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ASEAN Intergovernmental Commission
on Human Rights (AICHR)

Thematic Study on Legal Aid



SINGAPORE

I. Country Background

A mere land mass of around 720 km², Singapore is a small, densely populated island city-state of 5.61 million people, comprising 3.47 million citizens, 0.52 million foreign citizens who are also Permanent Residents, and another 1.64 million foreign citizens living and working in the country. The citizen population is also ethnically diverse, comprising 76.1% Chinese, 15.0% Malays, 7.4% Indians and 1.5% from other races. Not surprisingly, Singapore is also multi-religious, with a resident population that is 33.3% Buddhist, 14.7% Muslim, 18.3% Christian, 10.9% Taoist, 5.1% Hindu, and 17% who do not subscribe to any faith. In 2014, the Pew Research Centre ranked Singapore as the most religiously diverse country in the world.²⁴⁸

Founded in January 1819 by Sir Stamford Raffles of the British East India Company, Singapore's legal system has its roots in the English common law and practice. Since attaining self-government from Britain in 1959 and independence from Malaysia in 1965, Singapore has developed an autochthonous political and legal system that is relevant and unique to its political, social and economic circumstances. Modelled on the Westminster system, the Government comprises the Legislature, Executive and Judiciary. The Legislature is made up of the Parliament and the elected President. The Executive is made up of the President and the Cabinet, which is responsible for the general direction of the Government and accountable to Parliament. The Judiciary is composed of the Supreme Court, the State Courts, and the Family Justice Courts. The Supreme Court is made up of the Court of Appeal and the High Court, and hears both civil and criminal matters. The State Courts comprise the District Courts, Magistrates' Courts, and specialised courts such as the Coroner's Court, the Small Claims Tribunals, the Community Disputes Resolution Tribunal, and the Employment Claims Tribunals. The Family Justice Courts comprise the Family Courts, the Youth Courts, and the Family Division of the High Court.

Singapore is a party to four major international human rights conventions: Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), including the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, Convention on the Rights of Persons with Disabilities (CRPD), and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). On 19 November 2012, Singapore, together with other ASEAN Member States, affirmed her commitment to advancing, promoting, and protecting human rights in Singapore and in the region by adopting the ASEAN Human Rights Declaration.

²⁴⁸ I am grateful for the valuable assistance provided by the Ministry of Law, Singapore, and the Law Society of Singapore in furnishing information and data for this study. All errors of fact and analysis remain mine alone. This study is dedicated to the late Brother Emmanuel @ Pierre Paul Gaudette, Montfort Brothers of St Gabriel, who was called home to the Lord on 31 August 2017. Brother Emmanuel dedicated his life in the service of the last, the least, and the lost. Pew Research Centre, "Global Religious Diversity: Half of the Most Religiously Diverse Countries are in Asia-Pacific Region," April 2014, <<http://www.pewforum.org/files/2014/04/Religious-Diversity-full-report.pdf>> accessed 1 October 2017.

II. Legal Aid in General

The Singapore Government recognises and is committed to legal aid as an integral part of access to justice. Sixty years ago in 1958, Singapore was the first country in Southeast Asia to enact a legal aid scheme, which provided for the establishment of the Legal Aid Bureau (LAB) to provide civil legal aid to persons of limited means. Over the course of independent Singapore's history, legal aid²⁴⁹ as part of the overall access to justice has broadened significantly.²⁵⁰ Members of Parliament make regular calls for more people to qualify and receive government-funded legal aid. The government regards access to justice as being extremely important, and the public debate often centres on how to improve access to justice. While access to justice is often understood in terms of access to the courts and affordability of legal services, access to justice in Singapore is conceived in a broader and more nuanced context. This includes accessing and achieving justice through various means, including consensual outcomes that are acceptable to the parties in a dispute and reached within or without the court system.

Today, government-funded legal aid schemes cover both civil and criminal cases and they are co-delivered by the government with strong support from the legal fraternity and the civil society. Broadly speaking, eligible citizens and permanent residents can avail themselves to civil and criminal legal aid directly provided or co-funded by the state. Foreigners residing in Singapore may approach various volunteer welfare organisations, such as the Humanitarian Organisation for Migration Economics and the Archdiocesan Commission for the Pastoral Care of Migrants and Itinerant People, for help. The Law Society Pro Bono Services Limited also provides assistance on a case by case basis.

For criminal cases, all persons facing capital charges are offered legal representation without any means testing or other eligibility criteria under the Supreme Court-administered Legal Assistance Scheme for Capital Offences (LASCO).²⁵¹ For non-capital charges, criminal legal aid has been administered since 1985 through the Criminal Legal Aid Scheme (CLAS) administered by the Law Society Pro Bono Services Limited (LSPBS).²⁵² In a historic philosophical shift in 2015, the government began to directly fund criminal legal aid.

Other than legal aid funded by the government and the legal fraternity, legal services are also provided to persons of limited means by a rich landscape of community partners. This includes various regular and ad hoc programmes organised by LSPBS, the Community Justice Centre (CJC), and various community, religious and volunteer welfare organisations. The different stakeholders make significant efforts in providing the community with greater access to pro bono legal advice and representation. This multi-stakeholder approach ensures that access to justice remains a salient feature of Singapore's administration of justice in the civil and criminal realms.

²⁴⁹ In this country study, legal aid is broadly understood as embracing legal advice, legal assistance (e.g., drafting of legal documents) and representation in court proceedings.

²⁵⁰ In this country report, legal aid generally refers to legal assistance and advice provided to 'disadvantaged persons' who include:

- Persons from households with low income, whether determined by a means test or by other means;
- Persons who are disadvantaged because of financial hardship, intellectual or physical disability, mental or physical illness, lack of education or other circumstances;
- Persons who are unable to afford legal representation; and
- Persons who are unaware of their legal rights, liabilities and responsibilities, or their right to legal representation.

²⁵¹ *Singapore Parliament Reports*, vol. 94, col. 1349, 6 April 2016. Figures are for January to December of each year.

²⁵² Formerly known as the Law Society's Pro Bono Services Office (PBSO), it was established in 2007 before it became the Law Society's first wholly owned subsidiary in 2017.

