impose the standards of conduct . . . of the legal profession in Singapore” under section 39 of the Act.<sup>148</sup>

Thus, with respect to the legal rights of the poor, the case of *Chan Hiang Leng Colin* would support the bringing of an action in the event of an alleged violation of a constitutional right.<sup>149</sup> However, if the group of poor persons cannot establish a prima facie case of reasonable suspicion or an arguable case that their constitutional rights have been violated, it would then be difficult, based on *Chan Hiang Leng Colin*, to surmount the procedural obstacle. There is no broad-based constitutional right of access to justice in Singapore and, more specifically, no constitutional right to legal aid and legal representation.<sup>150</sup> Hence, should a new government decide to drastically reduce the legal aid budget so as to deprive a substantial number of the poor of the statutory entitlement to legal aid, these indigent litigants are unlikely to possess the *locus standi* to commence the action against the new government—such individuals would be hard pressed to establish that a specific constitutional provision, namely the constitutional right to legal aid, had been violated. Therefore, the procedural principles of *locus standi* in *Chan Hiang Leng Colin* could not be invoked by the group of indigent litigants claiming entitlement to legal aid where the underlying substratum of constitutional jurisprudence is absent.

However, the indigent litigants would be able to surmount the *locus standi* obstacle if they could establish that “sufficient interest” exists as in *In Re Advocate & Solicitor*, notwithstanding the absence of a constitutional infringement. The courts would not be required to indulge in “a detailed and microscopic analysis of the [court] material”<sup>151</sup> in determining *locus standi* as long as there is a prima facie case of suspicion of some infringement of the law. Again, the indigent litigant seeking criminal legal aid, for example, may wish to rely on the statutory obligation of the Law Society to “make provision for or assist in the promotion of a scheme whereby impecunious

---

<sup>147</sup> *Id.* at 22.

<sup>148</sup> *Id.* at 36 (citing the Legal Profession Act, Ch. 161, § 39 (Sing.)).

<sup>149</sup> *Chan Hiang Leng Colin v. Minister for Information and the Arts*, [1996] 1 Sing. L. Rep. 609.

<sup>150</sup> See *supra* Part II.A.

<sup>151</sup> See *Public Service Commission v. Lai Swee Lin, Linda*, [2001] 1 Sing. L. Rep. 644, ¶ 20 (citing the grounds of decision of the trial judge).

persons on non-capital charges are represented by advocates”<sup>152</sup> under the Legal Profession Act. It is suggested that, where there is prima facie evidence that the Law Society fails to carry out the statutory functions of criminal legal aid for the needy, the indigent litigant should have the *locus standi* to pursue the matter in the courts. The courts should not curtail such an application via a strict interpretation of *locus standi* rules. The substantive merits of such a case (as to whether a statutory obligation was in fact breached and whether remedies were available) should be treated as a separate matter from *locus standi*.

### 3. *Representative Actions Can Reduce the Financial Burden for Indigent Litigants*

The Singapore Rules of Court prescribe that representative proceedings may be commenced where numerous persons have the “same interest” in the proceedings.<sup>153</sup> Such an action is premised upon the existence of a common interest and common grievance in which the relief sought is beneficial to the representatives.<sup>154</sup> This procedure has been applied flexibly even to situations where the plaintiff representative does not have the consent of all the members of the represented group<sup>155</sup> or where the plaintiffs comprise opposing factions.<sup>156</sup> The procedural mechanism of instituting a representative action is not only meant for the poor but generally for individual prospective litigants who have to shoulder a huge financial burden in order to litigate. In particular, the mechanism is feasible where the claims of each prospective litigant are small compared to the potential costs and risks involved. This financial burden of potential litigants (including the poor) can be ameliorated if the claims are aggregated via a representative action. This serves as one avenue for enhancing access to justice for the group of indigent litigants who may also wish to share the costs in engaging a lawyer.

In Malaysia, for instance, the representative action was used in the case of *Jok Jau Evong* for the protection of native customary proprietary rights based on a statute.<sup>157</sup> The defined representative group in that case was the Kayan community, a native group that possessed legal rights to the

<sup>152</sup> See Legal Profession Act (Cap. 161, 2001 Rev. Ed.), § 38(g).

<sup>153</sup> Order 15, r 12. The leading local decision with respect to representative actions is *Tan Chin Seng v. Raffles Town Club (No 2)*, [2005] 2 Sing. L. Rep. 302 (involving the suit of 4895 members against the town club for misrepresentation and breach of contract).

<sup>154</sup> See *Duke of Bedford v. Ellis*, (1901) A.C. 1 (H.L.) (appeal taken from Eng.) (U.K.).

<sup>155</sup> *Abdul Rahim v. Ling How Doong*, [1994] 2 Sing. L. Rep. 668, 671.

<sup>156</sup> *Jok Jau Evong v. Marabong Lumber*, [1990] 3 Malayan L. J. 427, 433.

<sup>157</sup> *Id.* at 432 (citing the Land Code of Sarawak (Cap. 81)).

customary land.<sup>158</sup> In Singapore, though representative actions have been employed, there has not been a specific case involving indigent litigants as a group.

4. *The Security for Costs Application by the Defendant Should Not Deny Access to Justice for the Plaintiff*

In Singapore, the defendants involved in court litigation may apply for security for costs from the plaintiffs pursuant to the Rules of Court based on specified grounds.<sup>159</sup> The impoverishment of the plaintiff is not specifically stated as a ground for making an order for security for costs.<sup>160</sup> However, one of the specified grounds is that where the plaintiff is a nominal plaintiff, the court must assess whether there is “reason to believe that [the plaintiff] will be unable to pay the costs to the defendant if ordered to do so.”<sup>161</sup> It should also be noted that the Rules of Court stipulate that the court making the order for security for costs is to have regard to “the circumstances of the case” and considerations of justice.<sup>162</sup>

Singapore court decisions have expressly noted the significance of ensuring justice prior to making such an order. For example, the Court is mindful to ensure that the defendant’s purpose in seeking security for costs is not to quell the plaintiff’s quest for justice.<sup>163</sup> At the same time, the courts are reluctant to “whittle away a natural person’s right to litigate despite poverty.”<sup>164</sup> Hence, the application for security for costs from the defendant cannot be seen to deny the plaintiff access to the Singapore courts.<sup>165</sup>

---

<sup>158</sup> *Jok Jau Evong v. Marabong Lumber*, [1990] 3 Malayan L. J. 427, 433.

<sup>159</sup> Order 23, r 1 stipulates four alternative grounds: (a) the plaintiff is ordinarily resident outside the jurisdiction; (b) the plaintiff is a nominal plaintiff suing for the benefit of another person and there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; (c) the plaintiff’s address is not stated in the writ or other originating process or is incorrectly stated therein; or (d) the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation.

<sup>160</sup> See *Mathi Alegen s/o Gothendaraman v. The Tamils Representative Council Singapore*, [2002] S.G.H.C. 310, ¶ 21.

<sup>161</sup> Order 23, r 1(1)(b).

<sup>162</sup> Order 23, r 1.

<sup>163</sup> See *Pandian Marimuthu v. Guan Leong*, [2001] 3 Sing. L. Rep. 400, 403.

<sup>164</sup> *Amar Hoseen Mohammed v. Singapore Airlines Ltd.*, [1995] 1 Sing. L. Rep. 77, 84 (K.S. Rajah J.C.).

<sup>165</sup> *Id.*

5. *The Courts Cannot Order Interim Payments by Impecunious Defendants to Plaintiffs in Personal Injury Actions*

Order 29 of the Rules of Court on interim payments<sup>166</sup> in Singapore provides that in an action for personal injuries, the court must not make an order for interim payments if, amongst other criteria, the defendant does not have the “means and resources” to make the interim payments.<sup>167</sup> This serves to ameliorate the financial hardship of the indigent defendant.

While no Singapore court has reflected directly on interim payments by indigent defendants, the English Court of Appeal has interpreted a similar rule relating to the means and resources of the indigent defendant. In the English case of *British and Commonwealth Holdings v. Quadrex Holdings*,<sup>168</sup> the English Court of Appeal overturned the trial judge’s order that the defendant pay the plaintiffs interim payments of 75 million pounds under Order 29. Sir Nicholas Browne Wilkinson V.C. stated that, even in non-personal injury cases, “. . . if a defendant’s resources are such that an order for interim payment would cause irremediable harm which cannot be made good by an eventual repayment, that is a very relevant factor to be taken into account in fixing the amount of any interim payment.”<sup>169</sup> Hence, the Court of Appeal in that case drastically reduced the interim payment sum payable by the defendants.<sup>170</sup>

6. *Streamlining the Litigation Processes and Judicial Case Management to Enhance Efficiency Should Not Compromise Substantive Access to Justice*

The modus operandi of the Singapore courts is to reduce litigation costs and the waiting time for litigants as discussed below. In this way, indigent litigants who are not eligible for legal aid would likely benefit from the greater efficiencies of court processes. As more well-off litigants are likely better able to withstand prolonged trials or hearings as compared to their indigent counterparts, efficient court processes serve to reduce the

---

<sup>166</sup> Order 29, r 9 of the Rules of Court provides that interim payments, in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff. Order 29, r 10 empowers the plaintiff to apply to the Court for an order requiring that the defendant make an interim payment.

<sup>167</sup> Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 29, r. 11(2)(b).

<sup>168</sup> *British and Commonwealth Holdings v. Quadrex Holdings*, (1989) Q.B. 842 (U.K.).

<sup>169</sup> *Id.* at 867.

<sup>170</sup> *Id.* Note that the current U.K. Civil Procedures Rules 1998 (No. 3132 L. 17) do not stipulate the above-mentioned criterion relating to the “means and resources” of the defendant to make the interim payment, unlike the Rules of Court applicable to Singapore.

inequality gap. The improved efficiency of courts through more streamlined procedures and case management, *ceteris paribus*, is likely to reduce economic costs for the litigants as a whole, not to mention the anxiety and worries that can arise from undue delays in the judicial process. In criminal cases, inefficiency can further translate into loss of liberty if the accused is kept in remand for an unnecessarily long period pending trial. In addition, where a long time-lag exists between the events which give rise to the court action and the trial, there is a greater tendency for errors to multiply. However, although speed and efficiency of the court processes are important, they should not be over-emphasized such that the capacity of lawyers and litigants in person to understand and adequately prepare for their cases is compromised.

One important measure undertaken by the Singapore judiciary is the streamlining of litigation processes to facilitate access to justice. Prior to the reforms of the 1990s, the pace of litigation was virtually dictated by the parties, rather than the courts.<sup>171</sup> As an important feature of the departure from the party-controlled litigation process, Singapore introduced the proactive, court-initiated and court-directed procedure pursuant to Order 34A of the Rules of Court for “just, expeditious and economical disposal” in the Subordinate Courts in 1994<sup>172</sup> and the High Court in 1996 respectively.<sup>173</sup> This judicial formula for efficiency is also applied to the stage of summons for directions in trial preparation.<sup>174</sup> In addition, since 2001, the rule of automatic discontinuance was applied to cases that have been inactive for the duration of the preceding twelve months.<sup>175</sup>

With respect to manpower management in criminal cases, Singapore reduced the number of judges in capital trials from two to one since April 1992 in order to double the rate of disposal of cases and thus significantly shortened the remand period before trial.<sup>176</sup> Another measure involved the transferring of cases from the High Court judge to the registrars in bankruptcy petitions, family law disputes, and proceedings of the quasi-judicial tribunals such as the Copyright Tribunal, the Tenants’

---

<sup>171</sup> See PINSLER, CIVIL JUSTICE IN SINGAPORE, *supra* note 68, at 94.

