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Civil Case Management in Singapore: of Models, Measures and Justice*

Mr. Foo Chee Hock

Introduction

The goals of all ASEAN member states are to “accelerate economic growth, social progress and cultural development” and “promote peace and stability” in the region.¹ To achieve these goals, the public will need to trust and respect the Judiciary. Such trust and respect can be lost if there are inefficient practices that result in delay in the courts.² The Singapore Judiciary is presently lauded for “its efficiency, its technological sophistication, its accessibility and the confidence of Singapore’s citizens and businesses in the system.”³ The World Economic Forum has also ranked Singapore first (out of 142 countries) in recognition of Singapore’s efficient legal framework for settling disputes.⁴ These accolades were only possible because of the collective efforts of all the relevant stakeholders to constantly improve our legal system.

The picture in Singapore slightly over two decades ago was different. Our courts suffered from delays in the hearing of cases, and a backlog of cases accumulated.⁵ One

* By Assistant Registrars Eunice Chua and Louis Ng. The main ideas in this paper were presented at the 11th ASEAN Law Association General Assembly Conference in Bali, Indonesia in February 2012 by the Registrar of the Supreme Court of Singapore, Mr Foo Chee Hock. The authors are grateful to the Registrar for sharing his insights and experience with them.

¹ The ASEAN Declaration (Bangkok Declaration), 8 August 1967.

² Sir Jack Jacob, in his book *The Reform of Civil Procedure Law and Other Essays in Civil Procedure*, (London Sweet & Maxwell: 1982), described the relationship between society, justice and civil procedure this way (p 2): “Let no one underestimate the deep and abiding sense of justice which permeates and inspires the ordinary people of the land. In all countries, in all cultures, in all ages, men have striven to find the pathway to justice on the basis of their own social order, and it must not be thought that we in our time have reached the end of the road. The search for justice, as the social ideal which mankind should seek to obtain, remains as elusive and controversial as it has ever been, yet it remains a dominant element in our society, an essential compound of the machinery of the State as well as the well-being of its citizens. It is against this background that the question of the reform of civil procedure law, at any rate in England, takes on an essentially pragmatic but potent aspect. The quest for justice is to be found primarily in its administration, which must itself reflect the social and cultural values of society and satisfy the needs of all its citizens.”

³ Waleed Haider Malik, *Judiciary-Led Reforms in Singapore: Framework, Strategies and Lessons*, (World Bank, 2007), p 1.

⁴ *Global Competitiveness Report 2011-2012*; available at <<http://reports.weforum.org/global-competitiveness-2011-2012/>> (last accessed 2 February 2012).

⁵ In fact, Malik notes that “the backlog problem was recognized as early as 1948” when the total number of civil actions increased from 650 in 1947 to 843 in 1948. “A report by the Singapore Criminal District and Police Courts in 1948 indicated that 1,983 outstanding cases and 3,000 to 4,000 summons

possible cause for these delays and the case backlog was the increasing volume and complexity of commercial cases coming to the courts arising from rapid globalisation in the late 1980s to the 1990s. As Waleed Malik, author of “*Judiciary-Led Reforms in Singapore: Framework, Strategies and Lessons*”, observed:

The backlog reflected the fact that, as Singapore’s economy and population grew, more laws were enacted to regulate business and individual activities. Increased business activity produced more business disputes, which found their way to the courts... the problems in Singapore’s judicial system multiplied at a critical time. In the late 1980s Singapore was rapidly emerging as a regional commercial hub. Foreign investment was pouring in, as confidence in the public sector infrastructure and the corruption-free government and business environment increased. Tourism was booming... Against that setting, it became clear that Singapore needed a more modern judiciary to keep pace with the country’s fast-moving socioeconomic development.⁶

Unfortunately, the then-existing system of judicial administration was not designed with the fast-changing landscape in mind and it struggled to cope. By the end of September 1990, “there were still 1,963 suits begun by writ and 108 admiralty suits which were awaiting hearing dates in the High Court”.⁷ Some of these cases had been set down for hearing as early as 1982. It was then estimated that up to five years was needed before these cases could be disposed of.⁸

To address the case backlog, the Singapore Judiciary implemented a host of measures in the 1990s aimed at eliminating “court congestion and excessive delay[s] in the resolution of ... cases”.⁹ These included initiatives in case management, change management, and procedural reforms. These phrases would be known and familiar to many. In Singapore’s search for solutions, we have come up with a unique “toolbox of

applications remained to be dealt with at the beginning of the year in the five district courts, seven police courts and one juvenile court”: see Malik, *supra* note 3, at p 15. See also Michael Khoo, “*Procedural Reforms on Court Congestion in Singapore*”, [1981] MLJ cxi-cxv and Errol Carl Foenander, “*Administration of Justice in the Subordinate Courts in the 1990s*”, (1990) 2 SAcLJ 209.

⁶ Malik, *supra* note 3, at pp 16-17.

⁷ See Yong Pung How, “Speech Delivered at the Chief Justice’s Welcome Reference: 8 October 1990”, in *Speeches and Judgments of Chief Justice Yong Pung How*, (Law & Tax: 1996), at p 26.

⁸ *Ibid.*

⁹ Fern M. Smith, “Case Management”, paper presented at the International Conference on ADR and Case Management, May 3-4, 2003, New Delhi, available at <http://lawcommissionofindia.nic.in/adr_conf/FERN%20SMITH%20-%20%20CASE%20MANAGEMENT7.pdf>, p 2 (last accessed 2 February 2012).

techniques”, which can be classified broadly into four categories, viz, diversionary, facilitative, monitoring and control, and dispositive measures.¹⁰ Before discussing these tools in detail, it would be useful to first explore some models of case management.

Case Management Models

“Active case management”¹¹ commonly refers to the various systems and processes employed by court or tribunal officials to assume close supervision and control¹² (both *via* judicial orders and administrative measures) “over the litigation process than is traditionally associated with common law litigation”.¹³ The following is a concise explanation of what “active case management” means:

[Active] case management is a comprehensive system of management of the time and events in a law suit as it proceeds through the justice system, from

¹⁰ See Chief Justice Chan Sek Keong, “Pursuing Efficiency and Achieving Court Excellence – The Singapore Experience”, a paper delivered at the 14th Conference of Chief Justices of Asia and the Pacific, 12-16 June 2011, Seoul, South Korea, at para 4, available at <<http://app.supremecourt.gov.sg/data/doc/ManagePage/3841/CJ%20Speech%20at%2014th%20Conferen%20of%20CJs%20of%20Asia%20and%20the%20Pacific.pdf>> (last accessed 2 February 2012). See also, *infra* note 46.

¹¹ Generally, the phrase “case management” has been used in writings on civil procedure reforms to describe the modern practice of closely supervising and controlling the litigation process. However, in order to differentiate between the classical “non-interventionist” model of managing cases and the modern models of close supervision and control, the phrase “active case management” will be used in this paper to describe the latter. Because the classical model still prescribes a role for the court in managing cases, albeit a minimal one, it should still be regarded as a system of case management.

¹² See *infra* note 13. In addition, the phrase “judicial control”, in the context of active case management by courts of law, has been used in the following two sources:

- i. Website of Ontario, Ministry of the Attorney General, *The History of Judicial Case Management in Ontario*, p 1, available at <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/chapter_4.asp> (last accessed 2 February 2012).
- ii. Steven S Gensler, *Judicial Case Management: Caught in the Crossfire*, p 70, available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1484&context=dlj&sei-redir=1&referer=http%3A%2F%2Fwww.google.com.sg%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dactive%2520case%2520management%2520system%2520process%2520control%2520court%26source%3Dweb%26cd%3D3%26ved%3D0CC4QFjAC%26url%3Dhttp%253A%252F%252Fscholarship.law.duke.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1484%2526context%253Ddlj%26ei%3DznEqT_XsGY_NrQfsw4zfDA%26usg%3DAFOjCNEajnRm5BUaRe4H9s49ytgCYfxEAQ%26cad%3Drja#search=%22active%20case%20management%20system%20process%20control%20court%22> (last accessed 2 February 2012).