As indicated earlier, even before Singapore attained self-government or independence, there was already a system of legal aid in place.²⁵³ In June 1956, Singapore's Legislative Assembly passed the Legal Advice and Aid Ordinance. During the debate on the Bill, Chief Minister David Marshall said, "The institution of justice is one thing for which we can be unreservedly thankful to the colonial power, but it has one drawback, and that is that, in some measure, the poor people of the country have no opportunity either to understand their powers under it or to have full access to it ...".²⁵⁴ In moving the Bill at its Second Reading, Minister for Labour and Welfare Mr Lim Yew Hock began his remarks as follows:

... [T]hat all citizens should enjoy equality before the law and that there should be no necessity for a golden key to unlock the door to the courtroom. The ideal of fairness to rich and poor alike means that no man should suffer in the prosecution or defence of his legal rights for want of professional assistance and advice. Where inadequate facilities exist for a citizen of limited means to seek redress through the Courts for a wrong which has been done to him, or to obtain legal aid for his defence when he is committed for trial, then justice becomes a rationed commodity not freely available to all. ... It is of little comfort to the poorer citizen that the laws of his country are fair and just and that the Courts are impartial if, in practice, he is debarred from access to the Courts through lack of funds.²⁵⁵

This early institution of state-funded legal aid, as an indicator of access of justice, has created the requisite path dependence that continues to sustain current and future pathways on access to justice. In particular, access to criminal legal aid has undergone significant change in the past decade. The Government's previous longstanding position, first publicly articulated in 1995, was that "providing criminal legal aid would put the State in the position of using public funds to both prosecute and defend the same accused persons, after significant resources had been allocated to the careful and meticulous investigation, assessment and conduct of prosecutions".²⁵⁶ Then Law Minister S. Jayakumar explained that:

But as I said, the Government's policy is to provide legal aid to criminal cases only in capital offences. ... To elaborate, the State spends a lot of resources in maintaining as best as possible a first-class, top-rate law enforcement machinery - the Police, the Central Narcotics Bureau, the Commercial Affairs Department and so on. It also invests heavily in an excellent legal service with very good legal officers handling prosecutions, who sieve and vet all the police investigation papers. Their job is to investigate offences when there is evidence to prosecute, when accused persons are brought to book, only after thorough and careful process. Why are they prosecuted? They are prosecuted in the public interest and the State expends these monies in the public interest and in order to protect the law abiding majority. Therefore, ... it is paradoxical. It is incongruous and inconsistent that public funds should be used to defend an accused person which the State has decided ought to be charged in court and use public funds at the same time to get him off. The exception is where life is involved and for capital cases, counsel is assigned.²⁵⁷

The "paradoxical" and "incongruous" position then was that civil litigants could, in appropriate cases, avail themselves to legal aid provided by the State. However, in the case of criminal prosecutions, where

²⁵³ On the origins and early years of legal aid in Singapore, see Colin Cheong and Lim Hui Min, *Access to Justice: 50 Years of Legal Aid* (Singapore: Legal Aid Bureau, 2008).

²⁵⁴ *Singapore Parliament Reports*, vol. 1, col. 1965, 6 June 1956.

²⁵⁵ *Singapore Parliament Reports*, vol. 1, cols. 1957-1958, 6 June 1956.

²⁵⁶ Speech by Mr K. Shanmugam, Minister for Foreign Affairs and Law, at the Association of Muslim Lawyers' Inaugural Lecture, 6 December 2013, available at <https://www.mlaw.gov.sg/news/speeches/speech-by-min-at-aml-lecture.html>

²⁵⁷ *Singapore Parliament Reports*, vol. 64, col. 1349, 7 July 1995.

a person could lose his livelihood, his liberty, or be caned, legal aid was not provided by the State. Before the government provided funding for criminal legal aid, criminal legal aid was provided by the Criminal Legal Aid Scheme (CLAS) run by the Pro Bono Services Office of the Law Society of Singapore (now renamed as Law Society Pro Bono Services Limited, or LSPBS). This was financed almost entirely by the generosity of members of the legal profession and public donations.

However, in 2007, the Government began to provide *indirect* criminal legal aid through annual funding to the LSPBS.²⁵⁸ This marked the start of a different philosophical approach to legal aid. From 2015, the government began providing direct funding support in criminal cases to accused persons through CLAS. The improved access to legal aid was evident immediately. In 2016, the scheme benefited 2,542 accused persons, of which 1,669 received full legal representation or legal services not involving court attendance. This was a significant increase from 2014, where only 431 accused persons received full legal representation.

These changes to the legal aid regime were in response to the evolution of society towards a “more inclusive, a more compassionate society”.²⁵⁹ In making this significant shift, the Singapore government was and remains mindful that public funds are involved and that a clear framework has to be put in place to ensure that money is “well spent, properly spent, and not abused”.²⁶⁰ Hence, the government has consciously sought “to develop a system that is fair, prudent and sustainable right from the start. It is therefore not right to say that the State will underwrite all cases, will write a blank cheque”.²⁶¹ The foundational basis for the steadfast commitment to legal aid is well captured in Singapore’s report for the 2016 Universal Periodic Review where the government affirmed its commitment to building a fair and inclusive society amid persistent social inequalities.²⁶²

III. Legal Aid in Specific Areas

(a) Government-funded Legal Aid

Civil Legal Aid & the Legal Aid Bureau

The Legal Aid Bureau (LAB), a government department under the Ministry of Law, provides legal aid on civil matters such as divorce, estate matters, personal injury, adoptions, maintenance claims, custody of children, family violence, probate matters, monetary claims, wrongful dismissals, tenancy disputes, and motor and industrial accident claims.²⁶³ The key legislation is the Legal Aid and Advice Act (Cap. 160, 2014 Revised Edition) and the Legal Aid and Advice Regulations (Cap. 160, Rg 1, 1995 Revised Edition). The LAB provides legal aid in the form of oral legal advice, assistance in drafting legal documents, and representation in proceedings on civil matters. LAB receives more than 9,000 applications for civil legal aid per year.²⁶⁴ Representation in

²⁵⁸ Historically, criminal legal aid was provided for in the original Legal Aid Act and Advice Ordinance in 1956. But those provisions were never brought into effect and were in fact repealed in 1995.

²⁵⁹ Speech by Mr K. Shanmugam, Minister for Foreign Affairs and Law, at the Association of Muslim Lawyers’ Inaugural Lecture, 6 December 2013, at paras 33 and 34.

²⁶⁰ *Ibid.*, at para 29.