<sup>172</sup> Subordinate Courts (Amendment) Rules 1994 (S260/94).

<sup>173</sup> Rules of Court 1996 (S71/96) (Sing.) (on file with the *Pacific Rim Law & Policy Journal*).

<sup>174</sup> Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 25, r. 1(b).

<sup>175</sup> See The Honourable Chan Sek Keong, Chief Justice of Singapore, Speech at the 12th Conference of Chief Justices of Asia and the Pacific: Overcoming Backlogs, ¶ 58 (June 4, 2007) (transcript available at [http://app.supremecourt.gov.sg/data/doc/ManagePage/2022/HK%20Conference%20\\_CJ%20speech.pdf](http://app.supremecourt.gov.sg/data/doc/ManagePage/2022/HK%20Conference%20_CJ%20speech.pdf)) [hereinafter *Overcoming Backlogs*].

<sup>176</sup> See Singapore Supreme Court, SUPREME COURT SINGAPORE: THE RE-ORGANISATION OF THE 1990s 48 (1994).

Compensation Board, and the Income Tax Board of Review.<sup>177</sup> Furthermore, the recent enactment of the Subordinate Courts (Amendment) Act in 2005<sup>178</sup> allows greater flexibility in transferring cases from the Subordinate Courts to the High Court and vice versa to improve efficiency.

The Singapore judiciary also simplified the litigation processes.<sup>179</sup> The Rules of the Supreme Court and Subordinate Courts were merged to form a single set of rules in 1996.<sup>180</sup> In addition, recent changes have been implemented to streamline processes by reducing the four modes of commencement of proceedings to two (namely, the writ of summons and originating summons)<sup>181</sup> and by simplifying certain Latin or archaic legal terms previously in use.<sup>182</sup>

Further, with respect to streamlining the litigation process in terms of targeting outcomes and monitoring, the Singapore Supreme Court has cleared an extensive backlog of cases since the 1990s.<sup>183</sup> Waiting periods for cases to be heard are now considerably shorter than in the past.<sup>184</sup> Indeed, these specific waiting periods are not merely part of a wish list but are “concretized” in the Supreme Court Practice Directions 2006.<sup>185</sup> Now in Singapore, the speed at which the cases are heard and disposed of is fairly phenomenal. In 2005, the average disposal time for writs was less than seven months with more than 50% of the writs filed concluded in less than six months.<sup>186</sup> The Singapore judiciary has continued to set lofty standards and targets for the disposal of cases.<sup>187</sup>

<sup>177</sup> *Id.* at 44.

<sup>178</sup> Subordinate Courts Act, ch. 321 (Act 26 of 2005 – Subordinate Courts Act (Amendment) Act 26) (Sing.).

<sup>179</sup> See The Honourable Yong Pung How, Chief Justice of Singapore, Chief Justice Yong Pung How’s Speech, Opening of the Legal Year 2006 (Jan. 7, 2006), ¶¶ 5, 6 (transcript available at <http://app.supremecourt.gov.sg/default.aspx?pgID=921>) [hereinafter Chief Justice’s Speech 2006].

<sup>180</sup> The Rules of Court 1996 went into effect on April 1, 1996. At the same time, the Rules of the Subordinate Courts (1993 Edition) and the Rules of the Supreme Court (1990 Edition) were repealed. See Rules of Court 1996 (S71/96) (on file with the *Pacific Rim Law & Policy Journal*).

<sup>181</sup> See Statutes (Miscellaneous Amendments) (No. 2) Act 2005; Rules of Court (Amendment No. 3) Rules; see also The Supreme Court Practice Directions (Practice Direction No. 12 of 2005) and the Registrar’s Circulars No. 5 of 2005, <http://app.supremecourt.gov.sg/default.aspx?pgID=98>.

<sup>182</sup> The following legal terms have been substituted by new terms contained in parentheses: mandamus (mandatory order); prohibition (prohibiting order); certiorari (quashing order) and habeas corpus (order for review of detention). See Statutes (Miscellaneous Amendments) (No. 2) Act 2005 (Act 42 of 2005) (adding a new section 41B to the Interpretation Act (Cap. 1, 2002 Rev. Ed.)).

<sup>183</sup> See Chief Justice, Singapore Supreme Court, Response By The Honourable The Chief Justice: Opening of the Legal Year 1999 (Jan. 9, 1999), ¶¶ 5-7, 37, 38 (transcript available at <http://app.supremecourt.gov.sg/default.aspx?pgID=538>).

<sup>184</sup> See CIVIL JUSTICE IN SINGAPORE, *supra* note 68, at 98.

<sup>185</sup> See Rules of Court, 2006, R.5, Rev. Ed. (Sing.), app. B.

<sup>186</sup> See Chief Justice’s Speech 2006, *supra* note 179, ¶ 20.

<sup>187</sup> The targets comprise the disposal of at least 85% of the writ actions within eighteen months of filing and the fixing of trial dates within eight weeks of setting down. See The Honourable Chan Sek

Aiding in the efficient disposal of cases, the Differentiated Case Management Scheme of the Singapore judiciary assigns cases to different management tracks (standard, express, and complex).<sup>188</sup> Each track has a different timeline for disposing of cases and the progress of the cases is subject to regular monitoring.<sup>189</sup> There is also a differentiated track for complex civil claims above S\$150,000 at the Subordinate Courts.<sup>190</sup> The group management scheme in the Subordinate Courts ensures that the group managers (district judges) are each responsible for distributing and monitoring the cases heard by the other judges within their group.<sup>191</sup>

Despite the Singapore judiciary's progress in this arena, it is important to note that over-efficiency of the judicial system may put great demands on the time and resources of law firms and lawyers,<sup>192</sup> potentially affecting the quality of legal services provided.<sup>193</sup> This also applies to litigants in person in the preparation of the case, discussed more fully in Part II.C below. It is important that the speed and efficiency of the litigation process should not supplant substantive justice.<sup>194</sup> To reiterate the words of Justice Andrew Phang (cited above): "The quest for justice, therefore, entails a continuous need to balance the procedural with the substantive. More than that, it is a continuous attempt to ensure that both are *integrated*, as far as that is humanly possible. Both *interact* with each other."<sup>195</sup> In this regard, the adversarial process has an important role to play in ensuring that all material evidence, facts and legal arguments are put before the judges concerned. If lawyers and litigants encounter problems in ensuring adequate preparation

---

Keong, Chief Justice of Singapore, Response By The Honourable The Chief Justice Chan Sek Keong: Opening of the Legal Year 2007 (Jan. 6, 2007) ¶¶ 3-5 (transcript available at <http://app.supremecourt.gov.sg/default.aspx?pgID=67>) [hereinafter Response by Chief Justice Chan 2007].

<sup>188</sup> See Abigail Ng & Eric Tin, *Leading Change in the Singapore's Magistracy: The Seven Working Precepts* (unpublished paper presented at the inaugural AIJA Magistrates' Conference, Melbourne, July 20-21, 2001), ¶ 12, available at <http://www.ajja.org.au/Mag01/Singapore.pdf>.

<sup>189</sup> See Waleed Haider Malik, JUDICIARY-LED REFORMS IN SINGAPORE: FRAMEWORK, STRATEGIES, AND LESSONS 76 (The World Bank, 2007).

<sup>190</sup> See SUBORDINATE COURTS ANNUAL REPORT 2005, *supra* note 49, at 5-6.

<sup>191</sup> Mavis Chionh, *The Development of the Court System*, in *ESSAYS IN SINGAPORE LEGAL HISTORY* 118 (Kevin Y. L. Tan ed., 2005).

<sup>192</sup> The pace of litigation ranked fifth (out of twelve categories, the last being the residual category of "Others") in terms of the reasons for lawyers who ceased practice in Singapore from 1999 to 2001. CENSUS 2001, *supra* note 21, at 154, 185.

<sup>193</sup> One senior lawyer was quoted as stating, "Justice delayed may be justice denied. But justice hurried is justice buried. You can't expect cuisine quality under fast food conditions . . ." Ong Soh Chin, *Singapore Lawyers – Up Close With 'A Most Naughty Profession'*, STRAITS TIMES, Feb. 13, 2006.

<sup>194</sup> See CIVIL JUSTICE IN SINGAPORE, *supra* note 68, at 141.

<sup>195</sup> *United Overseas Bank Limited v. Ng Huat Foundations Pte. Ltd.*, [2005] 2 Sing. L. Rep. 425, ¶ 8.

for hearings,<sup>196</sup> there is a danger that the judge (and, for that matter, justice) may be compromised due to the absence of proper evidence and legal arguments. This important issue was emphatically addressed by the present Chief Justice who stated recently that “[n]o litigant should be allowed to leave the courtroom with the conviction or feeling that he has not been given a fair hearing.”<sup>197</sup> Indeed, in the most recent Subordinate Courts Workplan, the Chief Justice has highlighted the need to broaden and deepen the development of the “law, practice and jurisprudence” of Singapore.<sup>198</sup>

From the perspective of this second procedural approach, the prognosis is generally positive in Singapore. While relator actions are not practical to vindicate the rights of the poor to access justice, *locus standi* rules are sufficiently liberal in Singapore, even in the absence of a constitutional right of access to justice. Representative actions may be used to reduce legal costs for each indigent litigant by pooling resources. With respect to applications for security for costs, there have been several positive statements by judges emphasizing the significance of access to justice in determining the outcomes of such applications. Indigent defendants may also be protected via court orders refusing to grant interim payments to plaintiffs. While procedural efficiencies of the judicial processes have reduced costs and delays for litigants as a whole, care must be taken not to allow such efficiency to supplant substantive justice for individual litigants.

### *C. Institutional Measures Have, to a Large Extent, Enhanced Access to Justice for the Poor*

The institutional (or organizational) approach examines fairly large-scale reforms of the Singapore judicial system in recent years. These reforms may involve economic measures as well as the types of procedural measures discussed in Parts II.A and II.B above. Indeed, the three approaches interact and overlap to a considerable extent. In this Section, the work of small claims tribunals, court technology, court mediations as well as

---

<sup>196</sup> It was reported that a survey of more than 100 law firms revealed that 70% of them faced problems preparing for civil court hearings that were brought forward. See Blochlinger, *supra* note 48, at 613 (citing Tan Ooi Boon, *Early Trial Dates “Not a Problem,”* STRAITS TIMES, Jan. 18, 1999).

<sup>197</sup> See The Honourable Chan Sek Keong, Chief Justice of Singapore, Keynote Address: Justice @ The Subordinate Courts: The New Phases of Justice, 15th Subordinate Courts Workplan 2006/2007, ¶ 27 (May 18, 2006), available at <http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=34949> (last visited Sept. 3, 2007).

<sup>198</sup> See The Honourable Chan Sek Keong, Chief Justice of Singapore, Keynote Address: Justice @ The Subordinate Courts: The Next Phase, 16th Subordinate Courts Workplan 2007/2008, ¶ 5 (Apr. 27, 2007), (transcript available at <http://app.supremecourt.gov.sg/default.aspx?pgID=2021>) [hereinafter Keynote Address 2007].



legal aid provision, pro bono work, and the judicial perspectives towards litigants in person will be discussed.