¹³ See Case management and the regulation of mediation in Australia <http://en.wikipedia.org/wiki/Legal_case_management> (last accessed 20 February 2012). I.R. Scott attributes the historical development of active case management to the American legal scene of the early 1970s: see Scott, “Caseflow Management in the Trial Court” in *Reform of Civil Procedure* (Clarendon Press: 1995) (Zuckerman and Cranston ed), at p 2.

initiation to resolution. The two essential components of [active] case management systems are the setting of a timetable for pre-determined events and the supervision of the progress of the law suit through its timetable.¹⁴

Active case management covers a wide range of possible approaches and methods, such as harnessing the benefits of technology and information to “manage the life cycle of a case” more effectively.¹⁵ The goals of active case management include “timely disposition” of each individual case, “enhancement of the quality of the litigation process”, ensuring “equal treatment of all litigants” and instilling “public confidence in the court as an institution”.¹⁶ In order to achieve these goals, there must be proactivity, timeliness and fairness.¹⁷ From reflecting on the reforms introduced in Singapore and other jurisdictions, it is possible to distil a few possible case management models.

The classical model

At one end of the scale lies the classical “non-interventionist” model, in which the Judiciary plays no role or, at most, a very minor role in case management. In such a “somnolent regime”,¹⁸ the progress of cases is entirely dependent on the initiative of the parties or their lawyers.¹⁹ The court’s primary task is to decide the cases whenever they are ready for hearing. The Summons for Directions is probably the only time the court takes stock of preparations for trial.²⁰ As Lord Woolf explained:

The conduct of civil litigation in England and Wales, as in other common law jurisdictions, is by tradition adversarial. Within a framework of substantive and procedural law established by the state for the resolution of civil disputes, the main responsibility for the initiation and conduct of proceedings rests with the parties to each individual case, and it is normally

¹⁴ *Case Flow Management: An Assessment of the Ontario Pilot Projects in the Ontario Court of Justice*, A Report to the Courts Administration Division of the Ministry of the Attorney General, November 1993, p 4, cited in Lord Woolf, *Access to Justice: Interim Report to the Lord Chancellor on the civil justice system in England and Wales* (June 1995), p 30.

¹⁵ See generally, Legal case management, <http://en.wikipedia.org/wiki/Legal_case_management> (last accessed on 27 February 2012). Also see Chief Justice Chan Sek Keong’s paper delivered at the 14th Conference of Chief Justices of Asia and the Pacific (see *supra* note 10), para 1.

¹⁶ See Maureen Solomon and Douglas Somerlot, *Caseflow Management in the Trial Court: Now and for the Future*, (American Bar Association: 1987), p 5.

¹⁷ *Ibid.*

¹⁸ As described by Chief Justice Chan Sek Keong, *supra* note 10, at para 1.

¹⁹ *Ibid.*

²⁰ See, for instance, Singapore Rules of Court, (Cap 322, R 5, 2006 Rev Ed), O. 25.

the plaintiff who sets the pace. The role of the judge is to adjudicate on issues selected by the parties when they choose to present them to the court.²¹

This model is based on the premise that parties have the correct incentives to advance their cases, as they would be in the best position to know what they need.²² Essentially, the court sits as a passive umpire²³ and only intervenes on its own motion in the most egregious cases where justice delayed amounts to justice denied. Apart from such egregious cases, considerations of timeliness and efficiency do not generally come into play and the courts refrain from acting on their own motion to avoid being seen or perceived as behaving contrary to the “adversarial system” which, in common law jurisdictions at least, is regarded as the best means of achieving justice.

Under this classical model, case statistics are of little utility because no active case management is involved. Without a concrete and well-defined role for the court (and conceptual underpinning for such a role) in managing cases, there is no general need to have regard to timelines and disposal rates.

The facilitative model

Moving up along the scale, we have a system where the court plays a larger facilitative role in managing cases. Unlike the classical (non-interventionist) model, parties do not have free rein over the conduct of their disputes. Instead, the court will help the parties to crystallise the issues in dispute and provide a set of initial instructions

²¹ Lord Woolf, *supra* note 14, p 26.

²² See also Jacob, *The Fabric of English Civil Justice*, (Stevens & Sons: 1987), at pp 15-16: “My own belief is that [the adversarial system] reflects and responds to English cultural values, and conforms more closely with the English character of independence and “fair play”, and that therefore the common people of England would prefer to retain it rather than to adopt the inquisitorial system, its counterpart on the European continent. *They would, I believe, prefer that the conduct of their civil disputes should be under the control of the lawyers of their own choice rather than be managed by judges, however eminent and independent, who are in no way answerable to them.*” [Emphasis added.]

²³ The term “passive umpire” was used in the foreword of Marvin Frankel, “From Private Fights Toward Public Justice”, (1976) 51 N.Y.U.L. Rev. 516. Sir Jacob explained the first use of the term “umpire” to describe the role of the court through the following anecdote. See *supra* note 22, at p 9: “When dealing with the expected behaviour of a judge Pollock and Maitland contrasted the conduct of a man of science, carrying out research in his laboratory and using all appropriate methods for the solution of problems and the discovery of truth, with the role of the umpire in English games, who does not invent tests for the powers of the two sides but is there merely to see that the rules of the game are observed. They concluded that the strong inclination of English procedure was towards the second of these ideas, and they added, referring to the cricket match, “The judges sit in Court, not in order that they may discover the truth, but in order that they may answer the question, ‘How’s that?’ The English judge will, if he can, play the umpire rather than the inquisitor.””

to reduce unnecessary interlocutory proceedings and to minimise delays and their attendant costs. The aims of this model are typically achieved by holding one main pre-trial conference or case management conference²⁴ at a certain stage of the proceedings to establish a set of comprehensive timelines for completing various key pre-trial milestones. Thereafter, the onus is on the parties to abide by or enforce these timelines, as the case may be.

To our mind, there are at least two salient requirements for this facilitative model of case management to succeed. First, parties and their lawyers must have taken the initiative to prepare for trial before the first pre-trial conference. Only then will they be able to genuinely commit to a set of timelines and milestones at the first pre-trial conference. Accordingly, the lawyers must be given enough time to exchange information, obtain the necessary instructions and make sufficient preparations before the first pre-trial conference is held. Second, the facilitative model requires a culture where both lawyers and their clients prepare for and abide by the directions given at the first pre-trial conference as a matter of course. With such a culture in place, it would only be necessary to hold another pre-trial conference just before the trial to confirm that the parties are ready for trial because parties would have completed all the necessary pre-trial work in a timely manner. Without the need to regularly monitor the progress of a case, the number of pre-trial conferences can be kept very low and the case management process is then efficient and economical.

One advantage of this facilitative model is that it has room for flexibility. The parties are free to vary or modify any directions or timelines given at the first pre-trial conference, so long as the case is ready for trial at the stipulated date, usually, the date of the last pre-trial conference. On the other hand, absent the conditions that are vital to its success, the facilitative model would hamper case management efforts. Allowing ample time before convening the first pre-trial conference, may lead to parties delaying their preparations or doing nothing before the first pre-trial conference. This would then mean unnecessary delays that will detract from the “just, expeditious and economical disposal”²⁵ of proceedings.

²⁴ Henceforth, reference to “pre-trial conference” will include a case management conference or any other similar hearing, whatever they may be called in other jurisdictions.

²⁵ See Singapore Rules of Court, *supra* note 20, O. 25, r. 1 and O. 34A, r. 1.

The policeman model

A third model of case management is the “policeman model”, whereby the court will hold regular pre-trial conferences to monitor and give directions to ensure that cases move along at an acceptable rate. The court is given the broadest power and discretion in this regard.²⁶ The court can give directions on its own motion and impose harsh sanctions.²⁷ Before each pre-trial conference, lawyers and parties are expected to complete all the necessary pre-trial preparations required to move the case to the next milestone. At the pre-trial conference, lawyers will then have to update the court on the status of the proceedings, including what steps the parties have taken and what steps they will be taking. For example, lawyers would be expected to alert each other of possible interlocutory applications their clients wish to file and make attempts to resolve the issues before taking out a formal application, if that becomes necessary. As another example, after the exchange of affidavits of evidence in chief, parties would be expected to make arrangements for their expert witnesses to meet to crystallise or narrow the technical issues in dispute. By actively policing the progress of cases, the courts keep the lawyers and parties on their toes and ensure that there are no undue delays.

The “policeman” model has the merit of allowing the court to take preventive action against non-compliance with directions or take remedial steps when directions are breached, thereby minimising the chances of there being a delay in proceedings.

It may be noted that the extent of the court’s involvement in case management increases as we move from the classical model to the policeman model. Such active participation and intervention may be supported by the interest the public has in ensuring that justice is fairly and properly administered to ensure the timely disposal of cases. In this regard, the courts must not only bear in mind the interests of the parties to

²⁶ See, for instance, Singapore Rules of Court, *supra* note 20, O. 34A, r. 1.