²⁶¹ *Ibid.*, at para 32.

²⁶² See Singapore’s 2016 Universal Periodic Review report, para 14: “We seek to build a nation where our citizens lead meaningful and fulfilling lives in a fair and inclusive society. To build a successful economy and share the fruits of growth with all Singaporeans, we need effective social strategies that enable individuals to fully realise their potential, help the less advantaged so that they have a fair chance to succeed regardless of their starting point in life, and protect the most vulnerable groups in society.”

²⁶³ The LAB does not handle criminal cases, or matters involving defamation, breach of promise of marriage, cases where the applicant admits liability and the only question is as to the time and mode of payment by him of a debt (including liquidated damages) and costs, relator actions, and applications under the Parliamentary Elections Act or the Presidential Elections Act.

²⁶⁴ See Table 19 at Annex 1.

civil proceedings and oral legal advice each constitute about half of LAB's caseload. Assistance to draft legal documents only constitutes about two percent of LAB's cases. Most LAB applications concern matrimonial or adoption matters, followed by claims and probate or other matters.²⁶⁵

At this time of writing (October 2018), to qualify for civil legal aid at the LAB, an applicant must be a citizen or a permanent resident of Singapore, and satisfy both the means test and the merits test. This helps channel the limited public funds available to those with a more enduring connection with Singapore. This notwithstanding, the LAB may provide legal aid to foreigners²⁶⁶ who are involved in applications under the Hague Convention on the Civil Aspects of International Child Abduction.

To pass the means test, an applicant's disposable income cannot exceed SGD10,000 per annum²⁶⁷ and disposable capital cannot exceed SGD10,000.²⁶⁸ These criteria allow about 25 per cent of the resident population to qualify for legal aid. The means test includes a range of deductibles to exclude income required for daily living and supporting dependents. To give greater protection to vulnerable individuals involved in family proceedings, the deductibles for disposable capital are higher for family proceedings involving children, or protection orders involving spouses, ex-spouses or children.

If the applicant passes the means test, a legal opinion is prepared and submitted to the Legal Aid Board to conduct the merits test. The Board comprises the Director of Legal Aid and at least two solicitors from private practice. The Board will determine if there are reasonable prospects of success in the Applicant's case. This is to avoid expending public monies on supporting vexatious claims.²⁶⁹

A person receiving legal aid also has certain responsibilities. He may be required to pay a contribution, to pay a deposit to be used for out-of-pocket expenses incurred on his behalf, or to reimburse the Director for any costs incurred on his behalf when money or property has been recovered. Requiring such a contribution is intended to encourage legally aided persons to take ownership of their cases and not take legal assistance for granted, but this is subject to the applicant's ability to pay. The LAB may also cancel aid if the applicant acts unreasonably, for example, by refusing to participate in alternative dispute resolution or refusing to listen to legal advice, or if the applicant becomes uncontactable, or is found to be above means. This is to avoid any moral hazard that may follow if a person does not contribute to some of the cost of legal aid cost regardless of the outcome of the case.

The Ministry of Law regularly reviews the means test criteria to ensure that legal aid continues to be accessible for Singaporeans with limited means. The law is currently being amended, *inter alia*, to simplify the means

²⁶⁵ Other matters include guardianship, enforcement or variation of court orders, wills, Mental Capacity Act, etc.

²⁶⁶ Citizens or residents of contracting states.

²⁶⁷ Disposable income means the applicant's income and his spouse's income for the past 12 months, after deducting: SGD6,000 for the applicant; SGD6,000 for his spouse; maintenance for dependent(s) (capped at SGD6,000 per dependent); rent (capped at SGD20,000) and Central Provident Fund (CPF) contributions.

²⁶⁸ Disposable capital is the capital assets which an applicant possesses or is entitled to, after deducting: subject-matter of the proceedings; wearing apparel; tools of trade; household furniture; the applicant's home if it is a Housing Development Board (HDB) flat or a dwelling-house assessed at an annual value of not more than SGD13,000; CPF moneys; the surrender value of life policies up to SGD46,000 and savings up to SGD30,000 (if the applicant is aged 60 years or older). An additional SGD5,000 will be excluded in determining the disposable capital in family proceedings involving children, or protection orders between spouses or ex-spouses or which involve children.

²⁶⁹ An example of legal aid in a civil matter that satisfies the merits and means test: Assume an applicant who is a plaintiff in a divorce proceeding. If the applicant's disposable income is not more than SGD10,000 annually, and his disposable capital is not more than SGD10,000, he will pass the means test. Note that this applicant could be living in a 3-room public housing (HDB) apartment that he owns, with SGD50,000 savings in his CPF accounts and a delivery van that he owns. HDB flats, CPF accounts, and tools of the trade are excluded from consideration in the means test. If the applicant satisfies the pre-conditions for divorce in Singapore and there is sufficient evidence for this, the applicant has a reasonable prospect of success in his divorce proceedings against his spouse, and will therefore pass the merits test.

test, to provide greater flexibility to help applicants with extenuating circumstances, and to improve the administration of legal aid. The Legal Aid and Advice (Amendment) Bill (Bill No. 42/2018) was first tabled before Parliament on 1 October 2018.²⁷⁰

The proposed amendments seek to change the way by which an applicant for legal aid is assessed. This includes aligning the means test with those more commonly used in various social support schemes. The proposed law will empower the Ministry of Law with the flexibility to establish such means criteria which will be set out in the subsidiary legislation. The intention is to replace the current disposable income and disposable capital criteria with the “per capita household income” and the annual value of the applicant’s place of residence, savings, and investments. The qualifying limit for the proposed revised means test will not materially impact the number of households eligible for legal aid. The proposed criteria will also shorten the application process.

The proposed amendments will also provide the Legal Aid Bureau with greater flexibility to assist those who fail the means test if the Minister for Law (or delegated person or panel of persons) is of the opinion that it is just and proper to do so given the applicant’s extenuating circumstances. Currently, the Legal Aid Bureau has the discretion to grant legal aid to those who fail the means test under only four prescribed circumstances: applicant is living separately and apart from spouse, the applicant has a sudden physical or mental disability, the applicant suffers a sudden loss of income, or the proceedings involve children or protection orders between spouses or ex-spouses.