*1. Small Claims Tribunals Provide Cost-Effective Access to the Courts*

The aim of the Small Claims Tribunals Act<sup>199</sup> was to reduce costs and delays in Singapore and to that end, enhance access to justice for litigants with limited means. In this respect, the fees for lodging a claim at the Small Claims Tribunals (“SCTs”) are maintained at a relatively low level.<sup>200</sup> Further, the lodging of claims via the use of electronic forms can be accomplished expeditiously at SCTs.<sup>201</sup> In fact, the Honorable Chief Justice has indicated that, in the near future, the enforcement of SCT orders, currently enforceable as Magistrates’ orders, will be even further simplified.<sup>202</sup>

With respect to possible criticism that the potential for SCTs in enhancing access to justice for the poor litigant is limited by the jurisdiction stated in the SCT legislation, the fact is that since SCTs were first established, the cause of action jurisdiction has been increased. Initially, the SCTs had jurisdiction over claims such as disputes with respect to the sale of goods and provision of services.<sup>203</sup> Subsequently, tort claims resulting in property damage (excluding those arising from motor accidents)<sup>204</sup> and more recently, claims relating to disputes arising from any contract for the lease of residential premises not exceeding two years, were added to the list.<sup>205</sup> The monetary limits on the jurisdiction of the SCTs have also increased

---

<sup>199</sup> Small Claims Tribunals Act, ch. 308 (1998 Rev. Ed.) (Sing.) (This Act was most recently amended in 2005), available at <http://statutes.agc.gov.sg/> (search “308” in the “Go to Cap. No.” box; then follow the “Small Claims Tribunals Act” hyperlink).

<sup>200</sup> The fee is S\$10 for claim amounts up to S\$5000, S\$20 for claim amounts beyond S\$5000 but below S\$10,000. Where the claim is beyond S\$10,000 but not exceeding S\$20,000, the lodgment fee is 1% of the claim amount. See *The Singapore Subordinate Courts*, SUBORDINATE COURTS ANNUAL REPORT: THE NEW PHASES OF JUSTICE 42-43 (2006), available at <http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=4469> [hereafter SUBORDINATE COURTS ANNUAL REPORT 2006].

<sup>201</sup> This is in the form of a downloadable do-it-yourself kit for court users. See *Subordinate Courts of Singapore, Our Do-It-Yourself Kit*, <http://app.subcourts.gov.sg/sct/index.aspx> (last visited Sept. 3, 2007).

<sup>202</sup> SCT orders are currently enforced as Magistrates’ Orders which are more onerous. See Keynote Address 2007, *supra* note 198, ¶ 35.

<sup>203</sup> Small Claims Tribunals Act, ch. 308 (Act 27 of 1984 - Small Claims Tribunals Act 1984) (Sing.) The original enactment of this Act was in 1984.

<sup>204</sup> Small Claims Tribunals, ch. 308 (Act 17 of 1995 - Small Claims Tribunals (Amendment) Act 1995) (Sing.). The 1995 amendments were the second revisions to the Act following its original enactment.

<sup>205</sup> Small Claims Tribunals, ch. 308 (Act 43 of 2005 - Small Claims Tribunals (Amendment) Act 2005) (Sing.). The 2005 amendments are the most recent revisions to the Act and came into operation on February 15, 2006.

significantly in Singapore since the SCTs' establishment in 1984, from a mere S\$2000<sup>206</sup> to S\$10,000 (and where parties consent, up to a maximum amount of S\$20,000).<sup>207</sup> Such expansion of the SCTs' jurisdiction enables greater use of these tribunals as a cheaper and more user-friendly alternative forum to the civil courts.

As part of the Singapore judiciary's initiatives to enhance access to justice for the poor, in order to reduce the financial risks borne by litigants, SCTs are not allowed to award costs to the victorious party, only disbursements.<sup>208</sup> Moreover, once a claim has been lodged with SCTs, the plaintiff is generally foreclosed from bringing an action in the civil courts,<sup>209</sup> where the costs are likely to be higher.

One significant feature of SCTs is that no legal representation is allowed.<sup>210</sup> Whether the absence of legal representation might work to the relative detriment of the poor as against more well-off litigants depends, to a large extent, on the referee hearing the case. In particular, it depends on whether the referee would be proactive in ensuring that an indigent litigant is not unfairly prejudiced in a hearing against, for example, a large corporate body. According to a 1999 public survey, 98% of respondents agreed or strongly agreed that SCTs provide a low-cost forum for resolving small claims.<sup>211</sup> Notwithstanding such public sentiment, the Singapore judiciary continues to implement measures seeking to "equalize" this apparent asymmetry in litigation resources between litigants. For instance, the Subordinate Courts have recently provided user-friendly do-it-yourself ("DIY") kits on the process of SCTs to guide litigants through the judicial process.<sup>212</sup> To encourage public discourse on the subject, the Subordinate Courts also organized public talks on the work of the SCTs.<sup>213</sup>

The informal setting of a SCT proceeding is likely, as a whole, to promote greater access to justice for indigent litigants. The SCT processes enable the amicable settlement of disputes before the referee hears the

---

<sup>206</sup> Small Claims Tribunals Act, ch. 308 (Act 27 of 1984 - Small Claims Tribunals Act 1984) (Sing.).

<sup>207</sup> Small Claims Tribunals (Jurisdiction) Order (1997) (S. 321/97).

<sup>208</sup> Small Claims Tribunals Act, ch. 308, § 31 (Act 27 of 1984 - Small Claims Tribunals Act 1984) (Sing.).

<sup>209</sup> *Id.* § 6.

<sup>210</sup> *Id.* § 23(3).

<sup>211</sup> See *Survey On Public Attitudes and Perceptions of the Singapore Subordinate Courts*, 23 RES. BULL. 5 (Subordinate Courts of Singapore), Dec. 1999, <http://app.subcourts.gov.sg/Data/Files/File/Research/rb23.pdf> [hereinafter *Survey on Public Attitudes and Perceptions 1999*].

<sup>212</sup> See Subordinate Courts of Singapore, DIY Kit, available at <http://app.subcourts.gov.sg/sct/page.aspx?pageid=3946> (last visited Sept. 3, 2007).

<sup>213</sup> See SUBORDINATE COURTS ANNUAL REPORTS 2006, *supra* note 200, at 43.

evidence and decides the case based on its merits.<sup>214</sup> Also relevant, the referee in a SCT proceeding is not required to resort to strict legal forms, technicalities, or rules of evidence.<sup>215</sup> Bearing in mind that specific studies conducted appeared to show a general positive correlation between the level of education, income, and wealth in Singapore,<sup>216</sup> this absence of the requirement for formality and technical rules would, *ceteris paribus*, presumably enable poorer litigants without legal representation greater (or more equal) access to justice at SCTs.

In the initial years of establishing SCTs, the main users were corporate bodies to collect debts for unpaid goods and services.<sup>217</sup> The jurisdiction of the SCTs explicitly included claims in respect of fees and levies owed to certain statutory bodies.<sup>218</sup> One commentator expressed concern that consumers as a group might be sidelined and proposed a limitation on the number of claims filed by corporate bodies.<sup>219</sup> However, as noted by another commentator, the use of SCTs by corporate bodies for debt collection does not necessarily hinder access to justice for individual litigants (including the financially strapped) as long as the caseload is properly managed by SCTs.<sup>220</sup>

One of the possible criticisms of the SCTs' process that might bear on access to justice for the poor is that appeal rights for litigants are restricted. A right to appeal against the referee's decision to a higher court is not automatic.<sup>221</sup> It exists only where there is a question of law or if the dispute is beyond the jurisdiction of the SCTs.<sup>222</sup> In addition, the leave of the district court is required before an appeal may be taken.<sup>223</sup> This current restriction on the right of appeal is arguably in line with the aim of reducing litigation costs, namely, "to promote finality, and to avoid high costs in appealing that

---

<sup>214</sup> However, the referee would not have the benefit of professionally prepared legal arguments and research of counsel.

<sup>215</sup> Small Claims Tribunals Act, ch. 308, § 22 (1998 Rev. Ed.) (Sing.), available at <http://statutes.agc.gov.sg/> (search "308" in the "Go to Cap. No." box; then follow the "Small Claims Tribunals Act" hyperlink).

<sup>216</sup> See Ng & Yap, *supra* note 24; see also CReST Paper, *supra* note 25, at 2, 8-9.

<sup>217</sup> See Louis D'Souza, *An Experiment in Informal Justice: The Small Claims Tribunal of Singapore*, 3 SING. ACAD. L. J. 264, 274 (1991).

<sup>218</sup> Town Councils Act, ch. 329A, §§ 24H, 51 (2000 Rev. Ed.) (conservancy and service charges owing by owner or tenant of flat to Town Council); Housing and Development Act, ch. 129, § 65I(b) (2004 Rev. Ed.).

<sup>219</sup> Ho Peng Kee, *Small Claims Process: Some Reflections*, 26 Malayan L. R. 17, 26-27 (1984).

<sup>220</sup> Soh Kee Bun, *Small Claims Jurisdiction*, SING. J. LEGAL STUD. 389, 392 (1996).

<sup>221</sup> Small Claims Tribunals Act, ch. 308, § 38 (1998 Rev. Ed.) (Sing.), available at <http://statutes.agc.gov.sg/> (search "308" in the "Go to Cap. No." box; then follow the "Small Claims Tribunals Act" hyperlink).

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

may exceed in fact the sums in dispute . . . .”<sup>224</sup> A blanket right to appeal from the decisions of the referee at SCTs could result in increased costs, which the poor litigant can ill-afford.

Apart from SCTs, there are other avenues for resolving small claims which are relevant to the promotion of access to justice. One recent initiative has been the introduction of a new Expedited Claims Track for claims below S\$20,000.<sup>225</sup> These comprise debt claims, non-injury motor accident claims and claims for damages by victims of crime after the accused has been convicted.<sup>226</sup> The Honourable Chief Justice envisaged that, in the near future, non-injury motor accident cases below S\$1000 will be first heard by the Financial Industry Disputes Resolution Centre Ltd., before the commencement of proceedings at the Subordinate Courts.<sup>227</sup> The objective is to provide a “quick and affordable avenue for consumers who do not have the resources to go to court or who do not want to incur legal fees” and where no legal representation is allowed.<sup>228</sup>

## 2. *The Use of Technology in the Courts Has, to a Large Extent, Improved Access to Justice for the Poor*

To combat the problem of the poor suffering from “poverty of information,”<sup>229</sup> the courts have undertaken programs to promote legal literacy and training for members of the public through the use of technology. The advent of the internet enabled the dissemination of useful information about court services to the public. In this regard, the Singapore judiciary has utilized technology for public education purposes. The Subordinate Courts' e@dr website, for instance, provides public information on the appropriate dispute resolution forum, legal aid, and free services by the courts and volunteers.<sup>230</sup> Websites of various subordinate courts, such as the family court<sup>231</sup> and the juvenile court,<sup>232</sup> also provide public access to case law and law articles. More recently, the newly released court

<sup>224</sup> 80 SINGAPORE PARLIAMENTARY DEBATES REPORT, col. 1829 (Nov. 21, 2005).

<sup>225</sup> See Keynote Address 2007, *supra* note 198, ¶ 26.

<sup>226</sup> See *id.*

<sup>227</sup> *Id.* ¶ 32.

<sup>228</sup> *Id.* ¶ 33.