²⁷ The most draconian sanctions would include dismissing an entire claim or striking out an entire defence. For instance, in Singapore, a claim may be dismissed or a defence struck out in its entirety if the failure to comply with court-given timelines is intentional and contumelious or contumacious: see *Syed Mohamed Abdul Muthaliff and another v Arjan Bhisham Chotrani* [1999] 1 SLR(R) 361, at [10], [12] – [14]. See also *Re Jokai Tea Holdings Ltd* [1992] 1 W.L.R. 1196, *Lea Tool & Moulding Industries Pte Ltd (in liquidation) v C.G.U. International Insurance Plc (formerly known as Commercial Union Assurance Co. Plc)* [2000] 3 SLR(R) 745 and *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117.

the litigation, but also have to ensure that the public interest is protected.²⁸ A case should not be allowed to remain dormant simply because it suits the parties that it be so. In the words of former US Federal Judge Fern M Smith, “[d]elays strengthen the incentives for breaking commitments, leading to more legal disputes – and so the cycle continues”.²⁹ By having the courts supervise cases closely, a culture of “optional compliance”³⁰ amongst lawyers (whereby lawyers do not treat court-imposed timelines seriously) may be discouraged. This prevents the “downward spiral of logjam”³¹ referred to by Judge Smith, which may otherwise arise because lawyers know that an action will generally only be struck out in the most extreme circumstances.³² Judicial “policing” helps to encourage the parties and the Bar to take responsibility for the conduct of their cases, not forgetting that compliance with timelines should be consistent with achieving substantive justice. The courts employing the policeman model of case management therefore pursue efficiency as a means of achieving justice in each individual case, rather than as an end in itself.

²⁸ Sir Jacob recognised this when he stated, *supra* note 2, at p 63, as follows: “What seems to be desirable, if not necessary, is to maintain a proper balance between the freedom of lawyers, especially the independence of the Bar, to conduct their cases as they think best in the interests of their clients and the duty of the court, as a matter of public interest and policy, to ensure that once its jurisdiction is invoked, the parties shall use its machinery fairly and faithfully and with due diligence and do not abuse its process.”

In this regard, the pertinent observations of the Court of Appeal in *Su Sh-Hsyu v Wee Yue Chew* [2007] 3 SLR(R) 673 at [39] (followed by Justice Chan Seng Onn in *Singapore Investments (Pte) Ltd v Golden Asia International (Singapore) Pte Ltd* [2009] 4 SLR(R) 291 at [3]), come to mind. In that case, it was held that, “[t]he present judicial policy in relation to the religious and punctilious observance of hearing dates and minimal tolerance for unmeritorious adjournments has not and will not be modified. This strict judicial policy remains a vital cornerstone that ensures the systematic administration of justice and maximises the optimisation of judicial resources to most advantageously serve the public interest. Court hearing days and time, being scarce and expensive resources, should not be wasted...”

²⁹ See *supra* note 9, p 1.

³⁰ See Leo, “Case Management – Drawing from the Singapore Experience”, *Civil Justice Quarterly*, Volume 30, Number 2, 2011, 143, at p 148.

³¹ See *supra* note 9, p 6.

³² See *Grovit v Doctor and others* [1997] 1 WLR 640; where it was held that inordinate and inexcusable delay in itself would not warrant striking out the entire action for want of prosecution although it may justify such a striking out on the basis of an abuse of process. See also *Birkett v James* [1978] A.C. 297, at p 318, where the House of Lords held that inordinate and inexcusable delay alone did *not* justify dismissal for want of prosecution; one had in addition to show that such delay would give rise to a substantial risk that it was not possible to have a fair trial of the issues in the action, or was such as was likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party.

This is not to say that there are no drawbacks to having extensive judicial involvement in case management. For one, active case management may result in an increase in the costs of litigation. As regular pre-trial conferences are conducted to monitor the progress of cases, regular trips by lawyers to attend before the court are necessitated. The policeman model may therefore be more suitable for jurisdictions contained within a smaller geographical area. Nevertheless, for jurisdictions with large geographical reach, technology (*eg*, video-conferencing for pre-trial conferences) may be employed to reduce the attendant costs. Another objection to extensive judicial intervention may be that a culture of dependence develops (instead of a culture of “optimal compliance”) such that lawyers only react to the court’s directions or timelines. This is a legitimate concern. Such passivity and torpidity must be discouraged as far as possible as it may distort the fundamental basis of the adversarial system. After all, the courts, litigants and their lawyers share the responsibility of case management – it should not and cannot be borne by any one party alone.

Differentiated Case Management model

The fourth case management model we would like to highlight is Differentiated Case Management (“DCM”). The DCM model recognises that different “cases differ substantially in the time required for a fair and timely disposition” and hence should be subject to different “processing requirements”.³³ Some cases may require only very little discovery, and, because of their straightforward nature, pre-trial applications can be resolved speedily.³⁴ Others may require the court to supervise the pre-trial process more extensively as there may be difficult issues relating to third party discovery, joinder of additional parties and exchange of forensic and expert evidence.³⁵ DCM therefore involves the “[c]reation of multiple tracks or paths for case disposition, with differing procedural requirements and timeframes geared to the processing requirements of the cases that will be assigned to that track”.³⁶

³³ See Sackville AO, “The future of case management in litigation”, (2009) 18 JJA 211, at p 213, and Caroline Cooper, Maureen Solomon, and Holly Bakke, *Differentiated Case Management: Implementation Manual* 21 (Washington, D.C: American University, 1993), p 1, available at <<https://www.ncjrs.gov/pdffiles/difm.pdf>> (last accessed 2 February 2012) (“Cooper, et al”).

³⁴ See Cooper, et al, *supra* note 33, p 1.

³⁵ *Ibid.*

³⁶ *Id.*, p 3.

A successful DCM model depends on “identify[ing] [the] factors that determine the levels of preparation and court intervention required” for each case and developing appropriate “track criteria”.³⁷ This can be achieved in various ways. One way is to differentiate cases based on the nature of the dispute in question, *eg* in Singapore, building and construction, intellectual property and information technology and admiralty cases are placed on special case management lists. Another way is to differentiate cases based on factors such as the quantum of the claim in dispute, the estimated “time required for preparation and disposition based on the need for forensic testimony or psychiatric evaluation, the number of parties, the amount of discovery anticipated”, or the special “characteristics of the claims and [defences] asserted”.³⁸ As an illustration, Singapore also places cases that are suitable for e-discovery³⁹ on a special case management list. It is possible to combine various approaches to differentiation as Singapore has done, but the key lies in the court’s ability to “distinguish the amount of preparation and judicial intervention needed to resolve each case fairly and expeditiously” based on its specific characteristics.⁴⁰

One advantage of the DCM model is that different categories of cases are given more individualised treatment.⁴¹ The early case screening that is an inherent characteristic of the DCM model additionally “enables a court to prioritize cases for disposition based on other factors such as ... age or physical condition of the parties or witnesses, or local public policy issues”.⁴² At the same time, the DCM model requires a greater investment of resources from both judicial officers and court staff, especially if cases are allowed to switch tracks mid-stream to better suit their changing needs.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Or electronic discovery, *i.e.*, a specialised regime for disclosure and inspection of electronically stored documents. See Supreme Court Practice Direction No. 3 of 2009, “Discovery and Inspection of Electronically Stored Documents”, available at <http://app.supremecourt.gov.sg/data/doc/ManagePage/temp/4nuc3c45i15f0f45uff11b55/practice_direction_no.3_of_2009.pdf> (last accessed 2 February 2012). With effect from 1 March 2012, the revised version of this Practice Direction can be found at Part IVA of the Supreme Court Practice Directions, available at <<http://app.supremecourt.gov.sg/data/doc/ManagePage/4122/Part%20IVA%20Practice%20Directions%20Amendment%20No%201%20of%202012%20CLEAN.pdf>> (last accessed 5 March 2012).

⁴⁰ See Cooper, et al, *supra* note 33, p 3.

⁴¹ *Id.*, p 1, 3, 4 and 9.

⁴² *Id.*, p 1.

We conclude this section with a few observations on case management in general. As may have been apparent, the first three models of case management described above are abstractions of reality, whereas the fourth model, *ie*, the DCM model, is a well-known framework. Although how any case management model is implemented necessarily differs across jurisdictions, in practice, it is likely that a particular judicial system will contain features of all the models identified above, in varying degrees. However, at the end of the day, the aim is to design a system that strikes the optimal balance between managing cases based on their individual characteristics⁴³ and utilising the limited resources that are available to the courts without compromising on substantive justice. The Singapore courts have strived to achieve this balance by, *inter alia*, dividing our caseload into categories.⁴⁴ In so doing, we hope to increase the chances of producing the best outcome for each case by assigning it to the correct track. Ultimately, however, each case will be given the required level of individualised treatment⁴⁵ when specific directions tailored to the case are given at pre-trial conferences.