The LAB partners the legal fraternity to deliver civil legal aid. The Assigned Solicitors are private lawyers who take on LAB cases on a pro bono basis. About a third of the LAB’s cases are assigned to the Assigned Solicitors while the rest of the cases are handled by the LAB’s team of Legal Officers. Cases assigned to the Assigned Solicitors include cases where there is a conflict of interests (e.g. both parties are legally aided), involve specialised areas of law such as Syariah Court proceedings or medical malpractice, or urgent and complex cases.

(b) Legal Aid for Foreign Migrant Workers

Of the 1.644 million non-residents (non-citizens and non-permanent residents) in Singapore in June 2018, 56% of them are either foreign domestic workers (15%) or work-permit holders (41%).²⁷¹ Given the large number of foreign migrant workers, the Singapore government is mindful of access to justice issues that may be faced by them when they have legal disputes such as those relating to their terms of employment in Singapore. The State complements the various initiatives undertaken by various civil society groups that provide a range of pro bono legal services to migrant workers.

In 2016, the Ministry of Manpower (MOM) received about 9,000 salary-related claims involving some 4,500 employers.²⁷² Through mediation by MOM and adjudication by the “Labour Court”²⁷³, more than 95% of salary

²⁷⁰ The Bill is available online at the Parliament’s website: [https://www.parliament.gov.sg/docs/default-source/default-document-library/legal-aid-and-advice-\(amendment\)-bill-42-2018.pdf](https://www.parliament.gov.sg/docs/default-source/default-document-library/legal-aid-and-advice-(amendment)-bill-42-2018.pdf)

²⁷¹ *Population in Brief 2018*, p. 5.

²⁷² Information in this section obtained from the oral answer by Mr Lim Swee Say, Minister for Manpower, to parliamentary questions on workplace injury compensation and unpaid wages, 6 February 2017. See <http://www.mom.gov.sg/newsroom/parliament-questions-and-replies/2017/0206-oral-answer-by-mr-lim-swee-say-minister-for-manpower-to-parliamentary-question-on-workplace-injury-compensation-and-unpaid-wages>

²⁷³ “Labour Court” is colloquially used by the public and the Ministry of Manpower (MOM) when referring to hearings before a MOM assistant commissioner. From April 2017, the Employment Court Tribunals (ECT) have replaced the Labour Court in adjudicating statutory and contractual salary-related claims. Established by the State Courts under the Employment Claims Act 2016 (Act 21 of 2016), the Tribunals provide employees and employers with a speedy, low cost means to resolve salary-related disputes capped at SGD20,000 (or SGD 30,000 if the unions have helped to mediate in the dispute).

claims have been resolved successfully.²⁷⁴ Where an employer of foreign migrant workers has yet to comply with the Labour Court orders, it is debarred from hiring foreign workers until it complies with the Labour Court orders. This debarment also applies to culpable directors even if they were to start new companies.

Between 2014 and 2016, 158 employers have been prosecuted and convicted for salary-related offences. Such offences carry a fine of between SGD3,000 and SGD15,000 per charge, or to imprisonment for a term not exceeding six months, or both. In the area of workplace injuries, over 99.9% of the approximately 16,000 injured workers had their cases successfully resolved in 2016. However, five (out of about 16,000 cases) did not because their employers had failed to purchase work injury compensation insurance and were unable to pay due to financial difficulties. The Ministry of Manpower takes such offences seriously and prosecutes such employers under the Work Injury Compensation Act (Cap. 354, 2009 Revised Edition) and debars the companies and individual directors from hiring foreign workers, until they compensate their workers.²⁷⁵

In cases where the orders for unpaid salary or work-injury compensation could be enforced, the workers have to apply for the Writ of Seizure and Sale through the State Courts. This is the same process that applies to all unpaid Civil Court orders including those made by the State Courts. The Ministry of Manpower assists the workers by advising them on the process and preparing the necessary documents. Eligible low wage local workers may seek legal assistance from the Legal Aid Bureau, while foreign workers may approach the Migrant Workers' Centre (MWC). In addition, workers can also apply to the State Courts Registrar to waive or defer the costs of enforcing the order, or to recover these costs from the sale proceeds. Meanwhile, foreign workers with valid salary claims are also allowed to change employers. More than 2,200 of such requests were granted in the past three years.

The Singapore government remains concerned with workers who are unable to recover their claims because their employers no longer have the financial means to pay. It has pledged to continue to strengthen the system support for them. Currently, foreign workers can receive financial relief from the MWC.²⁷⁶ As with local low-wage workers, those with unresolved salary claims have been able to receive short-term relief from the Tripartite Alliance for Dispute Management (TADM) since April 2017.²⁷⁷ As for workers with more serious injury, if they fail to receive their work injury compensation and are in financial difficulties, they are assisted through the Manpower Ministry's Workers' Fund.

(c) Criminal Legal Aid for Non-Capital Cases – Criminal Legal Aid Scheme

Law Society Pro Bono Services Limited (LSPBS), a registered charity and an Institution of Public Character (IPC), has been running CLAS since September 1985.²⁷⁸ CLAS provides criminal legal aid for non-capital cases. To qualify for CLAS, an applicant must be charged in Singapore with one of the criminal offences

²⁷⁴ In most of the unresolved cases of unpaid salary or work injury compensation, the chance of workers recovering payments from their employers is slim because the employer companies are mostly in deep financial difficulties and have no means to pay.

²⁷⁵ Such offences carry a maximum penalty of SGD10,000, or imprisonment of up to 12 months, or both. In the last five years, 14 employers have been prosecuted for non-insurance and non-compensation of work injury.

²⁷⁶ A non-government organization, the MWC was established in 2009 by National Trades Union Congress (NTUC) and the Singapore National Employers' Federation (SNEF), umbrella bodies for the trade unions and employers in Singapore respectively. The MWC's mission is to champion fair employment practices and the well-being of migrant workers in Singapore. For more information, see <http://www.mwc.org.sg>.

²⁷⁷ The TADM is a collaboration of the tripartite partners: the Ministry of Manpower, National Trades Union Congress, and Singapore National Employers' Federation (SNEF). It seeks to "help employees and employers manage employment disputes amicably through advisory and mediation services". See further <http://www.tadm.sg>.