<sup>229</sup> Mauro Cappelletti, *Access to Justice as a Theoretical Approach to Law and a Practical Programme for Reform*, 109 S. AFR. L. J. 22, 29 (1992).

<sup>230</sup> See Singapore Subordinate Courts, eAlternative Dispute Resolution, <http://app.subcourts.gov.sg/e-adr/index.aspx> (last visited Sept. 3, 2007).

<sup>231</sup> See Singapore Subordinate Courts, Family Justice Division, <http://app.subcourts.gov.sg/family/index.aspx> (last visited Sept. 3, 2007).

<sup>232</sup> See Singapore Subordinate Courts, Juvenile Justice Division, <http://app.subcourts.gov.sg/juvenile/index.aspx> (last visited Sept. 3, 2007).

judgments have been posted on the websites of the Subordinate Courts<sup>233</sup> and Supreme Court<sup>234</sup> for easy public access. The Chief Justice has also announced that the Multi-Door Courthouse Justice Connect Information Centre will eventually assist litigants in person with court-related information.<sup>235</sup>

A substantial majority of Singaporeans have access to the internet at home, and the level of internet access is increasing.<sup>236</sup> Although some disparity exists in access to technology between high and low-income groups,<sup>237</sup> a large percentage of the low-income group is nevertheless able to access the internet and thus court-related information online.<sup>238</sup>

Within the Singapore judiciary, the various forms of technology such as videolink, computer-aided presentations, web-based filing for small claims tribunals and the electronic filing of court documents have been utilized to enhance efficiency in the courts.<sup>239</sup> Recently, a pilot project known as "E-PTC," which allows pre-trial conferences to be conducted by email, was launched.<sup>240</sup> The Applications and Cases E-Management System is being planned to allow for electronic monitoring of cases against the timelines set by the courts.<sup>241</sup> When implemented, this is expected to obviate the necessity of conducting pre-trial conferences if the parties have already complied with the stipulated timelines.<sup>242</sup>

The relationship between the use of technology and access to justice for the poor in Singapore raises the issue of whether computer-aided presentations privilege the well-off at the expense of the indigent litigant. First, it may be argued that computer aids are not evidence per se but merely serve as explanatory tools of the evidence adduced. Further, judges, as both triers of law and fact, should be capable of assessing the prejudicial effect of the material presented and disallow such materials if necessary.<sup>243</sup> As an additional safeguard, the person who prepared the demonstrative evidence

---

<sup>233</sup> See Subordinate Courts of Singapore, <http://www.subcourts.gov.sg/> (last visited Sept. 3, 2007).

<sup>234</sup> See Supreme Court of Singapore, <http://www.supcourt.gov.sg/> (last visited Sept. 3, 2007).

<sup>235</sup> See Keynote Address 2007, *supra* note 198, ¶ 46.

<sup>236</sup> See Lee Meng Chung, *Infocomm Usage by Households and Individuals 2000-2005*, STAT. SING. NEWSL., Mar. 2006, at 17, available at <http://www.singstat.gov.sg/pubn/ssn/archive/ssnmar2006.pdf>.

<sup>237</sup> See INFOCOMM DEV. AUTHORITY OF SING., ANNUAL SURVEY ON INFOCOMM USAGE IN HOUSEHOLDS AND BY INDIVIDUALS FOR 2006, at 8, 12 (2007), available at [http://www.ida.gov.sg/doc/Publications/Publications\\_Level2/20061205092557/hh06\\_public\\_v4.4.pdf](http://www.ida.gov.sg/doc/Publications/Publications_Level2/20061205092557/hh06_public_v4.4.pdf).

<sup>238</sup> See Ng & Yap, *supra* note 24.

<sup>239</sup> See Supreme Court of Singapore: Technology, <http://app.supremecourt.gov.sg/default.aspx?pgID=361> (last visited Feb. 29, 2008).

<sup>240</sup> See Response by Chief Justice Chan 2007, *supra* note 187.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> Evidence Act, ch. 97, § 68(A) (1997) (Sing.).

may be called to testify and be available for cross-examination as to the accuracy of the material.<sup>244</sup> In this regard, there are sufficient safeguards to ensure that the greater affordability of and accessibility to computer aids in the courtroom for the well-off would not unfairly prejudice litigants with limited means.

It should, however, be observed that the use of technology in the courts comes at a cost to litigants. The Electronic Filing System (“EFS”), initiated in 1997, enables the electronic filing and service of court documents<sup>245</sup> from the offices of law firms as well as the speedy transfer of files and electronic research. According to the Census of the Legal Industry and Profession, a majority of the lawyers and law firms surveyed in 2000 indicated that the EFS had in fact increased the overall costs to prepare and file court documents.<sup>246</sup> Further, pursuant to the Rules of Court, fees must be paid for the use of a technology court, its facilities, and the use and preparation of the computer presentation system.<sup>247</sup> The Supreme Court Practice Directions 2006 also stipulated fees for the use of specific court technology.<sup>248</sup>

Notwithstanding the above, the EFS is unlikely to prejudice the indigent litigant. This is because efforts have been undertaken by the Singapore Judiciary to reduce or waive fees for the use of technology. With respect to filing of court documents via EFS, indigent litigants can apply for the waiver or deferral<sup>249</sup> of EFS fees and charges.<sup>250</sup> EFS is in the process of transitioning into the Electronic Litigation Systems (“ELS”), which seeks to integrate the use of technology in the litigation process.<sup>251</sup> Although the focus of the ELS is to facilitate the disposal of cases via the use of technology, the EFS Review Implementation Committee, established in August 2003, recognized that for litigants in person, ELS should

---

<sup>244</sup> See Richard Magnus, *The Confluence of Law and Policy in Leveraging Technology: Singapore Judiciary's Experience*, 12 WM. & MARY BILL RTS. J. 661, 670 (2004).

<sup>245</sup> See Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 63(A)(2).

<sup>246</sup> The majority constituted 62% of the respondents surveyed; only 9% indicated a decrease in overall costs while 29% felt EFS had minimal impact on overall costs. See CENSUS 2001, *supra* note 21, at 5.

<sup>247</sup> Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 91(2).

<sup>248</sup> The fees for each day of use are as follows: Technology Court (S\$50), video-conferencing equipment installed in a technology court (S\$1000), Mobile Info-Technology Trolley (S\$100) and video-conferencing equipment from the mobile Info-Technology Trolley as well as telecommunication charges (actual cost) thereof. See Supreme Court Practice Directions, app. D(1-5) (2007).

<sup>249</sup> Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 91(5).

<sup>250</sup> See Rules of Court, 2006, R.5, Rev. Ed. (Sing.), app. B, ¶ 71(E)-(G); Rules of Court, 2006, R.5, Rev. Ed. (Sing.), Order 91(5).

<sup>251</sup> See generally SING. ACAD. OF LAW, ELECTRONIC LITIGATION IN SINGAPORE: A ROADMAP FOR THE IMPLEMENTATION OF TECHNOLOGY IN THE LITIGATION PROCESS (May 2005), available at <http://www.sal.org.sg/digitallibrary/Lists/LawNet%20Papers/Attachments/1/Electronic%20Litigation%20Roadmap%20Paper.pdf>.

nevertheless allow filing of paper documents.<sup>252</sup> In this regard, it added that the service bureau can provide services to litigants in person for a “reasonable fee.”<sup>253</sup>

### 3. *Court-Based Mediation as an Alternative to Costly Litigation and the Problem of Unequal Bargaining Power of Disputants*

The aims of the Alternative Dispute Resolution (“ADR”) movement in Singapore are generally to improve efficiency and reduce costs in the litigation processes as well as to promote less confrontational methods to dispute resolution.<sup>254</sup> Former Chief Justice Yong warned of the “intolerable” costs of dispute resolution and observed that ADR should help litigants to “resolve their conflicts fairly, at an *affordable cost*, and with due dispatch.”<sup>255</sup> The purpose of ADR is not to enhance access to justice for the poor alone, though the poor would be beneficiaries if the ADR mechanisms are implemented properly.

This Section focuses on one significant aspect of ADR, namely court-based mediation. For the purposes of this Article, the term “court-based mediation” refers to mediation that takes places in the courts after court proceedings have been initiated but before the matter proceeds to trial.<sup>256</sup> The mediation process serves as an alternative to full-fledged litigation that may be costly and time-consuming,<sup>257</sup> with the concomitant positive effects of access to justice for poorer litigants.

Court-based mediation is a significant feature of the Singapore judicial landscape. The e@dr Centre<sup>258</sup> of the Subordinate Courts supervises the use of mediation in civil cases. The Settlement Conference is presided

---

<sup>252</sup> *Id.* ¶ 9.3.1.

<sup>253</sup> *Id.*

<sup>254</sup> See Cappelletti, *supra* note 229, at 34 (referring to these alternatives to ordinary, contentious litigation as “coexistential justice”).

<sup>255</sup> See Chief Justice Yong Pung How, Supreme Court of Singapore, Address at the Official Opening of the Singapore Mediation Centre (Aug. 16, 1997), [http://www.mediation.com.sg/speech\\_1.htm](http://www.mediation.com.sg/speech_1.htm) (last visited Mar. 1, 2008) (emphasis added).

<sup>256</sup> Court-based mediation, as defined, excludes referrals by the courts to mediation conducted by bodies or institutions outside of the Singapore judiciary. For example, in criminal cases, a Magistrate of the Subordinate Courts is empowered to refer a private complaint to a mediator of the Community Mediation Centers for mediation. Community Mediation Centers Act, ch. 49(A), § 15 (1998). This is not court-based mediation for purposes of this Article. Court-based mediation also excludes mediation provided by government agencies and tribunals outside the Singapore Judiciary such as the Tribunal for the Maintenance of Parents. Maintenance of Parents Act, ch. 167(B), § 5(6) (1996).

<sup>257</sup> LIM LAN YUAN & LIEW THIAM LENG, COURT MEDIATION IN SINGAPORE 50 (1997).

<sup>258</sup> The e@dr Centre was formerly known as the Court Mediation Centre when it first began in 1994 and was renamed as the Primary Dispute Resolution Centre in 1998. It was subsequently renamed as the e@dr Centre in 2000. See *Lock Han Chng Jonathan v. Goh Jessiline*, [2007] 3 Sing. L. Rep. 51, ¶ 16.

over by a settlement judge who is expected to take a proactive mediation role in examining and suggesting possible solutions to the parties.<sup>259</sup> The family court, which is statutorily empowered to refer disputing parties, with their consent, to mediation,<sup>260</sup> provides in-house mediation and counseling services free of charge. One of the factors used by the family court in determining whether a case should proceed for maintenance mediation is the need to save litigation costs.<sup>261</sup> The recently-established Family Relations Centre of the family court has achieved a high rate of successfully mediated cases.<sup>262</sup> In addition, the Registrar of the small claims tribunals is obliged to invite disputing parties for consultation “with a view to effecting a settlement acceptable to all the parties.”<sup>263</sup>

For purposes of this Article, a relevant consideration is whether court-based mediation removes or reduces the inequality of resources of two litigants. First, mediation provides a less costly and faster method of resolving disputes.<sup>264</sup> Litigants are not charged hearing fees by the court for settlement conferences.<sup>265</sup> As noted above, the family court in-house mediation is free of charge. Second, mediation provides an informal and flexible process which is relatively more conducive for the litigant in person as compared to the traditional adversarial process. For litigants with legal representation, the courts’ practice is to require lawyers to inform and advise clients of the option of using mediation.<sup>266</sup> Notably, the settlement rate for civil cases commenced in the Subordinate Courts has been extremely high.<sup>267</sup>

---

<sup>259</sup> See Subordinate Courts of Singapore: Court Dispute Resolution, <http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=4419> (last visited Feb. 29, 2008).