Measures taken to Improve the Litigation Process in Singapore⁴⁶

⁴³ *Id*, pp 1 and 4.

⁴⁴ *Id*, p 9.

⁴⁵ Some jurisdictions employ an “individual docket system”. “The general principle underlying the individual docket system is that each case commenced in the Court is to be randomly allocated to a judge of the Court, who is then responsible for managing the case until final disposition. ... The Docket judge makes orders about the way in which the case should be managed or prepared for hearing”, and “may direct that special procedures be used, including case management conferences and referrals to mediation. ... [t]he Docket judge [also] monitors compliance with directions, deals with interlocutory issues and ensures that hearing dates are maintained”. “The individual docket system aims to encourage the just, orderly and expeditious resolution of disputes”. The Docket judge's familiarity with the case also “eliminates the necessity to explain the case afresh each time it comes before a judge”, resulting in savings in time and cost. See <<http://www.fedcourt.gov.au/how/ids.html>> (last accessed 2 February 2012).

Singapore employs a “selective docket system” in that *selected categories* of cases are identified for docketing before each *individual case* is assigned to a judge with experience and expertise in that specialist area of law (such as arbitration, building and construction, admiralty and intellectual property) that the particular case falls within. The assignment is the result of a considered decision as opposed to random allocation. See <<http://app.supremecourt.gov.sg/default.aspx?pgID=43>> (last accessed 30 April 2012).

⁴⁶ The specific measures detailed in this paper have previously been presented in Chief Justice Chan Sek Keong's paper delivered at the 14th Conference of Chief Justices of Asia and the Pacific (see *supra* note 10); and the speeches of Justice Judith Prakash, “Making the Civil Litigation System more efficient”, delivered to the delegates of the International Bar Association Conference in Singapore on 17 October 2007 and “Making the Civil Litigation System more efficient”, delivered to the delegates at the Asia Pacific Judicial Reform Forum Round Table Meeting in Singapore on 21 January 2009.

Against this backdrop, we will now discuss some of the specific measures that Singapore has employed to overcome the problem of backlog and enhance the existing efficiencies in our litigation process.⁴⁷ These measures may be broadly divided into four categories: diversionary, facilitative, monitoring and control, and dispositive.⁴⁸ A graphical representation of our corporate toolbox of techniques may be found at *Annex A*.⁴⁹ At this juncture, however, it is important to highlight that Singapore's approach is but one possible approach towards solving the problem of case backlog. Any reform must be grounded in the local legal culture and socio-economic environment. In the case of Singapore, the Judiciary led the reforms but chose to do so in an incremental manner that was targeted at achieving desired practical outcomes. Other jurisdictions may well find a different path that will suit their needs and address their particular difficulties.

Diversionary measures

The first tool in Singapore's toolbox may be described as diversionary simply because the aim is to divert disputes from full-blown litigation. In brief, this is achieved through the use of, *inter alia*, alternative dispute resolution ("ADR"), pre-action protocols and extra-judicial resources.

Singapore actively supports and promotes the use of ADR for a variety of reasons, chief of which is that certain disputes are more appropriately resolved in alternative fora where outcomes can be achieved that go to the heart of the parties' dispute. Additionally, even if ADR does not result in a full and final settlement of all the disputes between the parties, the process on its own would still have benefited the parties because it may have narrowed the disputed issues, compelled parties to consider their options and alternatives (including whether the possible benefits of pursuing litigation would outweigh the costs) or, at the very least, allowed for some venting of pent-up emotions.

When it comes to arbitration, the Singapore courts have developed a jurisprudence that, on the whole, supports arbitration by giving full effect to party

⁴⁷ See Annex of Chief Justice Chan Sek Keong's paper delivered at the 14th Conference of Chief Justices of Asia and the Pacific (see *supra* note 10).

⁴⁸ See *supra* note 46.

⁴⁹ See *supra* note 47.

autonomy and keeping curial intervention with arbitration proceedings to a minimum.⁵⁰ In addition, bodies, such as the Singapore International Arbitration Centre, exist to promote and encourage arbitration both locally and internationally, and other bodies, such as the Singapore Institute of Arbitrators, focus on promoting domestic arbitration.⁵¹ The growth of arbitration as a viable ADR process was further boosted by the launch in 2009 of Maxwell Chambers, the “world’s first integrated dispute resolution complex housing both best-of-class hearing facilities and top international ADR institutions”.⁵²

As for mediation, the Singapore Mediation Centre (“the SMC”) was established in 1997 to provide and promote mediation services. It is currently located in the Supreme Court building, which has the advantage of allowing parties to meet in a centrally-located and neutral venue. The court may, in exercising its discretion as to costs, take into account the parties’ conduct in relation to any attempts to resolve the matter by mediation or other means of dispute resolution.⁵³ In the Singapore Supreme Court, our practice during pre-trial conferences is to actively encourage parties to attempt mediation in appropriate cases, and to give a reasonable opportunity and timeframe for parties to do so. In particular, our experiences suggest that cases involving family law issues (such as division of matrimonial property, maintenance and custody) or which have a relational element (such as commercial or other disputes between relatives, business partners or parties with a pre-existing relationship) may be appropriate for encouraging mediation.

ADR is promoted just as vigorously in the Subordinate Courts of Singapore. In May 2010, the Subordinate Courts issued a Practice Direction (“PD”) to encourage

⁵⁰ See the Singapore Court of Appeal decisions in *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 and *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] 2 SLR(R) 565. In addition, see the Court of Appeal decision of *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305 where an arbitral award was set aside on the facts of the case, and also the decision of *AJU v AJT* [2011] 4 SLR 739.

⁵¹ See Justice Judith Prakash’s paper, “Making the Civil Litigation System more efficient”, delivered to the delegates at the Asia Pacific Judicial Reform Forum Round Table Meeting in Singapore on 21 January 2009 (*supra* note 46), para 13. For the SIAC, see <<http://www.siarb.org.sg/>> (last accessed 2 February 2012).

⁵² See the website of Maxwell Chambers, <<http://www.maxwell-chambers.com/>> (last accessed 2 February 2012).

⁵³ See Singapore Rules of Court, *supra* note 20, O. 58, r. 5(c).

greater use of ADR.⁵⁴ This PD requires all parties to submit an ADR status form to the court at the Summons for Directions stage. Thereafter, the Subordinate Courts will make a recommendation on the most appropriate form of ADR for the case in question, be it mediation, arbitration, neutral evaluation⁵⁵ or adjudication. The effect of the ADR status form and the court's recommendation is to facilitate the parties' serious consideration of ADR, although the ultimate decision on whether or not to attempt ADR remains with them. If the parties decide on attempting mediation, this may be conducted by a judge from the Subordinate Courts, thus saving time and costs for the parties. It has been observed that since the implementation of this PD, the number of cases referred to court mediation from pre-trial conferences has more than doubled.⁵⁶

In addition, the Subordinate Courts of Singapore have instituted pre-action protocols for motor accident cases (whether involving personal injuries or not)⁵⁷ and medical negligence claims. Because these categories of cases often require expending a large amount of resources that may well be disproportionate to the value of the dispute, the pre-action protocols help the parties to save time and costs by stipulating a series of steps that must be taken before a case is filed in court. Going through the steps will

⁵⁴ ePractice Direction No. 2 of 2010, available at <http://app.subcourts.gov.sg/Data/Files/File/PracticeDirections/ePD2of2010.pdf> (last accessed 2 February 2012).

⁵⁵ Neutral evaluation was introduced in the Singapore Subordinate Courts in 2011 via Registrar's Circular No. 3 of 2011: <http://app.subcourts.gov.sg/Data/Files/RC3%20of%202011.pdf> (last accessed 2 February 2012). Neutral evaluation is a structured but informal proceeding where parties (and their legal advisers) will present key evidence, whether by oral or written submissions or a combination of both, to one another and an evaluator. The evaluator will consider the submissions, review the case and provide an assessment of its merits or an estimate of the parties' likelihood of success at trial. Parties may then use this evaluation as a basis for settlement negotiations. The evaluation is, by default, not binding on the parties. However, parties may choose to record a consent judgment to give final and binding effect to any settlement reached. See [http://app.subcourts.gov.sg/civil/print.aspx?pageid=54106#Public_NE_\(1\)What%20is%20NE](http://app.subcourts.gov.sg/civil/print.aspx?pageid=54106#Public_NE_(1)What%20is%20NE) (last assessed 2 February 2012). See also Quek and Seah, "Finding the Appropriate Mode of Dispute Resolution: Introducing Neutral Evaluation in the Subordinate Courts", Singapore Law Gazette, November 2011, available at http://app.subcourts.gov.sg/Data/Files/File/cdr/Neutral_Evaluation_article.pdf (last accessed 2 February 2012).