²⁷⁸ Prior to the establishment of CLAS, "pro bono never existed as such" but is now seen as a "golden crown": see "The lawyers who take cases for no fee: Pro bono movement now seen as a 'golden crown'," *ChannelNewsAsia*, 15 October 2017, <<http://www.channelnewsasia.com/news/singapore/pro-bono-movement-lawyers-9300718>>

covered²⁷⁹, satisfy the means test (disposal income not exceeding SGD10,000 per annum and disposable capital not exceeding SGD10,000), and satisfy the legal merits test.

As discussed earlier, previously, the Singapore government did not directly fund criminal legal aid, apart from capital cases. The number of applicants to CLAS had been steadily increasing over the years. However, due to limited resources, CLAS was not able to represent all who deserved representation. Prior to the government providing funding, CLAS saw about 1,000 applications per year, of which 200 to 300 applicants qualified for aid.²⁸⁰ The government decided to play a bigger role to better assist the defendants who cannot afford their own lawyers and should not be left to face the criminal justice system themselves.

Hence, in a significant shift in government policy, the government announced in 2013 that it had decided to fund CLAS. The government worked closely with partners including the legal fraternity, the Singapore Academy of Law, and the Judiciary to develop a policy framework to enhance CLAS. The enhanced CLAS was launched in 2015, which continues to be run by LSPBS. The government provides the bulk of the funding to cover operational costs, honoraria, and disbursements while LSPBS raises funds to cover the rest of the costs.

Launched on 19 May 2015, the enhanced CLAS now serves more accused persons. It also provides more types of legal services in addition to full representation, including basic legal advice and unbundled services not involving court attendance, such as written mitigation pleas and drafting of the defence case. Coverage was also extended to include more offences for which accused persons may be granted assistance, and to provide aid in cases where the accused person intends to plead guilty - if legal aid can make a difference in the sentencing.²⁸¹ The means test was significantly enhanced to allow more accused persons to qualify for legal aid.

Even with government funding an honorarium to help lawyers defray expenses, these enhancements would not be possible without the support of the legal fraternity to take up CLAS cases. Four schemes were introduced to grow the pool of lawyers taking on CLAS cases and to provide additional support to pro bono criminal legal aid. They are:

- a. **Lead Lawyers:** These are volunteer senior criminal law practitioners who are on duty at the LSPBS office to provide basic legal advice to CLAS applicants, assess the merits of the case, and make a recommendation on the level of aid to be given.
- b. **Memorandums of Understanding (MOUs):** Signed with 22 law firms (as at August 2017), which pledged to take on over 300 CLAS cases per year between them.
- c. **CLAS Fellows:** These are lawyers seconded or sponsored by their law firms to work full-time on a one-year tenure exclusively on CLAS cases. The Fellowship strengthens the provision of criminal legal aid. It also aims to strengthen the criminal Bar, and to develop a pro bono spirit that the young lawyers will carry back into the fraternity.

²⁷⁹ CLAS covers offences under the following 16 statutes: the Arms & Explosives Act; Arms Offences Act; Corrosive & Explosive Substances & Offensive Weapons Act; Dangerous Fireworks Act; Enlistment Act; Explosive Substances Act; Films Act; Miscellaneous Offences (Public Order and Nuisance) Act; Misuse of Drugs Act; Moneylenders Act; Penal Code; Prevention of Corruption Act; Undesirable Publications Act; Vandalism Act; Misuse of Computer Act; and the Women's Charter.

²⁸⁰ Note that between 2012 and 2014, there was a significant year-on-year increase in the number of accused persons granted legal aid by CLAS: 320 cases in 2012; 427 in 2013; and 431 in 2014 (figures from the Law Society).

²⁸¹ Before 2015, CLAS only assisted persons claiming trial, except for defendants who are 16-18 years old of age or with mental illness/disability.

- d. CLAS Advocates:** These are full-time criminal lawyers hired by LSPBS with government funding support. These Advocates are more experienced lawyers working full-time on CLAS on two- to three-year tenures. They work on more complex and challenging cases, mentor the CLAS Fellows, and ease the transition of cases between different batches of CLAS Fellows.

There is strong support from the legal fraternity for enhanced CLAS. Many firms have contributed greatly to CLAS through their support for the CLAS Fellowships and taking on a significant number of CLAS cases under the MOUs. Some firms have also exhibited strong pro bono spirit by waiving all honoraria their lawyers would have received for taking on CLAS cases.

With the provision of government funding and the strong support of the legal fraternity, the enhanced CLAS is now able to serve many more accused persons. The number of applications has increased by more than 30 per cent (from about 1,800 cases in 2014 to about 2,500 cases in 2017), and the number of applicants receiving full representation or unbundled services each year has almost quadrupled (from about 400 cases in 2014 to about 1,600 cases in 2017).²⁸² In addition, all CLAS applicants now receive basic legal advice, regardless of whether they are eventually granted legal aid. This service was not provided prior to 2015.

(d) Criminal Legal Aid for Capital Cases – Legal Assistance Scheme for Capital Offences (LASCO)

The Legal Assistance Scheme for Capital Offences (LASCO), which is overseen by the Supreme Court, provides pro bono legal aid for capital offences. LASCO is provided regardless of the accused person's nationality, without any means testing or other eligibility criteria. Once a person is charged with a capital offence, legal counsel will be offered to the person. Usually, two counsels will be assigned: one lead and one assisting. This applies to legal representation at both the initial trial and subsequent appeal.

As with all pro bono criminal legal aid, LASCO relies on the support of the legal fraternity. Practising lawyers apply through the Supreme Court to become LASCO counsel. Those who qualify as LASCO counsels are put on a list maintained by the Registrar of the Supreme Court. When there is a case, counsels on the list are notified. Any LASCO counsel may volunteer to take on the case. The LASCO Case Assignment Panel then assigns the counsel to the case after deliberation. Currently, about 200 lawyers are empaneled as LASCO counsel. All assigned counsels are paid an honoraria for the professional services rendered. The Registrar of the Supreme Court decides on the amount of honorarium to be paid in each case.

IV. Legal Aid Service Providers

Pro Bono Legal Services Provided by the Legal Fraternity and the Community

In terms of financial resources, the State is a significant legal aid service provider. In the current financial year (FY2018-19), the government has budgeted SGD7.21 million (SGD7.54 million in FY2017-2018) to fund the legal aid programme.²⁸³ In addition, for the CLAS, the government commits up to SGD3.5 million annually to

²⁸² Statistics based on calendar year (1 January – 31 December).