<sup>260</sup> See Women’s Charter, ch. 353, § 50(1) (1997).

<sup>261</sup> Marvin Bay, Shobha G. Nair & Asanthi Mendis, *The Integration of Alternative Dispute Resolution Within the Subordinate Courts’ Adjudication Process*, 16 SING. ACAD. L. J. 501, 503 (2004).

<sup>262</sup> See *Overcoming Backlogs*, *supra* note 175, ¶ 64 (noting that 88% of the 1150 mediated cases at the Family Relations Centre reached settlement in 2006).

<sup>263</sup> Small Claims Tribunals Act, ch. 308, § 17(1) (1998 Rev. Ed.) (Sing.), available at <http://statutes.agc.gov.sg/> (search “308” in the “Go to Cap. No.” box; then follow the “Small Claims Tribunal Act” hyperlink).

<sup>264</sup> See 79 SINGAPORE PARLIAMENTARY REPORTS: ESTIMATES OF EXPENDITURE FOR THE FINANCIAL YEAR 1ST APRIL 2005 TO 31ST MARCH 2006, col. 1314 (Mar. 3, 2005).

<sup>265</sup> See Subordinate Courts of Singapore: Court Dispute Resolution International (CDRI), [http://app.subcourts.gov.sg/civil/faqs\\_print.aspx?pageid=8170](http://app.subcourts.gov.sg/civil/faqs_print.aspx?pageid=8170) (last visited Sept. 3, 2007).

<sup>266</sup> See SUBORDINATE COURTS PRACTICE DIRECTIONS, at 64-65, (2006 ed.), available at <http://app.subcourts.gov.sg/Data/Files/File/PracticeDirections/Master%20PD.pdf>.

<sup>267</sup> See 79 SINGAPORE PARLIAMENTARY REPORTS: ESTIMATES OF EXPENDITURE FOR THE FINANCIAL YEAR 1ST APRIL 2005 TO 31ST MARCH 2006, col. 1314 (Mar. 3, 2005) (stating that between 1994 and 2004, some 48,300 civil matters in the Subordinate Courts were mediated with an average settlement rate of over 94%).



However, difficulties arise with respect to litigants of markedly different bargaining power. Professor Fiss of Yale Law School cautions about the informational asymmetry of the economically poor, this group's greater inducement to settle to obtain payments, and its lack of resources to finance litigation which can adversely skew the settlement outcome.<sup>268</sup> Another commentator noted that mediation is generally not suitable in a case of great power inequality, as the stronger party lacks the incentive to compromise.<sup>269</sup> It is also plausible for inequity in financial power to be manifested in other forms, which can skew the settlement process, such as inequalities in literacy level and education. The above does not mean that it is impossible to find a mediated resolution between parties with vast disparities in financial prowess, but it does suggest that it might be more difficult to achieve appropriate mediated solutions.

Even in a case where there is no chasm in the parties' relative power, there are potential problems in ensuring that the parties' settlement have been reached voluntarily and based on the proper evidence and facts. Although control mechanisms within the judicial process guard against coercion of parties by the judge to settle without first hearing the evidence, as occurred in the English Court of Appeal decision of *Re R (A Minor)*,<sup>270</sup> this ultimately depends on whether litigants, particularly those who are not legally represented, are aware that the judicial conduct in question was improper.

Apart from questions about the effectiveness of court-based mediation for vulnerable parties (including those with limited means), the legal status of orders emanating from settlements brokered by a judge-mediator may also be uncertain. Such questions arose recently in relation to the status of the court orders of the settlement judges at the e@dr Centre. In *Lock Han Chng Jonathan v. Goh Jessiline*,<sup>271</sup> the Singapore High Court determined that the e@dr Centre was not a Subordinate Court vested with judicial power and instead was merely part of the organization of the Subordinate Courts.<sup>272</sup>

---

<sup>268</sup> See Richard L. Abel, *The Politics of Informal Justice, Volume 1: The American Experience*, cited in DISPUTE PROCESSES: ADR AND THE PRIMARY FORMS OF DECISION-MAKING 56, 58 (Michael Palmer & Simon Roberts eds., 2005).

<sup>269</sup> See LIM LAN YUAN & LIEW THIAM LENG, *supra* note 257, at 62.

<sup>270</sup> *Re R, (A Minor)* (1995) 1 W.L.R. 184, 191 (A.C.) (U.K.) (determining that a previous consent order, arrived at by the parties (who were legally represented) after a settlement, should be set aside and ordering a retrial). The decision cautioned that "great care must be taken not to exert improper or undue pressure on a party to settle when he or she is unwilling to do so. In particular, the judge must take great care not to give the impression that he has decided the issue without hearing the evidence and argument upon it finally and for all time." *Id.*

<sup>271</sup> *Lock Han Chng Jonathan v. Goh Jessiline*, [2007] 3 Sing. L. Rep. 51.

<sup>272</sup> *Id.* ¶ 18.

Thus, the Centre does not possess the requisite jurisdiction to make orders of court.<sup>273</sup> According to the decision, the settlement judge at the e@dr Centre is only entitled to record the settlement reached by parties and, as such, the parties must appear before a judicial officer of the Subordinate Courts to convert the recorded settlement into a court order.<sup>274</sup> Consistent with the High Court decision, the Subordinate Courts issued a circular in May 2007 to effect the procedure for the recording of consent judgments or orders.<sup>275</sup> However, the Singapore Court of Appeal subsequently reversed the High Court decision in October 2007 and stated that the Centre has the power to make court orders.<sup>276</sup> Detailed grounds of the decision are still pending from the Court of Appeal, but the Subordinate Courts have already revoked the above-mentioned circular.<sup>277</sup> Although the wheel seems to have turned a full circle, this episode has, subject to further clarification from the Court of Appeal, raised some doubts about the legal status of the orders arising from settlements made at the Subordinate Courts.

4. *The Singapore Judiciary Assists in Extending and Promoting the Provision of Legal Aid and Pro Bono Services and Takes Steps to Enhance Access to Justice for Litigants in Person*

This Section examines the work of government organs, private organizations and the judiciary in providing legal aid to litigants with limited means. Insofar as legal aid refers to the provision of legal assistance and advice by lawyers, it is expected that the bulk of the legal aid burden would fall on the shoulders of the state legal aid bodies and/or private lawyers, not judges. Judges, by virtue of their role as impartial arbiters and bearing in mind the potential perils arising from real or perceived conflicts of interests, are not expected to provide direct legal advice and assistance to litigants, particularly in an adversarial litigation system such as Singapore's. However, the judiciary can play a more *indirect* role in legal aid provision, pro bono work, and in providing assistance to litigants. The Singapore judiciary has taken positive steps in this regard but more can be done to enhance access to justice for litigants.

---

<sup>273</sup> *Id.* ¶ 19.

<sup>274</sup> *Id.* ¶ 28.

<sup>275</sup> See SUBORDINATE COURTS, REGISTRAR'S CIRCULAR, No. 1 (2007).

<sup>276</sup> See Wong Mun Wai, *Teacher Wins Appeal Against Insurer Over Legal Costs*, CHANNEL NEWSASIA, Oct. 3, 2007, available at <http://www.channelnewsasia.com/stories/singaporelocalnews/view/303590/1/.html>.

<sup>277</sup> See SUBORDINATE COURTS, REGISTRAR'S CIRCULAR, No. 2 (2007).

a. *The Singapore Judiciary's Roles in the Extension of Legal Aid and Promotion of Pro Bono Work*

State legal aid in civil cases is managed by the Legal Aid Bureau (“LAB”).<sup>278</sup> LAB conducts a means test as well as a merits test to determine eligibility. The means test is based on the disposable capital and income level of the applicant.<sup>279</sup> The merits test is based on the opinion of the LAB (consisting of the Director of LAB and at least two private practitioners) whether the applicant has “reasonable grounds” for taking or defending the action.<sup>280</sup> The Director possesses wide discretion to refuse granting legal aid.<sup>281</sup> Legal aid work is carried out by legal officers of LAB or by private lawyers assigned by the Director of LAB at rates below normal legal costs.<sup>282</sup> Outside of the state civil legal aid system, the Law Society<sup>283</sup> and

---

<sup>278</sup> See Legal Aid and Advice Act, ch.160 (1996); see also Legal Aid Bureau, *About Us*, <http://app.minlaw.gov.sg/lab/about.asp> (last visited May 17, 2008).

<sup>279</sup> See *id.* § 8(2); see also Legal Aid and Advice Act, ch. 160, Second Schedule, ¶ 1 [hereinafter Second Schedule]. The current threshold amounts are S\$10,000 (disposable capital) and S\$10,000 (disposable income) per annum. See Second Schedule, *supra*, ¶ 1. Where the applicant has disposable income in excess of S\$2000 per annum and disposable capital in excess of S\$2000, the Director may require the applicant to make contributions to the Legal Aid Fund pursuant to section 9(1) of the Legal Aid and Advice Act. See *id.* ¶ 3. “Disposable capital” refers to the property that the applicant for legal aid possesses or is entitled to minus the subject matter of the proceedings, his wearing apparel, tools of the trade, household furniture, his dwelling-house or Housing and Development Board home, savings of up to S\$30,000 if he is aged 60 years and above, and his monies in the Central Provident Fund (“CPF”). *Id.* ¶ 4. “Disposable income” is computed by taking the income of the applicant together with that of the spouse (if any) during the period of 12 months immediately preceding the date of application and *deducting* the following sums: S\$3500 per annum for each dependant, S\$4500 for the applicant, an amount not exceeding S\$1000 for rent, and the amount of the applicant’s contribution to the CPF. *Id.*

<sup>280</sup> Legal Aid and Advice Act, ch. 160, § 8(2)(a) (1996).

<sup>281</sup> *Id.* § 8(3) (stating where “it appears to [the Director] unreasonable that the applicant should receive [legal aid] in the particular circumstances of the case . . .”).

<sup>282</sup> The lawyer’s fee for “investigating and reporting or giving an opinion upon applications for the grant of legal aid or giving legal advice” is only S\$50 per hour for work done. See Rule 15(4), Legal Aid and Advice Regulations, 1 October 1995 (pursuant to Legal Aid and Advice Act (Cap. 160), § 23(1)). That sum is minimal compared to the median billable hours of lawyers as reported in the CENSUS 2001, which indicated the following rates: S\$200–S\$299 (for lawyers with fewer than three years of experience); S\$300–S\$399 (for lawyers with three to twelve years of experience); and S\$400–S\$499 (for lawyers with twelve or more years of experience). CENSUS 2001, *supra* note 21, at 4.

<sup>283</sup> Legal Profession Act, ch. 161, § 38(1)(f) (2001) (stating that under the Legal Profession Act, one of the objectives of the Law Society is to “protect and assist the public in Singapore in all matters touching or ancillary or incidental to the law”). One example of civil legal aid undertaken by the Law Society is the Project Law Help, set up in 2004 to “1) make provision[s] for a scheme by which legal practices and advocates and solicitors can provide pro bono non-litigation commercial legal advice to charities, non-profit organizations and voluntary welfare organizations; and 2) facilitate, promote, support and encourage a sustainable commitment to pro bono work within the legal profession in Singapore.” LawSociety.org, Project Law Help, <http://www.lawsociety.org.sg/lawhelp/lawhelp.asp> (last visited Feb. 29, 2008).

private organizations<sup>284</sup> in Singapore also provide legal aid in both litigation and non-litigation matters.