⁵⁶ See *Subordinate Courts Annual Report 2010: Access to Quality Justice*.

⁵⁷ The pre-action protocol for motor accidents involving personal injuries was introduced, and the pre-action protocol for non-injury motor accident cases was amended, via ePractice Direction No. 2 of 2011, available at <http://app.subcourts.gov.sg/Data/Files/ePD%20of%202011.pdf> (last accessed 2 February 2012). All the pre-action protocols used in the Subordinate Courts can be found in the Subordinate Courts Practice Directions, available at http://app.subcourts.gov.sg/Data/Files/File/PracticeDirections/MasterPD_31082011.pdf (last accessed 2 February 2012).

enable parties to obtain all the information that they will need to make a considered decision as to whether or not to pursue litigation and will improve the chances of settlement through ADR.

Apart from the courts, other extra-judicial bodies exist as avenues for ADR. One such body, initially designed to handle disputes between consumers and financial institutions (including insurance companies and banks), is the Financial Industry Disputes Resolution Centre (“FIDReC”). More recently, FIDReC has also mediated motor accident cases where no personal injuries are involved. For the financial year 2010/2011, FIDReC successfully resolved a total of 1,743 cases, thus diverting this substantial caseload away from the courts.⁵⁸ New and targeted mediation schemes have also been developed for certain types of disputes. For example, the SMC has separately collaborated with the Ministry of Health, the Singapore Medical Council, the Council for Estate Agencies, and the Council for Private Education to establish bespoke mediation schemes.⁵⁹ This array of schemes enables individualised treatment of disputes and facilitates their efficient and effective disposal without any increase in the caseload of the courts.

Facilitative measures

One step that any Judiciary may take in order to prevent or ameliorate the problem of a backlog of cases is to improve the “supporting infrastructure” for disposing of cases.⁶⁰ This may be done, *inter alia*, by allocating more resources to case management or streamlining certain court processes.⁶¹

One necessary measure that Singapore undertook to combat the backlog problem in the early 1990s was to appoint more adjudicators. The importance of having

⁵⁸ See FIDReC Annual Report 2010/11, *Resolving Financial Disputes since 2005*, available at <http://www.fidrec.com.sg/website/annualreports/FIDReC_2010ARFinancial.pdf> (last accessed 2 February 2012).

⁵⁹ Welcome Address by Justice Belinda Ang, Chairman, Singapore Mediation Centre (“SMC”) at SMC’s Annual Appreciation Lunch & Launch of the Singapore Mediation Charter (9 Sept 2011) at para 9, available at <<http://www.sal.org.sg/Lists/Speeches/DispForm.aspx?ID=92>> (last accessed 2 February 2012).

⁶⁰ See Justice Judith Prakash’s paper, “Making the Civil Litigation System more efficient”, delivered to the delegates at the Asia Pacific Judicial Reform Forum Round Table Meeting in Singapore on 21 January 2009 (*supra* note 46), para 20.

⁶¹ *Ibid.*

a sufficient number of judges to hear the usual quantity of cases filed in court each year goes without saying. Temporary increases in caseload, however, may not warrant a permanent increase in the size of the Judiciary. In order to “facilitate the disposal of business in the Supreme Court”,⁶² Judicial Commissioners were appointed to the Bench. These Judicial Commissioners are senior lawyers appointed for fixed terms. They may come from the Bar, academia, or the Singapore Legal Service. During their terms of appointment, they may exercise the powers and perform the functions of a Judge of the High Court in respect of such classes of cases as the Chief Justice may specify.⁶³ After which, they may return to their previous careers.

An optimal-sized team of administrative staff is equally important as the availability of Judges and judicial officers. To this end, in 2011, the Supreme Court of Singapore successfully implemented a new scheme, called the Case Management Officer Scheme (“CMOS”),⁶⁴ as part of its continuing drive to achieve excellence in court administration. Under CMOS,⁶⁵ court staff handle all matters relating to the cases assigned to them, from the time the cases are commenced to the time the cases are disposed of. Previously, their role was limited to dealing with specific and discrete processes at one particular stage of a case (*eg*, issuing court documents or checking draft orders of court). The Case Management Officers are now able to provide better service to the public because they are familiar with the overall progress and life cycle of the cases assigned to them. They are also involved in tracking timelines, ensuring compliance with court orders and directions, providing case updates and lending administrative support to move proceedings along.⁶⁶ In the end, the Supreme Court Registry’s capability to meet the increasingly demanding information requirements of modern times is strengthened.

⁶² Constitution of the Republic of Singapore, Art 94(4).

⁶³ *Ibid.*

⁶⁴ See *Singapore Supreme Court Annual Report 2009*, Foreword by the Registrar, available at <<http://app.supremecourt.gov.sg/data/doc/ManagePage/44/AnnualRpt2009/forewordRegistrar.html>> (last accessed 2 February 2012) and *Singapore Supreme Court Annual Report 2010*, Foreword by the Registrar, available at <http://app.supremecourt.gov.sg/data/doc/ManagePage/44/AnnualRpt2010/FW_r.html> (last accessed 2 February 2012).

⁶⁵ See para 25 and footnote 22 of Chief Justice Chan Sek Keong’s paper delivered at the 14th Conference of Chief Justices of Asia and the Pacific (see *supra* note 10).

⁶⁶ *Ibid.*

CMOS reflects a paradigm shift in how cases are managed operationally. It required the Singapore Supreme Court to invest much time and resources to develop the skills of staff and to change their mindsets so that they are able to perform all aspects of case management rather than be focused on a single aspect. In 2010, a total of 35 Case Management Officers each received an average of 78.4 hours of customised training.⁶⁷ E-learning was used to supplement traditional channels of training to maximise available resources. Today, staff competency levels have reached a new high due to the priority accorded to staff re-training and development when implementing C-MOS.

The rules governing court procedure must also be designed to facilitate the timely disposal of cases. Unlike the United Kingdom, the applicable rules in Singapore were not reformed in one “Big Bang”.⁶⁸ Instead, numerous incremental changes were introduced from 1990 to remove certain outdated processes, streamline other processes and generally improve the efficiency and effectiveness of the Rules of Court.⁶⁹ For instance, we introduced pre-trial conferences as a forum for dealing with case management issues.⁷⁰ To take another example, we also amended the Rules of the Supreme Court (as they were known then) to require that parties in civil trials adduce their evidence-in-chief by way of affidavits.⁷¹ This initiative takes the form of witness statements in some common law jurisdictions. The use of such affidavits cuts down considerably the time required for trials because cross-examination can commence almost immediately after the trial begins. The requirement for affidavits of evidence-in-chief is one instance of the increasing significance of written advocacy in modern

⁶⁷ See *Singapore Supreme Court Annual Report 2010*, Foreword by the Registrar, pp 6-7, and Case Management Officer Scheme, p 42, available at <<http://app.supremecourt.gov.sg/data/doc/ManagePage/44/AnnualRpt2010/index.html>> (last accessed 2 February 2012).

⁶⁸ That said, there were some fairly significant amendments, such as the reduction of modes of commencing a case from four to two, the introduction of the Electronic Filing System and the merger of the Rules of the Supreme Court with the Rules of the Subordinate Courts in 1996 (re-enacted as the Rules of Court).

⁶⁹ Between 1970 and 1989, Singapore amended the Rules of the Supreme Court (as it was known before 1996) 3 times. However, from 1990 to February 2012, the Rules of the Supreme Court and, later, the Rules of Court (the Rules of the Supreme Court was re-enacted as the Rules of Court after it was merged with the Rules of the Subordinate Courts in 1996) were amended 55 times. See also Pinsler, *Civil Justice in Singapore: Developments in the course of the 20th century*, (Butterworths Asia: 2000), pp 503-534.

⁷⁰ For further elaboration on the use of pre-trial conferences in Singapore, see the subsection entitled “Monitoring and control measures”, below.