²⁸³ The budget is the sum of the operating and development expenditures. For FY2014-15 and FY2015-16, the actual expenditures for the Legal Aid Bureau were SGD5.93 million and SGD6.87 million respectively. The estimated expenditure for FY2016-17 is SGD6.85 million.

LSPBS to cover operational costs, honoraria and disbursements.²⁸⁴ To reiterate, other than legal aid funded by the government, the legal fraternity and a rich network of community partners provide pro bono legal services. Some of these key stakeholders are highlighted below.

(a) The Law Society of Singapore (Law Society)

The role of the Law Society in ensuring access to justice is crucial. The Legal Profession Act (Cap. 161, 2009 Revised Edition) states that one of the purposes of the Law Society is “to make provision for or assist in the promotion of a scheme whereby impecunious persons on non-capital charges are represented by advocates”.²⁸⁵ Beyond fulfilling its statutory purpose, the Law Society “believes that lawyers have a professional and ethical obligation to provide pro bono assistance in our community, arising from (1) our calling or vocation as lawyers and (2) a social contract with the community arising from our monopoly over legal advice and representation”.²⁸⁶ The Criminal Legal Aid Scheme (CLAS) has been a major undertaking of the Law Society since 1985. In 2007, the Law Society established the Pro Bono Services Office (LSPBSO) with the mission to help bring free legal assistance. Subsequently, the LSPBSO was corporatised on 1 April 2017 as the Law Society Pro Bono Services Limited (LSPBS), the Law Society’s first wholly owned subsidiary. This has enabled it increase its staff strength and to provide a wider range of initiatives and activities which had grown considerably over the years.

The LSPBS’ major legal aid programmes include various legal clinics, and legal literacy outreach.²⁸⁷ Over 10,000 underprivileged individuals receiving legal advice and aid annually, with the support of 2,000 volunteer lawyers across different specialisations. The Community Legal Clinics, which provide free legal information, advice and referral on questions of Singapore law and procedure to persons of limited financial means, in a one-to-one 20-minute session. They are to assist needy Singaporeans and Permanent Residents who are not represented by a lawyer. Advice would be provided on personal matters and not business/corporate or professional matters.²⁸⁸ Four Community Legal Clinics are held each week, one at each of four Community Development Councils (CDCs) spread across the island, for greater accessibility to members of the public.²⁸⁹ About 180 lawyers volunteer with LSPBS’ Community Legal Clinics.

Other than the Community Legal Clinics, LSPBS also collaborates with specialised organisations in the following Specialist Legal Clinics: Civil, Criminal and Family Legal Clinics held at the State Courts, Criminal Legal Remand Clinics to provide advice for persons in remand and Law Works Clinics to assist union members. LSPBS also has an Ad Hoc Pro Bono Referral Scheme, which provides civil or criminal legal representation for exceptional cases not covered by LAB or CLAS. Cases are generally referred to LSPBS from social welfare organisations, lawyers, Members of Parliament, or government agencies. Other activities organised by the LSPBS targeted at members of the public to raise legal literacy can be found at Annex 2.

²⁸⁴ Press release by the Ministry of Law on enhanced CLAS, 19 May 2015, available online at <<https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/Enhanced-CLAS-to-provide-greater-access-to-justice.html>> accessed 6 Sep 2017.

²⁸⁵ See section 38(1)(f) and (g) of the Legal Profession Act, which provide that the purposes and powers of the Law Society include:
(f) to protect and assist the public in Singapore in all matters touching or ancillary or incidental to the law;
(g) to make provision for or assist in the promotion of a scheme whereby impecunious persons on non-capital charges are represented by advocates;

²⁸⁶ Correspondence with the Law Society of Singapore.

²⁸⁷ See Table 20 at Annex 1. See also the LSPBS website at <http://probono.lawsociety.org.sg/Pages/default.aspx>.

²⁸⁸ More information on the Community Legal Clinics can be obtained from <http://probono.lawsociety.org.sg/Pages/Community-Legal-Clinic.aspx>.

²⁸⁹ To qualify for assistance, the applicant must be a Singapore Citizen or Permanent Resident, be of limited financial means, reside in Singapore, and not already have engaged the services of a lawyer.

(b) Community Justice Centre

The Community Justice Centre (CJC) was established in 2012 through an MOU between the Ministry of Community, Youth and Sports (now the Ministry of Social and Family Development²⁹⁰), the Ministry of Law, the Subordinate Courts (now renamed the State Courts), the Tan Chin Tuan Foundation, and the Law Society of Singapore. The CJC is also at the forefront of promoting a pro-alternative dispute resolution (ADR) culture so that litigants have an avenue to resolve issues more amicably, expeditiously, and cost-effectively. The CJC provides legal services via the following programmes²⁹¹:

- a. The Primary Justice Project encourages the public to explore amicable settlement of disputes before taking legal action in court. Under this scheme, a party who has a dispute may seek the assistance of a lawyer who is listed on the Primary Justice panel. These mediation-trained lawyers provide, at a fixed low cost, basic legal services geared towards resolving the disputes at an early stage.
- b. The CJC provides information and support for LIPs through (i) the HELP (Helping to Empower Litigants in Person) Service Centres located in the State Courts and the Family Justice Courts, which provide procedural information; (ii) the University Court Friends programme in which law students provide immediate support and guidance to litigants-in-persons by explaining court processes and proceedings to them, and (iii) the Friends of Litigants-in-Person (FLIP) scheme in which volunteers provide guidance on non-legal issues and moral support such as attending court hearings with the LIP and assisting them to note down useful information. In November 2016, the CJC collaborated with the Supreme Court to establish a satellite office in the Supreme Court.²⁹² These centres serve as a one-stop legal service hub that provides greater integration of legal aid and social assistance to litigants-in-person (LIPs).
- c. The CJC also provides legal advice and assistance to LIPs through the On-Site Legal Advice Scheme (OSLAS) which provides immediate legal advice to LIPs at the HELP Centre located at the State Courts (Mondays to Fridays) and Supreme Court (every Thursday for bankruptcy matters only); and the Enhanced Guidance for Plea Scheme (eGPS) under which judges can call upon the pool of lawyers from the Association of Muslim Lawyers or the Association of Criminal Lawyers to give legal advice to unrepresented litigants facing criminal charges.
- d. Many litigants coming to the courts also face socio-economic challenges. The CJC's Legal Information and Knowledge Services (LINKS) located at the Family Justice Courts provides litigants with interim financial assistance and food rations support. If CJC assesses that the party requires further specific assistance, CJC may refer the party to other relevant social service agencies for more targeted social support to be provided to them.