While the Singapore judiciary has no direct role in assigning counsel with regard to civil cases, it has nevertheless taken positive steps to encourage pro bono work amongst Singapore lawyers. The Singapore judiciary has sought to encourage pro bono work amongst the lawyers as a “professional value,” and in this regard, a judicial commissioner was appointed to chair the Singapore Academy of Law’s Committee on Pro Bono Work.<sup>285</sup> Notably, the Singapore High Court also assigns an advocate and solicitor to a vexatious litigant who is “unable on account of poverty” to engage a lawyer.<sup>286</sup> In addition, within the family court there are legal clinics staffed by volunteer lawyers who provide legal advice to persons in the low-income category.<sup>287</sup>

With respect to criminal cases, the Singapore government does not provide legal aid due to its perception of conflicts of interests and roles.<sup>288</sup> This gap is filled by the Law Society and private organizations providing legal assistance. As mentioned above, the Law Society is statutorily obliged to “make provision for or assist in the promotion of a scheme whereby impecunious persons on non-capital charges are represented by advocates.”<sup>289</sup> Private lawyers under the Criminal Legal Aid Scheme

---

<sup>284</sup> The Singapore Association of Women Lawyers (“SAWL”), an affiliate of the Singapore Council of Women’s Organizations (the national umbrella organization of women’s organizations), has conducted free legal counseling to members of the public since 1976. See SAWL.org, About Us, <http://www.sawl.org.sg/about.html> (last visited Feb. 29, 2008). This service is presently provided to the public in various community centers and the Family Court. *Id.* Other private organizations, such as the Catholic Lawyers Guild Singapore, also provide legal assistance to those in need. See <http://clgsingapore.com/> (last visited Feb. 29, 2008).

<sup>285</sup> See Chief Justice Chan Sek Keong, Singapore Supreme Court, Welcome Reference for the Chief Justice: Response By the Honourable Chief Justice Chan Sek Keong (Apr. 22, 2006), available at <http://app.supremecourt.gov.sg/default.aspx?pgid=1001&printFriendly=true>; see THE LAW SOCIETY OF SINGAPORE, LEGAL AID REVIEW COMMITTEE OF THE LAW SOCIETY OF SINGAPORE REPORT 4 (on file with the *Pacific Rim Law & Policy Journal*) [hereinafter LEGAL AID REVIEW REPORT]; see also Rajah & Tann, LLP, <http://www.rajahtann.com/RajahTannCMS/partners.aspx?pid=232> (last visited Feb. 29, 2008) (showing that Sundaresh Menon, the Judicial Commissioner previously appointed to chair the committee, has since left for private legal practice).

<sup>286</sup> See Supreme Court of Judicature Act, ch. 322, § 74 (1999).

<sup>287</sup> See The Subordinate Courts of Singapore Family Justice Division, Services: Overview, <http://app.subcourts.gov.sg/family/page.aspx?pageid=38742> (last visited May 4, 2008).

<sup>288</sup> See 76 SINGAPORE PARLIAMENTARY REPORTS, col. 715 (noting Associate Professor Ho Peng Kee’s comment that “I think I have explained why, philosophically, jurisprudentially, practically, it does not make sense for the State to both prosecute and then defend, in the public interest. Do not forget, when the State prosecutes, it goes through a very detailed process and the conclusion is that this person has done something which ought to be punished. The right hand says, ‘Let’s punish him.’ The left hand says, ‘Let’s get him out.’ So the two are being pulled apart.”).

<sup>289</sup> Legal Profession Act, ch. 161, § 38(g) (2001).

("CLAS") of the Singapore Law Society have been active in this regard.<sup>290</sup> A new pro bono service department has been set up by the Law Society to manage pro bono initiatives, including CLAS.<sup>291</sup> Lawyers from the Association of Criminal Lawyers,<sup>292</sup> a separate private entity, have also volunteered to provide pro bono assistance to accused persons. Insofar as the Singapore judiciary is concerned, the courts play a limited, yet important role, pursuant to the court rules in assigning lawyers to represent the accused under a capital charge.<sup>293</sup>

Litigants who cannot qualify for state legal aid and who are unable to obtain the services of a lawyer willing to take up a case on a pro bono basis are bereft of formal legal assistance unless they are willing and able to engage and pay a private lawyer. The Singapore lawyer is prohibited from entering into contingency fee agreements with clients,<sup>294</sup> notwithstanding that such agreements would enhance access to justice for persons of limited means.<sup>295</sup> Moreover, relaxing the current prohibition against contingency fees agreements between lawyers and clients could provide the flexibility which the legal aid system lacks, though contingency fees models admittedly have their fair share of obstacles to surmount before proper implementation.<sup>296</sup> Alternatively, the litigant can seek informal legal advice from professional lawyers without the benefit of formal legal representation in court. Another option which has not been pursued actively in Singapore is the extension of limited rights of legal representation to paralegals for simpler and cost-effective legal assistance for more routine matters. Currently, non-lawyers such as paralegals are prohibited by statute from providing legal advice to clients;<sup>297</sup> therefore any conferment of the rights of legal representation on the paralegal would require legislative reform. A further recourse would be to seek the assistance of McKenzie<sup>298</sup> friends or

---

<sup>290</sup> See generally Tracy Sua, *Calling All Lawyers: Legal Aid Scheme Needs Help*, STRAITS TIMES (Singapore) (Feb. 1, 2007) (noting that in 2006, CLAS had about 360 volunteers who handled 319 criminal cases, which was more than twice the number of cases handled in 2005).

<sup>291</sup> Law Society of Singapore: Pro Bono Services, [http://www.lawsociety.org.sg/pro\\_bono/index.asp](http://www.lawsociety.org.sg/pro_bono/index.asp) (last visited Feb. 29, 2008).

<sup>292</sup> The Association was registered on Aug. 3, 2004 under the Societies Act, ch. 311 (1985).

<sup>293</sup> Sing. Sup. Ct. (Crim. App.) Rules, R. 11(a) (1997).

<sup>294</sup> *Supra* note 22.

<sup>295</sup> See generally Chan, *supra* note 19; see generally Adrian Yeo, *Access to Justice: A Case for Contingency Fees in Singapore*, 16 SING. ACAD. L. J. 76 (2004).

<sup>296</sup> See Chan, *supra* note 19 (noting that contingency fees raise professional ethics issues, including the lawyer's susceptibility to conflicts of interests, and the lawyer's improper assessment of risks at the expense of clients).

<sup>297</sup> See Legal Profession Act, ch. 161, § 33 (2001) (providing sanctions for unauthorized persons who act as advocates and solicitors). Section 32 provides that an unauthorized person is one whose name is not entered in the roll of advocates and solicitors or does not have in force a practicing certificate. *Id.* at § 32.

<sup>298</sup> This term is based on the famous English case of *McKenzie v. McKenzie*, [1970] 3 All E.R. 1034.

lay assistants who may help to take notes during court proceedings and provide moral support. Like paralegals, these McKenzie friends and lay assistants in Singapore are not, as will be apparent below, entitled to provide the legal advice that is currently the sole domain of the qualified lawyer.

There is clearly a need to explore possible solutions to improve access to justice for the litigant who is ineligible for legal aid and is unable to afford legal representation. A Legal Aid Review Committee was set up recently under the auspices of the Law Society in order to seek inputs from, inter alia, the Singapore Academy of Law committee on pro bono work which was chaired by a judicial commissioner.<sup>299</sup> The Committee made new and significant recommendations, some of which have since been crystallized in a set of “Key Initiatives” issued by the Singapore Law Society. These “Key Initiatives” included proposals for the LAB means test criteria to be relaxed<sup>300</sup> and recommended that civil legal aid assistance be extended to the fortieth percentile of Singapore’s average household income.<sup>301</sup> This eventually led to a relaxation of the means test via an increase in the threshold income pursuant to recent amendments to the Legal Aid and Advice Act in 2007.<sup>302</sup> The Law Society had also recommended that law firms pledge to ensure that lawyers perform a minimum of twenty-five hours of pro bono work annually.<sup>303</sup> Coupled with the proposal to set up legal clinics by the LAB,<sup>304</sup> the recommendations represent important milestones in extending the reach of civil legal aid to Singaporeans. In conjunction, CLAS has significantly raised the individual income ceiling in respect of criminal cases.<sup>305</sup> These recent moves are indeed laudable.

In Singapore, it appears the strategy to increase access to justice for indigent litigants is two-pronged: the provision of state legal aid and the utilization of private pro bono services, moving in tandem.<sup>306</sup> The recent

---

<sup>299</sup> See LEGAL AID REVIEW REPORT, *supra* note 285, at 1.

<sup>300</sup> The qualifying monthly household income for a family of four of S\$1900 will be increased to about S\$2600. See Marcel Lee Pereira, *More People to Get Lawyers’ Advice in Civil Cases*, STRAITS TIMES (Mar. 3, 2007).

<sup>301</sup> See The Law Society of Singapore, *Key Initiatives Of The Law Society Following Recommendations Made By The Legal Aid Review Committee As Set Out In Its Report Dated December 8, 2006* (on file with the *Pacific Rim Law and Policy Journal*).

<sup>302</sup> Legal Aid and Advice Act, ch. 160, (Act 310 of 2007 – Legal Aid and Advice (Amendment) Act 2007). This amendment went into effect on July 1, 2007.

<sup>303</sup> According to the CENSUS 2001, the *average* time spent on pro bono work per lawyer from November 2000 to October 2001 was 32 hours and respondents considered the appropriate average time spent on pro bono work should be 46 hours. CENSUS 2001, *supra* note 21, at vii, 114.

<sup>304</sup> See Khushwant Singh, *Income Ceiling for Aid to be Upped to \$1700: Needy Get Better Access to Legal Aid for Civil, Criminal Cases*, STRAITS TIMES (Mar. 3, 2007).

<sup>305</sup> *Id.*

<sup>306</sup> This two-pronged approach is also consistent with the principle adopted by the Centre for Legal Process, Law Foundation of New South Wales that “[p]ro bono legal services complement, and do not

initiatives buck the trend in other developed countries where state legal aid is being reduced while pro bono work is encouraged to fill the gaps left by declining state legal aid.<sup>307</sup> Not surprisingly, this trend in other developed nations has not been well received by all quarters.<sup>308</sup> Singapore is experimenting with pro bono services during these initial stages and at least for now, pro bono work is only encouraged, rather than being mandatory.<sup>309</sup>

*b. Concrete Steps by the Singapore Judiciary to Enhance Access to Justice for Litigants in Person and Suggestions for Reform*

The increase in the number of litigants in person<sup>310</sup> in developed countries<sup>311</sup> should prompt us to closely examine the manner and extent of their access to the courts. Within the Singapore Subordinate Courts, the proportion of unrepresented litigants in maintenance cases and family violence cases respectively is very significant.<sup>312</sup> Furthermore, the percentage of unrepresented litigants in divorce cases is fairly high.<sup>313</sup> In view of the figures, it is therefore important to find out if more assistance, whether of a legal or non-legal nature, should be provided to such litigants in

replace, publicly funded legal services.” See LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES, *FUTURE DIRECTIONS FOR PRO BONO LEGAL SERVICES IN NEW SOUTH WALES* 8 (Access to Justice Series, 2002).