⁷¹ See Singapore Rules of Court, *supra* note 20, O. 38, r. 2.

litigation.⁷² In the Singapore High Court, not only are affidavits of evidence-in-chief required to be filed and exchanged before trial, parties are also required to submit written opening statements at the start of the trial⁷³ and may be required to provide written submissions after the close of evidence at trial. In the Court of Appeal, written Cases for both the appellant and respondent must be filed prior to the hearing of the appeal.⁷⁴ In addition, save where the appeal needs to be heard urgently or where the court otherwise directs, written skeletal arguments are mandatory.⁷⁵ In order to encourage conciseness and brevity, these skeletal arguments are limited to 20 pages.⁷⁶

Perhaps the most widely-known measure that Singapore has taken to facilitate the litigation process and improve case management is the use of technology. In 2000, the Electronic Filing System (“EFS”) was officially launched, allowing law firms to electronically file documents in court at any time of the day without having to attend at the Registry in person. The other useful features of EFS have been discussed in detail elsewhere.⁷⁷ On average, about 64,000 documents are filed electronically in the Supreme Court and the Subordinate Courts monthly. Apart from minimising the need for documents to be physically conveyed, electronic filing allows for downstream

⁷² In this regard, Singapore has supplemented the “principle of orality” with written advocacy. The “principle of orality” dates back to the earliest days of the common law system of trial by jury and is deeply ingrained in the English legal process: see Jacob, *supra* note 22, at p 19. Sir Jacob, opines, at p 20 that: “[t]he disadvantage of orality is its inevitable tendency to prolong the hearings and trials and thus to add considerably to increasing delays and costs.”

⁷³ See Singapore Rules of Court, *supra* note 20, O. 34, r. 3A and e-Supreme Court Practice Directions, para 60, available at <http://app.supremecourt.gov.sg/data/doc/ManagePage/98/ePD2010/ePD2010.htm> (last accessed 2 February 2012).

⁷⁴ See Singapore Rules of Court, *supra* note 20, O. 57, rr. 9 and 9A.

⁷⁵ The *e-Supreme Court Practice Directions*, para 79, available at <http://app.supremecourt.gov.sg/data/doc/ManagePage/98/ePD2010/ePD2010.htm> (last accessed 2 February 2012). Para 79(4) explains that: “Skeletal arguments are abbreviated notes of the arguments that will be presented. Skeletal arguments are not formal documents and do not bind the parties. They are a valuable tool to the Judges and are meant to expedite the hearing of the appeal.”

⁷⁶ See the *e-Supreme Court Practice Directions*, para 79(5), available at <http://app.supremecourt.gov.sg/data/doc/ManagePage/98/ePD2010/ePD2010.htm> (last accessed 2 February 2012).

⁷⁷ See Electronic Filing System, http://en.wikipedia.org/wiki/Electronic_Filing_System (last accessed 2 February 2012).

automation.⁷⁸ For instance, cases that have exceeded the timelines imposed by the court can easily be identified and flagged by the computer system and statistical data, which informs management decisions, can be gathered expeditiously. EFS also takes care of calculating, processing and receiving payment of court fees.

Although EFS has served the Singapore courts well, there have been further developments in technology since 2000 and we will be rolling out a system to replace EFS shortly. This new system, known as the Integrated Electronic Litigation System or eLitigation,⁷⁹ will focus on “capturing structured, machine-processible *information* rather than *documents*” [emphasis added].⁸⁰ Once users enter information regarding a case into the system, such information can be extracted and used (whether automatically or otherwise) at various stages of the workflow, thus reducing the work required by both the law firms and the courts in generating and processing court documents.⁸¹

Monitoring and control measures

In the context of quality management, it has been said that that which can be measured can be improved.⁸² We might add that that which is measured *and consistently monitored for follow-up action* can be improved exponentially. In Singapore, we recognise the importance of setting benchmarks and Key Performance Indicators (“KPIs”)⁸³ and of monitoring the relevant statistical data in order to improve on the overall quality and efficiency of the justice system. In this regard, we mention

⁷⁸ See Justice Judith Prakash’s paper, “Making the Civil Litigation System more efficient”, delivered to the delegates at the Asia Pacific Judicial Reform Forum Round Table Meeting in Singapore on 21 January 2009 (*supra* note 46), para 29.

⁷⁹ See Integrated Electronic Litigation System, <<http://en.wikipedia.org/wiki/IELS>> (last accessed 2 February 2012).

⁸⁰ See Justice Judith Prakash’s paper, “Making the Civil Litigation System more efficient”, delivered to the delegates at the Asia Pacific Judicial Reform Forum Round Table Meeting in Singapore on 21 January 2009 (*supra* note 46), para 30.

⁸¹ *Ibid.*

⁸² Peter Drucker has been quoted as saying “what gets measured gets managed”. See also, generally, Syngy, “Enabling Analysis”, <http://www.esresearch.com/e/downloads/EnablingAnalysis_Syngy_Summer08.pdf> (last accessed 12 March 2012), and John Hayes Jr, “What Can Be Measured Can Be Improved”, <<http://www.articlesnatch.com/Article/What-Can-Be-Measured-Can-Be-Improved/755346>> (last accessed 6 March 2012).

⁸³ Chief Justice Chan Sek Keong called KPIs the “much feared acronym amongst lawyers” (see *supra* note 10), para 4.

three KPIs that we have found to be helpful – lifespan of cases, clearance rates and waiting periods.

It is important that cases that have come into the court system do not remain there for an unduly long time. In this respect, the Singapore Supreme Court has set itself the target of disposing of 85% of all writ actions within 18 months of filing. This is not an easy target to meet. Nevertheless, the 85% standard is still reasonable because it allows for the courts to give complex cases some leeway while still ensuring that the majority of the cases does not drag on unnecessarily. With constant monitoring and the concerted efforts of all stakeholders, we have consistently exceeded this target. In 2008, 88% of our cases complied with the 18-month benchmark and in the years 2009, 2010 and 2011, our compliance rate was 89%. The 85% benchmark is effective because it motivates and sets the expectation in lawyers, litigants, Judges, judicial officers and court staff alike that all but the most exceptional cases should be disposed of within 18 months.

We also track clearance rates,⁸⁴ *ie*, the number of cases disposed of measured against the number of cases filed within a one year period. This is a rough and ready measure of the “output” versus “input” of cases in the court system.⁸⁵ Such statistics help prevent “creeping backlog” as they serve as an alert where an excessive number of cases are carried forward to the following year (“the pending caseload”). For the years 2008, 2009, 2010 and 2011, our clearance rates were 97%, 96%, 98% and 98% respectively. Apart from measuring the overall clearance rate, we also monitor the clearance rates of different categories of cases to help us to identify trends and better calibrate our responses. For example, it may become apparent that certain types of cases take an increasingly lengthy amount of time to dispose of and those types of cases may be flagged for special managing or other follow-up action, such as increasing the number of Judges that deal with those types of cases.⁸⁶

⁸⁴ See Justice Judith Prakash’s paper, “Making the Civil Litigation System more efficient”, delivered to the delegates at the Asia Pacific Judicial Reform Forum Round Table Meeting in Singapore on 21 January 2009 (*supra* note 46), para 6.

⁸⁵ “Output” refers to the cases that are disposed of within the year, which may not necessarily have been filed in that same year. “Input” refers to the cases that have been filed within the year.

⁸⁶ See Justice Judith Prakash’s paper, “Making the Civil Litigation System more efficient”, delivered to the delegates at the Asia Pacific Judicial Reform Forum Round Table Meeting in Singapore on 21 January 2009 (*supra* note 46), para 7.

The final benchmark is that of “waiting periods”, *ie*, the time between the commencement and the hearing of applications or other proceedings. The Singapore Supreme Court monitors many different types of waiting periods and publishes the targets to be met for these (also known as “service timelines”) in our Annual Reports for transparency. One target of significance is that of having a trial fixed for hearing within eight weeks from the date of setting down.

The monitoring and management of waiting periods is done mostly through pre-trial conferences. The pre-trial conferences bring lawyers on opposing sides together to apprise the court of the latest developments in the case, narrow areas of dispute, consider settlement and offer an assessment of their preparation and readiness for trial. If previously-set timelines have been breached, a pre-trial conference will invariably be called for the court to ascertain the reasons for the breach and determine the appropriate remedies to keep the case on track. At a suitable juncture, even before the case is ready to be set down, the court will give an indication of when trial dates will be fixed so that all parties will be able to make any necessary arrangements from an early time, thus minimising the risk that the trial will not be able to proceed as scheduled.

The physical bringing together of lawyers on opposing sides to resolve outstanding issues is an important aspect of pre-trial conferences. Without pre-trial conferences, lawyers on opposing sides may not communicate to discuss the issues in the case or their intentions to take out interlocutory applications. The respondent to an impending application may not be informed about the application until it is filed and served on him, and may not have the chance to inform his opponent that he is actually agreeable to the application before it is formally taken out. It has therefore been necessary on occasion for the court to direct lawyers to meet at their office premises with their clients or expert witnesses to exchange information and update each other about the next steps to be taken *before* the next pre-trial conference. Such a direction may be seen as a supplement to the Rules of Court or simply a practical and commonsensical measure to prepare cases for trial.