(c) Other Legal Service Providers

Other than these LSPBS and CJC programmes, there are more than 50 other legal clinics in Singapore organised by community centers, religious organisations, and volunteer welfare organisations that provide

²⁹⁰ In 2012, the Ministry of Community, Youth and Sports was restructured to become the Ministry of Social and Family Development. Some functions were also moved to two other ministries, i.e. the Ministry of Culture, Community and Youth, and the Ministry of Communications and Information.

²⁹¹ See Table 21 at Annex 1.

²⁹² The CJC satellite office at the Supreme Court was soft launched in November 2016. It caters to persons involved in bankruptcy proceedings and may expand its scope of work in future.

legal support to members of the public. Some legal clinics cater specifically to foreigners providing free legal advice for migrant workers. They include the Foreign Domestic Worker Association for Skills Training (FAST) Legal Clinic and the Migrant Workers' Centre (MWC) Legal Clinic.

Other than legal advice, some organisations e.g., Humanitarian Organisation for Migration Economics (HOME) and the Catholic Church's Archdiocesan Commission for the Pastoral Care of Migrants & Itinerant People (ACMI) (in collaboration with the Catholic Lawyer's Guild and other volunteer lawyers) also provide legal representation to migrant workers on an ad hoc basis.

In addition to legal services, non-legal services may be provided to support vulnerable parties in need of other forms of social assistance. This is usually done through social services referrals. The provision of such a service recognises that the legal issues faced by an indigent litigant are not self-contained legal problems but are often a manifestation of other issues. LSPBS and LAB make social service referrals if they assess that applicants for legal aid also have unmet social needs. For example, applicants may be referred to CJC's LINKS program for interim financial support, the Divorce Support Specialist Agencies (DSSAs) for divorce, family dispute counselling and case management, or Centre For Promoting Alternatives to Violence (PAVE) for cases involving family violence.

V. Good Practices

The relative success of Singapore in broadening the provision of legal aid and ensuring robust access to justice is the result of an effective and efficient legal aid regime that is undergirded by the commitment to meaningful access to justice. There are four key pillars: strong political will in ensuring access to justice, a multi-stakeholder approach and collaboration on legal aid, a growing pro bono culture that is constantly nurtured, and the provision and promotion of alternative dispute resolution and the use of diversionary strategies and institutions.

(1) Strong Political Will and Leadership in Ensuring Access to Justice

The political will to provide and ensure access to justice through legal aid has been a lodestar in the development and growth of legal aid in Singapore. Since independence, the Singapore government recognises that to have a system of governance defined by the rule of law, a key determinant is access to justice. The government has developed a legal framework that is supportive of legal aid. This commitment towards a rules-based system was initiated under the leadership of Singapore's founding Prime Minister, Mr Lee Kuan Yew, when the People's Action Party (PAP) was elected into government in 1959.²⁹³ Although Singapore's approach to criminal legal aid was initially marked by an ambivalent, if not conflicted, sense of what the public interest required, the government has always been very supportive of efforts by the legal fraternity, led by the Law Society, in providing criminal legal aid.

In order for the legal system (and courts in particular) to fulfill their constitutional role, those who use the legal system must have as much unimpeded access to them as possible. They should not be excluded merely because of their lack of ability to pay. Furthermore, an independent judiciary is a necessary condition for the rule of law to prevail but it is not a sufficient condition. The touchstone is the availability of meaningful access

²⁹³ As a lawyer prior to becoming Prime Minister, Mr Lee Kuan Yew was a legal advisor to many trade unions and recognised the potential and central importance of the law in making a positive difference to society.

to the legal system, especially the courts. There is the abiding commitment of various stakeholders, led by the government, in ensuring that access to justice is not denominated and differentiated by the “haves” and the “have nots”. Without meaningful access to the legal system, laws are likely to become a dead letter - a rebuke to a system that seeks to be defined by the rule of law. In addition, without adequate access to justice, the work of the legislature in enacting laws that promote the common good would be rendered nugatory, and the vision of a society defined by the rule of law illusory.

The strong political will and leadership vis-à-vis access to justice were in tandem with the government’s determination to build an incorruptible and meritocratic government and an inclusive society. The Singapore government is an advocate, promoter and practitioner of ensuring access to justice which impacts upon a person’s inclusion in society. As a result of the government’s unwavering political commitment and leadership, which has seen renewed vigour in the past decade, a culture of pro bono service is being engendered and reinforced in the Singaporean psyche and way of life.

(2) Firm and Deep Foundation of Pro Bono Culture

The political will and leadership in ensuring access to justice is complemented by a strong pro bono culture within the legal fraternity. In the delivery of legal aid, lawyers are the “legs to go places”. Access to justice is not just an ideal worth striving towards but any framework designed to this end must also be sustainable. The Singapore government is strongly supportive of the legal fraternity’s concerted efforts towards growing a pro bono culture as an integral part of building a more caring and compassionate society.²⁹⁴ Similarly, the Judiciary is also an active supporter and promoter of pro bono work.²⁹⁵ This belief and support in co-creation is important in ensuring that legal aid is adequate, access to justice is secure, and the overall framework is sustainable.

Since 2015, Singapore lawyers are required to disclose the number of hours spent in each preceding year on pro bono work.²⁹⁶ On the contributory factors for the current success and which would underpin future success for their pro bono efforts, the Law Society pointed to the following:

- “The continued support and selfless contributions of our members and volunteers”;
- “Adoption of public-private partnerships (3P) as the model of choice to scale up our pro bono initiatives”;

²⁹⁴ Pro bono work includes:

- i. Legal advisory / representation work for legal organisations and societies; and
- ii. Other law-related work (e.g. committee work for the Law Society of Singapore, the Singapore Academy of Law, the Singapore Mediation Centre, the Singapore Institute of Legal Education, any Ministry in a law reform project and sitting as a member of a Disciplinary Committee).