<sup>307</sup> See generally Francis Regan, *Legal Aid Without The State: Assessing The Rise of Pro Bono Schemes*, 33 *UNIV. B.C. L. REV.* 383 (1999-2000). For a view that the provision of pro bono work is itself vulnerable to market forces in the United States, see Rebecca L. Sandefur, *Lawyers’ Pro Bono Service and American-Style Civil Legal Assistance*, 41 *L. & SOC. REV.* 79 (2007).

<sup>308</sup> See e.g., Andrew Boon & Robert Abbey, *Moral Agendas? Pro Bono Publico in Large Law Firms in the United Kingdom*, 60 *MOD. L. REV.* 630, 634 (1997) (providing an example of a trend not well received). In the United Kingdom, the Law Society’s Pro Bono Working Party pointed out that *pro bono publico* must not be seen as a substitute for legal aid. *Id.*

<sup>309</sup> Cf. MODEL RULES OF PROF’L CONDUCT, R. 6.1 (2002) (stating “[e]very lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year . . .”).

<sup>310</sup> Commonly referred to as pro se litigants in the United States and unrepresented litigants in Australia.

<sup>311</sup> With respect to England, see George Applebey, *Justice Without Lawyers? Litigants in Person in the English Civil Courts*, 18 *HOLDSWORTH L. REV.* 109, 109-10 (1997); for Hong Kong, see RESOURCE CTR. FOR UNREPRESENTED LITIGANTS, REPORT OF THE STEERING COMMITTEE ON RESOURCE CENTRE FOR UNREPRESENTED LITIGANTS, ¶ 1.2, available at <http://rcul.judiciary.gov.hk/rc/eng/screport/RC%20Report.pdf> [hereinafter RESOURCE CTR. FOR UNREPRESENTED LITIGANTS].

<sup>312</sup> For 2005, the figures were 95.2% (maintenance cases: complainants only); 99.3% (maintenance cases: respondents only); 96.5% (family violence: complainants only) and 99.7% (family violence: respondents only) respectively. In 2006, the corresponding figures for the first three categories had increased slightly to 96.0%, 99.6% and 97.1%, while the figure for family violence: respondents only decreased marginally to 99.3%. The statistics have been kindly provided by the Subordinate Courts (on file with the author).

<sup>313</sup> In 2005, the percentages of unrepresented litigants were 39.1% (divorce: plaintiffs only) and 39.0% (divorce: defendants only). In 2006, the figures have increased to 43.2% and 43.1% respectively. The statistics have been kindly provided by the Subordinate Courts (on file with the author).

person to attain, as far as possible, equal access to justice vis-à-vis other litigants with legal representation.

An in-house study was conducted by the Subordinate Courts in 2005 on Parties in Person in both the family court and SCTs.<sup>314</sup> As the users of SCTs are not permitted legal representation to begin with, it might be more useful to focus on litigants in the family court who could have engaged lawyers but were not legally represented for various reasons. A majority of the litigants in person in the family court were in the low-income group.<sup>315</sup> Of the reasons cited for being self-represented, the majority (55%) said they could not afford a lawyer while a smaller proportion (29%) felt they did not require the services of a lawyer.<sup>316</sup> In terms of legal needs, the respondents ranked the need for information as follows: court procedures (52.1%), relevant law (29.6%), and court room formalities (22.9%).<sup>317</sup> The study also revealed a lack of awareness among the respondents concerning the LAB and the services and programs provided by the Subordinate Courts (such as the Multi-Door Courthouse, information brochures, the family court legal clinic and the judiciary website) to assist litigants in person.<sup>318</sup> However, for the litigants in person who have utilized the services, the majority response was that the court location, facilities, information, and services were accessible.<sup>319</sup>

To the author's knowledge, there has yet to be a significant study conducted on the litigation performance of litigants in person as compared to litigants with legal representation in Singapore. Nevertheless, research conducted in the United Kingdom and Australia suggests that litigants in person are likely to perform worse than their legally-represented counterparts in accordance with certain specified comparators. In the United Kingdom, a recent study by Moorhead and Sefton on four English courts, in first instance civil and family proceedings, indicated that litigants in person tended to commit more mistakes than litigants with legal representation and, further, that the litigants in person were more likely to make more serious errors.<sup>320</sup> The types of mistakes examined in the study included errors which are obvious from the file, which concern procedural and administrative

---

<sup>314</sup> See CReST Paper, *supra* note 25, at 4.

<sup>315</sup> The majority (68%) had monthly incomes of less than S\$1500 and the average income is S\$1075.

*Id.*

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> *Id.* The paper did not define the term "accessible."

<sup>320</sup> RICHARD MOORHEAD & MARK SEFTON, DEP'T OF CONST, AFF., LITIGANTS IN PERSON: UNREPRESENTED LITIGANTS IN FIRST INSTANCE PROCEEDINGS 151 (2005), available at [http://www.dca.gov.uk/research/2005/2\\_2005.pdf](http://www.dca.gov.uk/research/2005/2_2005.pdf).



matters (as opposed to an assessment of the merits of the case or the strategies adopted by litigants), fundamental misunderstandings of relevant issues, and failures to address essential aspects of a case.<sup>321</sup> The evidence also suggested that the litigants in person experienced more problems with documentation.<sup>322</sup> Another study conducted in Australia has focused on the inadequacies of litigants in person or, alternatively, the relative success rates in litigation, the likelihood of discontinuation of a case and the likelihood of having to pay the costs of the other party.<sup>323</sup>

Cognizant of the need to provide more assistance to litigants in person, the Subordinate Courts of Singapore have initiated a pilot Lay Assistant Scheme whereby law students<sup>324</sup> may provide non-legal assistance to litigants in person such as taking notes at hearings and performing administrative tasks.<sup>325</sup> The scope of the scheme is limited to litigants in person involved in maintenance cases pursuant to the Women's Charter.<sup>326</sup> The pilot project relates only to applications for the maintenance of the wife and children where: 1) one party is legally represented and 2) the litigant in person is unable to afford a lawyer and has chosen not to apply for one or

---

<sup>321</sup> *Id.* at 129.

<sup>322</sup> *Id.* at 139.

<sup>323</sup> See Helen Gamble & Richard Mohr, *Litigants in Person in the Federal Court of Australia and the Administrative Appeals Tribunal* (unpublished paper presented to the Sixteenth AIJA Annual Conference Melbourne (Sept. 4-6, 1998)), available at <http://www.uow.edu.au/law/crt/litigants.html>. This is a collaborative research project to evaluate the impact of litigants in person on the management of judicial business conducted jointly by the Federal Court of Australia, Administrative Appeals Tribunal, Centre for Court Policy and Administration, University of Wollongong and the Justice Research Centre in Sydney. *Id.*

<sup>324</sup> See Implementation of Lay Assistant Scheme (Pilot Phase), The Subordinate Courts of Singapore, <http://app.subcourts.gov.sg/family/newsdetails.aspx?pageid=27144&cid=27174> (last visited Sept. 3, 2007). These are law students from the Pro Bono Group, a student club set up under the Law Management Council, Law Faculty, National University of Singapore ("NUS"). The website states that this group of law students "strongly believe that volunteer legal service brings benefits to both the community and the volunteer, and we seek to spread this message to our peers by informing them about the *pro bono* movement in Singapore and to involve them in *pro bono* service." See NUS Pro Bono Group, About Us, <http://nusprobono.wordpress.com/about-us/> (last visited Sept. 3, 2007).

<sup>325</sup> See Ansley Ng, *Law Undergrads in Court's Pilot Scheme*, TODAYONLINE, Jan. 5, 2007. The Singapore Management University runs a compulsory two-week community service attachment program for its students. It is envisaged that the students from the School of Law may, under this program, pursue attachments with organizations involved in legal aid and pro bono work. See SINGAPORE MANAGEMENT UNIVERSITY, BACHELOR OF LAWS PROGRAMME, <http://www.law.smu.edu.sg/blaw/index.asp> (last visited May 4, 2008); see SINGAPORE MANAGEMENT UNIVERSITY, BACHELOR OF LAWS STUDENT HANDBOOK, <http://info.smu.edu.sg/courses/index.asp> (follow "LLB Handbook" hyperlink) (last visited May 4, 2008).

<sup>326</sup> See Implementation of Lay Assistant Scheme (Pilot Phase), The Subordinate Courts of Singapore, <http://app.subcourts.gov.sg/family/newsdetails.aspx?pageid=27144&cid=27174> (last visited Sept. 3, 2007); Women's Charter, ch. 353 (1997 Rev. Ed.) (Sing.) (This Act was most recently amended in 2005), available at <http://statutes.agc.gov.sg/> (search "353" in the "Go to Cap. No." box; then follow the "Women's Charter" hyperlink).

has not qualified for legal aid.<sup>327</sup> Participation in the Lay Assistant Scheme is voluntary.<sup>328</sup> The Subordinate Courts emphasize that the availability of a lay assistant is “not guaranteed and is not an entitlement.”<sup>329</sup> The website of the Subordinate Courts refers to a leaflet provided to the litigant in person which briefly explains the Lay Assistance Scheme. It states that the lay assistant may explain the hearing process to the litigant in person, assist in the preparation of paper work, and take notes at the hearing.<sup>330</sup> However, the lay assistant cannot, inter alia, give legal advice or address the court unless special permission is granted.<sup>331</sup>

Litigants are also entitled to seek the help of McKenzie friends in Singapore courts.<sup>332</sup> The English Court of Appeal recently stated that the purpose of allowing a litigant in person the assistance of a McKenzie friend is “to further the interests of justice by achieving a level playing field and ensuring a fair hearing.”<sup>333</sup> It is the litigant in person who possesses the right to assistance, as opposed to the McKenzie friend’s right to act as one.<sup>334</sup> In the case of *Wee Soon Kim Anthony v. UBS AG*, Kan J., citing English precedents<sup>335</sup> in support, regarded a “McKenzie friend” who takes his responsibilities seriously as a “help not only to the litigant who seeks his assistance, but also to the court.”<sup>336</sup> However, the learned judge cautioned that those who abuse the privilege by disregarding directions of the court, who pursue an agenda beyond helping the litigant, or who use the privilege as a backdoor to legal practice should be excluded.<sup>337</sup> In *Wee Soon Kim Anthony v. UBS AG*, the learned judge rejected the litigant’s application for a McKenzie friend as the person assisting the litigant in the case was intending

---

<sup>327</sup> See Implementation of Lay Assistant Scheme (Pilot Phase), The Subordinate Courts of Singapore, <http://app.subcourts.gov.sg/family/newsdetails.aspx?pageid=27144&cid=27174> (last visited Sept. 3, 2007).

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> See generally *Wee Soon Kim Anthony v. UBS AG*, [2003] 1 Sing. L. Rep. 833.

<sup>333</sup> In the matter of the children of Mr O’Connell, Mr Whelan and Mr Watson [2005] E.W.C.A. (Civ.) 759, at ¶ 128(1) (Eng.); see also Lord Woolf M.R. in *R v. Bow County Court, ex parte Pelling*, [1999] 1 W.L.R. 1807, 1825 (Eng.) (stating “the help which a McKenzie friend can properly give a litigant in person could assist in achieving equality between the parties . . .”) [hereinafter Pelling].

<sup>334</sup> Pelling, *supra* note 333, at 1824.