As a last resort, the court may have to make “unless orders” (or peremptory orders) to enforce its directions. The unless order is not new, but more frequent resort to

it is.⁸⁷ One reason for making an unless order is that a party has, in a few instances, failed to comply with the court's directions without good reason. In *Grovit v Doctor*, it was opined that "[t]he courts should more readily make [unless orders]" to deal with the problem of inordinate delay.⁸⁸ In Singapore, while the court has the power to make an unless order for the just, expeditious and economical disposal of the cause or matter, "[s]uch orders are issued by [the court] only when this is considered to be really necessary".⁸⁹ If the breach of the unless order is found to be intentional and contumelious or contumacious, the court may impose the ultimate sanction – dismissing a claim or striking out a defence in its entirety.⁹⁰

Dispositive measures

Another measure that the Singapore courts have used in case management that is worth mentioning is the concept of automatic discontinuance. Singapore's Rules of Court provide that if no step or proceeding has been taken in any action, cause or matter for more than a year, the action, cause or matter will be deemed to have been discontinued.⁹¹ To appreciate the value of automatic discontinuance, one need only consider the state of affairs before its introduction. Before automatic discontinuance was introduced, cases could remain in the court system for years and years although no

⁸⁷ See generally, Pinsler, *supra* note 69, pp 485-491. In particular, Pinsler recounts that (at p 486) that: "[t]he order was developed by the courts rather than the rules of court, although the rules governing the extension of time now have greater significance in this area. In the 19th century, the 'unless order' was absolute so that the court was not entitled to interfere with its consequences. The party who failed to comply could not apply to the court for an extension of time in which to perform the required act. He had to accept the consequences regardless of the reasons for his non-compliance. This is no longer the position in Singapore or England."

⁸⁸ [1997] 1 WLR 640 at para F.

⁸⁹ See Singapore Rules of Court, *supra* note 20, O. 34A, r. 1, and *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 at para 2.

⁹⁰ See the Singapore Court of Appeal decision of *Syed Mohamed Abdul Muthaliff and another v Arjan Bhasham Chotrani* [1999] 1 SLR(R) 361. In this case, the appellants were ordered to provide further and better particulars of their claim by a certain deadline. The appellants failed to comply with this deadline but attempted to file their further and better particulars the day after they were due to do so. The respondent thereafter obtained an order to strike out the appellants' claim with costs, which the appellants appealed against. The Court of Appeal allowed the appeal, holding that the power to extend the time for complying with an unless order should be exercised cautiously, and that the onus was on the defaulting party to show that his default was not intentional and contumelious or contumacious. On the evidence, the Court accepted that the appellants' default was not intentional and contumelious or contumacious as, *inter alia*, the margin of default was very thin and the appellants did try to comply with the unless order. See also *supra* note 27.

⁹¹ See Singapore Rules of Court, *supra* note 20, O. 21, r. 2(6).

action was being taken in those cases. Defendants in such cases could apply for dismissal of the action on the basis of want of prosecution, but this was seldom granted unless a fair trial was no longer possible.⁹² They would therefore be left with claims hanging over their heads for lengthy periods of time. With the automatic discontinuance rule, claimants bear the burden of moving their cases forward expeditiously; no action, cause or matter can have an indefinite lifespan. It nevertheless remains open to a claimant to file a fresh action if his case is discontinued automatically pursuant to the rule, provided that the cause of action is not time-barred under the Limitation Act. To avoid injustice, there is also a legislative provision for reinstatement of automatically discontinued cases⁹³ if exceptional circumstances can be demonstrated.⁹⁴

Looking back at the situation in the early 1990s, the Singapore courts have come a long way. The key measures described above, implemented in combination with other measures, have helped to eliminate case backlog and prevent it from arising again. The effectiveness of the measures we have taken is apparent from the statistics. As early as January 1993, civil cases awaiting trial had been reduced from 2,059 (as of 1 January 1991) to 175 cases.⁹⁵ The waiting period for trials had also been reduced from five years to six months.⁹⁶ One year later, this waiting period was further reduced to three months.⁹⁷ The case backlog, both for civil and criminal cases, was completely eliminated by the end of 1993.⁹⁸

Judicial Cooperation in Case Management, etc

Having shared Singapore's toolbox of active case management strategies that have helped to improve the litigation process, it is now apt to look to the future.

⁹² See Lim Hui Min, *Automatic Discontinuance under Order 21 Rule 2 – First Dormant, then Dead*, (2001) 13 SAclJ 150, pp 151, 186-188. See also *Birkett v James* [1978] AC 297 HL.

⁹³ See Singapore Rules of Court, *supra* note 20, O. 21, r. 2(8).

⁹⁴ See Lim, *supra* note 92, pp 178-184.

⁹⁵ See Yong Pung How, "Speech Delivered at the Opening of the Legal Year 1993: 9 January 1993", in *Speeches and Judgments of Chief Justice Yong Pung How*, (Law & Tax: 1996), at p 72.

⁹⁶ *Ibid.*

⁹⁷ See Yong Pung How, "Speech Delivered at the Opening of the Legal Year 1994: 8 January 1994", in *Speeches and Judgments of Chief Justice Yong Pung How*, (Law & Tax: 1996), at p 100.

⁹⁸ *Id.*, p 99.

Using management ideas

While case management takes place within a legal context, it is increasingly recognised that case management and judicial administration can gain from the experiences of management science. While courts do not share the profit-making aim of businesses, we share in trying to achieve efficiency and productivity as we are increasingly expected to do more with the same (or even less) resources. As Malik observed:

Although [a management-oriented perspective] is not a customary reference point for studying courts and related entities, judicial organizations can be assessed using this rather simple approach. Among other similarities, the operation and structure of judicial organizations mirror those of business institutions in many respects. This perspective enables taking a broad look at the multidisciplinary aspects of judicial functions and machinery and facilitates seeing how a reform process can affect the economic, financial, client service, and other aspects of the administration of justice.⁹⁹

The importance of Judges, judicial officers and court staff being familiar with management ideas has also been highlighted by Chief Justice Chan Sek Keong as follows:

We must learn how to employ management concepts like systems thinking, knowledge management, change management, people development, customer engagement, scenario planning, business process re-engineering and international best practices – to mention some of the concepts that we have experimented with and which may be applied to our operations and processes. And indeed, these concepts are sensible and commonsensical, and add value to the courts as an organisation. Nothing is more powerful than an idea whose time has come, and the idea has now struck many judiciaries around the world that sound judicial administration is as important as good judgments.

...[W]e need some judges who can provide the leadership in the management of an organisation. It seems that the core competencies of a “judge-manager” should go beyond case management... Every judiciary must have a “judge-manager” who is at least familiar with or proficient in: (a) the principles of management; (b) the uses of technology; and (c) the management of people, especially court staff and judicial officers.¹⁰⁰

⁹⁹ Malik, *supra* note 3, p xv. Also see Chief Justice Chan Sek Keong’s paper delivered at the 14th Conference of Chief Justices of Asia and the Pacific (see *supra* note 10), para 11.

¹⁰⁰ Chief Justice Chan Sek Keong, *supra* note 10, pp 7-8.

The Singapore Judiciary is constantly looking to the science and practice of business management for ideas and adapting them for use in court administration.

An example of an idea assimilated from the business community is the Supreme Court's "Customer Service" initiative. The idea of regarding lawyers, litigants and the public as "customers" of the court is a fairly new development. First, we had to customise the concept of customer service for application in the unique institution that is the Judiciary. It is apparent that what works for world-class organisations like The Ritz-Carlton or Singapore Airlines cannot simply be imported into and implemented in the Supreme Court. Together, the senior officers and court staff of the Supreme Court worked out the principles of customer service that a Judiciary should subscribe to and formulated a "Customer Service Creed". Second, these principles and how to apply them had to be cascaded down to all the staff of the Supreme Court. We achieved this through various channels like holding a Customer Service Conference, conducting training courses and forming a Customer Service Taskforce to oversee the initiatives in this regard. The aim of these efforts was to nurture a healthy attitude of service to court users and the public as well as to lift service standards so that they would be comparable to those in the private sector. This attitude to service was nicely encapsulated in the theme of our first Customer Service Conference in 2009 – "M.A.D. about Customer Service"; "M.A.D." being an acronym for "making a difference".

Channels for co-operation

We turn now to suggest some avenues or channels to share ideas, solutions and experiences on case management and the improvement of the litigation process. It cannot be gainsaid that discussing such issues regularly will greatly help Judiciaries. After all, "[t]he price of public confidence in the administration of the law is its continual renewal to match the needs of society."¹⁰¹ No single Judiciary has a monopoly on good case management ideas and there is certainly much that we can learn from each other.

One platform to facilitate this exchange of ideas is having regular visits and attachments to foreign Judiciaries. Currently, the Singapore Supreme Court sends our judicial officers and court staff to jurisdictions such as the United Kingdom, Hong Kong

¹⁰¹ Jacob, *supra* note 22, p 251.

and Australia so that they can learn from and observe the latest ideas and best practices employed in other jurisdictions. In exchange, we share our experiences and know-how with judges and court personnel from other jurisdictions as we host them during visits to Singapore. Not only does this increase the technical skills and broaden the horizons of our judicial officers and staff, it is an excellent way to build closer personal ties and working relationships, which are invaluable in today's globalised world.

Another way to exchange ideas is through hosting regional or international conferences and seminars. In August 2011, the Singapore Academy of Law, with support from the Supreme Court, the legal community and other partners, organised the International Conference on Electronic Litigation. Electronic litigation has become an important issue in many jurisdictions and this conference allowed close to 400 participants from more than 35 jurisdictions to share ideas relating to electronic litigation, *eg*, electronic discovery, incorporation of technology in court advocacy and the impact of social media. The conference also benefited from the expertise of world-renowned speakers such as the Right Honourable Lord Justice Rupert Jackson, Judge of the Court of Appeal, England and Wales, Senior Master Steven Whitaker of the Senior Courts of England and Wales and Mr Stephen Mason, author of leading textbooks on electronic evidence. Similarly, our Judges and judicial officers have been privileged to attend many overseas conferences and seminars.

A conference or seminar on case management, whether regional or international, would be a good opportunity to share ideas, solutions and experiences. For a start, we could have a regular colloquium of Chief Registrars or their equivalent counterparts from ASEAN since these are the people intimately involved in civil procedure and case management.

Shared values for judicial administration

Apart from collaborating to improve case management and litigation processes, ASEAN judiciaries may wish to consider coming together to create a set of shared values for judicial administration. While the specific organisational and management needs of each Judiciary undoubtedly differ from jurisdiction to jurisdiction, we believe broad consensus may be found in the underlying values that drive our organisations as the roles our courts play in our respective societies are largely similar. These common values may include equality before the law, fairness, impartiality, independence of

decision-making, integrity and timeliness.¹⁰² Similar to how ASEAN member states have jointly committed to several fundamental governing principles,¹⁰³ ASEAN Judiciaries may commit themselves to a set of shared values for judicial administration.

We submit that being able to commit to a set of shared values governing judicial administration would represent a significant step for ASEAN. We would be signalling to the world that we are committed to justice and court excellence and we are ready to work together as a consortium of Judiciaries to achieve those ends. Not only would a set of shared values be representative of our common interests, it would also foster greater confidence in the business community in Southeast Asia.

To go a step further, a set of shared values may eventually allow us to adopt a common court administration framework. There are, of course, many different modalities that may be used to examine the performance of a business organisation's management (generally called business excellence frameworks).¹⁰⁴ A bespoke framework specifically designed to address the management and administration needs of Judiciaries would save individual Judiciaries the trouble and effort of reinventing the wheel. One existing framework based on judicial administration that we may have reference to is the International Framework for Court Excellence ("IFCE") developed by the International Consortium for Court Excellence.¹⁰⁵ This framework to measure the quality of justice and court administration was developed by the courts and organisations from Europe, Asia, Australia, the United States and Singapore after studying various models. In addition to values, the IFCE comprises tools and concepts to assist courts to assess their own standard of court management and achieve court excellence. The IFCE has since gained some measure of acceptance amongst many Judiciaries world-wide.¹⁰⁶

Conclusion

¹⁰² See International Framework for Court Excellence, p 8, available at <<http://www.courtexcellence.com/pdf/IFCE-Framework-v12.pdf>> (last assessed 2 February 2012).

¹⁰³ See the Treaty of Amity and Cooperation in Southeast Asia (TAC) of 1976.

¹⁰⁴ See, *supra* note 10, at p 9, para 14.

¹⁰⁵ See, *supra* note 102.

¹⁰⁶ See the International Framework for Court Excellence website available <<http://www.courtexcellence.com/pdf/IFCE-Framework-v12.pdf>>, at *supra* note 102.

At the end of the day, it cannot be denied that seeing that justice is done is the foremost interest of all our Judiciaries. As Sir Jacob remarked, “[i]n the forefront of every study concerning the future prospects of ... civil justice, the factor which must be given the most important weight is justice itself.”¹⁰⁷ After all, “justice is the great interest of man on earth.”¹⁰⁸ The reality is that active case management is a fundamental and essential component of achieving justice. In this regard, Phang JA gave us a timely reminder when he observed that “[t]he obsession with achieving a substantively fair and just outcome does not justify the utilisation of any and every means to achieve that objective...if the procedure is unjust, that will itself taint the outcome”,¹⁰⁹ such that the “quest for justice...entails a continuous need to balance the procedural with the substantive.”¹¹⁰

As the word “management” suggests, proactivity, responsibility and professionalism is required in active case management. Singapore has experienced some success in this area since the 1990s and a large part of this must be attributed to sterling judicial leadership and a collaborative working relationship with the Bar. Going forward, as the ties between ASEAN countries are strengthened, so will the relationships of our Judiciaries. It is hoped that we will seize these opportunities to share, exchange and learn from the best practices that each of our Judiciaries have to offer.

¹⁰⁷ Jacob, *supra* note 22, pp 283-284.

¹⁰⁸ *Per* Daniel Webster in his eulogy of Mr Justice Story, cited by Jacob, *supra* note 2, p 285.

¹⁰⁹ See *Lee Hsien Loong v Singapore Democratic Party* [2008] 1 SLR(R) 757 (at [36]), endorsing the observations in *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 (at [4]-[9]). For more on the relationship between civil procedure and substantive law, see Pinsler and Bull, “Procedure’s Multi-faceted Relationship with Substantive Law – Not a “Mistress”; nor a “Handmaid””, in *SAL Conference 2011: Developments in Singapore Law between 2006 and 2010* (Academy Publishing, 2011) (Yeo et al, ed), p 106-131.

¹¹⁰ *Ibid.*

Overcoming Backlogs/ Enhancing Present Efficiencies

Diversivory Measures

- **Alternative Dispute Resolution**
Singapore Institute of Arbitrators, Singapore International Arbitration Centre, Singapore Mediation Centre & Community Mediation Centres
- **Pre-action protocols** for Non-Injury Motor Accident (NIMA), Personal Injury Motor Accident and medical negligence cases
- **Diversivory Programme** to extra-judicial resources (e.g. FIDReC, in association with the Monetary Authority of Singapore)
- **Debt Repayment Scheme** for bankruptcy cases

Facilitative Measures

- **Manpower**
 - (a) Judges;
 - (b) Judicial Officers – e.g. ARs hearing certain applications to free up the Judges from routine applications;
 - (c) JLCs to support Court of Appeal & High Court
- **Court Processes**
 - (a) Facilitate changes to the Rules, e.g. simplification of originating processes from 4 to 2; Offer to settle (O 22A); allowing declarations and other reliefs in judicial review proceedings (O 53); referrals on issues of foreign law (O 101);
 - (b) Emphasis on written advocacy; e.g. AEICs; Opening statements; Appellate advocacy – submission of Cases & Skeletal arguments;
 - (c) Selective docket system;
 - (d) Reduction of interlocutory appeals (where appropriate) to Court of Appeal;
 - (e) Corporate self-representation in the Sub Cts.
- **Technology**
 - (a) Electronic Filing System (EFS) (O 63A) & integrated Electronic Litigation System (iELS);
 - (b) Digital Transcription System;
 - (c) E-discovery (PD 3 of 2009);
 - (d) Electronic Rules of Court & Practice Directions;
 - (e) Paper-less hearings in Court of Appeal

Monitoring & Control

- **Pre-trial Conferences**
- **Lead counsel's statement**
- **Peremptory Orders** ("Unless orders")
- **Early Trials, trial date certainty & hearing fees**
- **Costs orders**
- **Regular statistical reports & Applications & Cases E-Management System (ACES)** (alerts and real-time statistics)
- **Docket PTCs**

Dispositive Measures

- **Auto-discontinuance** (by ROC)
- **Peremptory Orders** ("Unless orders")
- **Judgments and Grounds of Decision** (Time limits)
- **Appeals** (Generally one-tier)
- **Execution of Judgments** (Time limits)
- **Limitation Laws**

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