<sup>335</sup> *McKenzie v. McKenzie* [1970] 3 All E.R. 1034; *Regina v. Leicester City Justices ex. P. Barrow*, (1991) 2 Q.B. 260 (U.K.); Pelling, *supra* note 333.

<sup>336</sup> *Wee Soon Kim Anthony v. UBS AG*, [2003] 1 Sing. L. Rep. 833, ¶ 18; see also Office of the President of the Family Division [2005] 35 Fam. 405 (U.K.) (emphasizing in the guidance notes that the presumption in favor of McKenzie friends is a “strong” one).

<sup>337</sup> *Wee Soon Kim Anthony v. UBS AG*, [2003] 1 Sing. L. Rep. 833, ¶ 18.

to make the submissions to the court on behalf of the litigant in person as if he were an advocate, going beyond the role allotted to a McKenzie friend.<sup>338</sup>

The proper role and perspective of a judge in a court proceeding toward a litigant in person has also been judicially examined in Singapore.<sup>339</sup> The scope for direct legal assistance provided by a judge to a litigant in person in a court case is, not surprisingly, fairly restricted. In *Soong Hee Sin*, the court stated that the district judge has no duty to advise the accused of the significance or relevance of restitution in sentencing.<sup>340</sup> As such, the failure of the judge to do so did not vitiate his subsequent discretion in sentencing.<sup>341</sup> The learned judge explained that the role of a judge was to serve as “an independent and unbiased adjudicator” and hence a judge should not “proffer or extend his own legal advice” to the disputing parties.<sup>342</sup>

Although the judges should be impartial and refrain from providing legal advice to the litigants, the judiciary can do more to assist the litigants in person. This Article proposes that the judiciary should also, as a matter of practice, provide information directly to the litigants in person of the availability of legal aid prior to the hearing. Where the litigant in person does not qualify for legal aid, the judge should explain to the litigant in simple terms the main purpose of the hearing as well as some basic aspects of court procedures and formalities to level the playing field, where the other party is legally represented. In conjunction, the court administrators could also ensure that such information be made available to the litigants prior to the hearing to reduce the time spent by the judge to educate the litigant on court formalities and procedures.

Apart from the Lay Assistant Scheme and McKenzie friends, the Subordinate Courts have provided a court concierge service to assist members of the public with directions to court rooms and information on court schedules.<sup>343</sup> The Singapore Subordinate Courts have stated clearly on the judiciary website the roles and responsibilities of court staff with respect

---

<sup>338</sup> *Id.* ¶ 19. In the United Kingdom, the rights of audience of a person who is not an advocate and solicitor is provided according to the Courts and Legal Services Act 1990, § 27; see *Paragon Finance plc v. Noueiri* [2001] 1 W.L.R. 2357 at ¶¶ 54, 58 (Eng.) (addressing the judicial discretion to grant such rights on an exceptional basis).

<sup>339</sup> The author understands that the Singapore Subordinate Courts circulates an Equal Treatment Bench Guide—a set of internal guidelines which provides for the proper judicial approach towards litigants in person. This document, however, is not made available to the public and is currently undergoing review.

<sup>340</sup> *Soong Hee Sin v. Public Prosecutor*, [2001] 2 Sing. L. Rep. 253, ¶ 9.

<sup>341</sup> *Id.* ¶ 9.

<sup>342</sup> *Id.* ¶ 7. See also *Saravanan s/o Ganesan v. Public Prosecutor*, [2003] S.G.H.C. 273, ¶ 44; *Rajeevan Edakalavan v. Public Prosecutor*, [1998] 1 Sing. L. Rep. 815, ¶ 22.

<sup>343</sup> See Tracy Sua, *Need Help? Ask a Court Concierge*, STRAITS TIMES, Jun. 2, 2006.

to disputes commenced at the family court.<sup>344</sup> For example, court staff will help litigants find hearing lists and contact details for the Legal Aid Bureau and Law Society, but will stop short of providing legal advice and advice on the language used for court documentation.<sup>345</sup> Further, the court website provides useful information on the possible non-litigious avenues for litigants in person such as the Community Mediation Unit and the Ministry of Community Development, Youth, and Sports.<sup>346</sup> Additionally, it sets out the appropriate court behavior for litigants unfamiliar with court procedures and etiquette.<sup>347</sup> With respect to disputes dealt with by the SCTs, the Subordinate Courts have, as stated above, provided a user-friendly DIY kit on matters relating to filing claims at SCTs, form-filling procedures, simple checklists of items which serve as reminders for litigants, consultation/mediation processes, and preparations for court hearings.<sup>348</sup> For the benefit of litigants in person, in civil cases, the court provides a write-up outlining procedures from the commencement of a civil action to the court judgment and appeal.<sup>349</sup>

*c. Recommendations for Enhancing Access to Justice for Litigants in Person*

The Singapore judiciary has indeed taken concrete and extensive steps to enhance access to justice for litigants in person. Some comparisons may also be made with developments elsewhere as the Singapore judiciary continually seeks refinements and improvements.

In particular, the following initiatives, which have been implemented in other common law jurisdictions to augment access to justice for the poor, warrant attention. In Hong Kong, for instance, the judiciary is pro-active in consciously integrating and coordinating the provision of legal assistance by legal professionals, non-governmental organizations, and other bodies through a dedicated Resource Centre at the judiciary premises.<sup>350</sup> In Australia, the federal courts provide a Referral for Legal Assistance

---

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> *Id.*

<sup>348</sup> See Subordinate Courts of Singapore, Civil Justice Division, Processes, <http://app.subcourts.gov.sg/sct/index.aspx> (last visited Sept. 3, 2007).

<sup>349</sup> See Subordinate Courts of Singapore, Civil Justice Division, Conducting a Civil Trial in Person, <http://www.subcourts.gov.sg> (last visited Sept. 3, 2007).

<sup>350</sup> See generally RESOURCE CTR. FOR UNREPRESENTED LITIGANTS, *supra* note 311.

Scheme.<sup>351</sup> Each of the Australian courts has a list of pro bono practitioners who have agreed to provide pro bono work.<sup>352</sup>

Having a list of pro bono lawyers, at the convenient access of the litigant in person, would assist in saving time and costs in seeking lawyers. However, should the Singapore judiciary play a more pro-active role in providing a list of lawyers willing to provide pro bono work, there should be an explicit caveat that the pro bono lawyers are not the recommendations of the judges, but merely provided for informational purposes. Otherwise, there may be criticisms of judicial biases and conflicts of interests in the choice of lawyers in a particular case.

Apart from education on court procedures and formalities, transparency and public access to the proper judicial treatment towards litigants in person are also paramount. The Judicial Studies Board, the body established in 1979 and responsible for training judges in England and Wales, has drafted guidelines (the Equal Treatment Bench Book) on the proper approaches courts should adopt towards the poor and other disadvantaged litigants in proceedings—in short, equal access to justice.<sup>353</sup> For instance, the Bench Book encourages the court to clearly explain its decision and the reasons therefore to litigants in person, including drawing to their attention the question of costs and rights of appeal.<sup>354</sup> It urges judges not to see litigants in person as a problem for the judiciary, but rather to examine their needs.<sup>355</sup> The Bench Book focuses on unrepresented parties and the difficulties they face (such as unfamiliarity with the law and court procedures), and it provides guidance for judges to ensure a fair hearing.<sup>356</sup> One section on “Poverty and the county courts” provides information for the benefit of judges on the following: the work of the county courts in helping creditors to recover monies from debtors, the scale of poverty in Britain, the benefits system, the minimum wage and tax credits system, and mortgage repossession cases.<sup>357</sup> Thus, the English judges are expected to be aware of the circumstances facing financially disadvantaged litigants and the benefits available to such individuals. To reinforce the role poverty plays in

---

<sup>351</sup> See Federal Court of Australia, Federal Court Legal Assistance Scheme,

<http://www.fedcourt.gov.au/litigants/general/legalassistance.html> (last visited Sept. 3, 2007).

<sup>352</sup> See Federal Court of Australia, Getting Legal Help,

<http://www.fedcourt.gov.au/litigants/general/legalhelp.html#lawact> (last visited Sept. 3, 2007).

<sup>353</sup> See Judicial Studies Board, *Equality and Justice*, in EQUAL TREATMENT BENCH GUIDE, at Ch. 1.1 (Apr. 2007), available at <http://www.jsboard.co.uk/etac/etbb/index.htm> (follow “1. Equality and Justice” word document hyperlink).

<sup>354</sup> *Id.* ¶ 1.3.6.

<sup>355</sup> *Id.* ¶ 1.1.1.

<sup>356</sup> *Id.* ¶ 1.3.

<sup>357</sup> *Id.* ¶¶ 1.4.6, 1.4.7.

impacting access to justice, the Bench Book also makes ample reference to Community Legal Service (managed by the Legal Services Commission) to aid the poor in obtaining legal assistance as well as civil legal aid.<sup>358</sup> Judges are advised to adjourn or postpone proceedings in appropriate cases to enable the litigant in question to obtain legal assistance and to direct the unrepresented litigants to appropriate legal help as required.<sup>359</sup>

This Article proposes that the Singapore judiciary should examine the Equal Treatment Bench Book carefully (in particular, the portions on litigants in person and poverty issues) which may be adapted for use to improve access to justice for the poor in Singapore. In order to improve public awareness of the judicial roles, there should also be transparent access of the guidelines to members of the public. As discussed above, the Singapore judiciary has undertaken great efforts to allow greater public access to its court judgments and technological facilities. Access to judicial guidelines on the proper treatment of litigants in person and indigent litigants should follow as a corollary.

Finally, under this third institutional approach, this Part has examined the use of the SCTs' processes to reduce legal costs for litigants in person. Technological advancements within the Singapore judiciary have, on the whole, improved the administration of justice in Singapore, without compromising access to justice for indigent litigants. However, some areas still need improvement. While court-based mediation has enabled the resolution of a large majority of cases without the need for prolonged trials, questions still linger on the practicality of mediation in a situation of serious inequality of power (including financial prowess) between the litigants, such as where a large corporation is opposed by a financially disadvantaged litigant. Comparative developments in Hong Kong, Australia, and England can further assist the Singapore judiciary in refining approaches in the coordination of legal aid and pro bono work, as well as in the provision of assistance to litigants in person.

#### IV. CONCLUSION

Doing justice must count as at least one of the central tasks of the judiciary and the paramount objective of achieving equal access to justice cannot remain as mere rhetoric. In this regard, the scorecard is, on the whole, a positive one. The overall efforts of the Singapore judiciary in enhancing access to justice have been fairly comprehensive and proactive.

---

<sup>358</sup> *Id.* ¶ 1.4.9.

<sup>359</sup> *Id.* ¶ 1.3.4.

Despite the absence of a strong rights-based constitutional jurisprudence relating to access to justice, the concrete plans and programs implemented by the judiciary, coupled with significant public policy statements by its top echelons, speak volumes of the drive to attain greater access to justice for the poor. It is fair to say that, based on the three approaches examined above (economic, procedural and institutional), the judicial practice working towards access to justice in Singapore has surpassed its constitutional rhetoric.

However, the Singapore judiciary should attempt to further improve access to justice for the poor as recommended in Part III above. This task of maintaining and promoting access to justice for the poor is by no means an easy one. It requires continual and painstaking endeavors in close coordination and cooperation with efforts undertaken by other state organs such as the Legal Aid Bureau, the Law Society, and other private organizations, underscored by a strong desire to “do justice” for the poor.