Work will be considered as pro bono if no remuneration is received, or only an honorarium is received. (<https://www.mlaw.gov.sg/news/press-releases/mandatory-reporting-for-legal-pro-bono-work-done.html>)

²⁹⁵ See Chief Justice Sundaresh Menon, ‘Law and Medicine: Professions of Honour, Service and Excellence,’ 23rd Gordon Arthur Ransome Oration, 21 July 2017, para 36. See also Chief Justice Sundaresh Menon, ‘The Singapore Academy of Law: An Essential Dedication to Honour and Service,’ 25th Singapore Academy of Law Annual Lecture, 11 October 2018. The themes of honour and service underscore both lectures. It is worth noting the Chief Justice’s constant exhortation, encouragement, and emphasis that the “spirit of public service” embodies the purpose and ideals of the legal profession. See also the theme of honour and the legal profession’s nobility made by Justice Andrew Phang in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308 at [81].

²⁹⁶ When a lawyer applies for a practicing certificate, he is required by statute (Legal Profession (Mandatory Reporting of Specified Pro Bono Services) Rules 2015) to declare the number of hours spent on pro bono work in the immediately preceding practice year. The Law Society of Singapore recommends a minimum of 25 pro bono hours per year, although this is not a statutory requirement (<http://www.lawsociety.org.sg/probono/pdf/probonoguide.pdf>). See Table 22 at Annex 1 for annual pro bono hours between 2009 and 2016.

- “Consistent support and guidance from the Law Society’s leadership, investment in building structures to provide support for lawyers doing pro bono work and instill a spirit and culture of volunteerism amongst the profession”;
- “Reaching out beyond the legal profession/practising lawyers and are engaging law students as well as non-practising lawyers (e.g. in-house teams, corporate counsel). For example, we work closely with NUS [National University of Singapore], SMU [Singapore Management University] and SUSS [Singapore University of Social Sciences], as well as associations such as the Singapore Corporate Counsel Association”.

While the legal fraternity is at the vanguard of pro bono efforts, the three Singapore law schools at NUS, SMU and SUSS also contribute to the growing culture by instilling the pro bono ethos in their law students.²⁹⁷ Law students who commenced their relevant qualifying law programmes from 2013 are required to perform 20 hours of pro bono work as part of their graduation requirements for their entire course.²⁹⁸ Earlier, the 2007 Report of the Committee to Develop the Singapore Legal Sector recommended that measures should be taken to foster idealism and community bonding among lawyers, in particular, through the promotion of pro bono work.²⁹⁹

Building on the Committee’s recommendation, the Singapore Institute of Legal Education (SILE) has initiated a pro bono programme for law students from the local law schools. Through the programme, law students would acquire a better understanding of what is access to justice, raising awareness of legal rights, liabilities and responsibilities, and of self-help remedies such as mediation, negotiation and alternative means of conflict resolution for disadvantaged persons. The programme aims to develop students’ conception of the practice of law as a public service vocation in which benefit to the community is the clarion call. By enabling students to experience how the law works in real life through interaction with the host organisations, this effort seeks to normalise and encourage pro bono work.

(3) Multi-stakeholder Approach

Closely tied to the strong and growing pro bono culture is the strong belief and commitment to the multi-stakeholder approach and collaboration in providing legal aid and enhancing access to justice. In Singapore, there is the 3P approach involving the public, private, and people sectors in a joint partnership. This collaborative partnership of key stakeholders facilitates all stakeholders in bringing their strengths and values to the cause of access to justice. Undergirded by the keen recognition that the legal system, especially the courts, does not merely provide a public service, the issue of access to justice is, at its core, about the accessibility and trust in the legal system, including the courts. Hence, access to justice must be effective not just in a theoretical sense, but in practice too.³⁰⁰

²⁹⁷ Law schools have traditionally and culturally confined themselves to the academic instruction of the law. The law schools at NUS and SMU have established pro bono centres to further encourage law students to help the needy and better understand the role of law and the lawyer in society.

²⁹⁸ This may be done at any time after their first year of study. The criteria and guidelines for approved pro bono work under SILE’s Pro Bono Programme can be found at http://www.sile.edu.sg/pdf/SILE_Approved_Pro_Bono_Work-Criteria_and_Guidelines_2014.pdf. The SILE has a Review Committee comprising representatives from the Institute, the Law Society and the Law Schools to review and confirm specific activities as Approved Pro Bono Work.

²⁹⁹ See paras 3.56 and 3.57 of the Report, available at <https://www.mlaw.gov.sg/content/dam/minlaw/corp/assets/documents/linkclিকে1d7.pdf>.

³⁰⁰ While this study would not be able to make any conclusion on this, Singapore’s legal system continues to very well-regarded.

This “many helping hands” approach is necessary to ensure that legal aid is delivered to those who require it and that access of justice is assured both in form and in substance. The government and the legal fraternity cannot go the course alone. For example, the Law Society’s collaboration with relevant stakeholders and agencies has allowed them to tap on their partners’ wide network and enabled the Law Society to provide customised assistance to targeted segments of the community. Similarly, the Law Society collaborated with the Ministry of Law to roll out the enhanced CLAS in 2015. Since its launch, it has served almost four times more accused persons with full representation or unbundled services, and provided the other applicants with basic legal advice as well. Simply put, “the [enhanced CLAS] is an excellent example of a game changer public-private partnership that works”.³⁰¹

The Judiciary is another invaluable stakeholder in the drive to ensure access to justice, particularly in civil matters. Since the early 1990s, the Judiciary has been continually revamping and overhauling civil litigation. In late 2017, after three years of careful study, the Supreme Court’s Civil Justice Commission appointed by the Chief Justice submitted its report recommending bold reforms which aim at “enhancing efficiency and speed of adjudication and maintaining costs at reasonable levels”.³⁰² The intent is to update and simplify procedural rules of court, eliminate time- and costs-wasting procedural requirements, promote the greater use of technology in litigation, and allowing for greater curial control of the litigation process. These reforms to the civil litigation process are undergirded not just at making the courts more efficient and effective but are fundamentally about improving access to justice. There are now more litigants-in-person appearing before the courts. Not all of these litigants may be indigent but if the litigation process becomes expensive, tedious, and forbidding, then the central principle of meaningful access to justice becomes severely undermined. In this regard, the concern of access to justice is not confined to the poor and disenfranchised but extends to those prevented from fully utilising the legal system to assert and protect their rights and interests.

There are also efforts for the medical and legal professions to collaborate for the public good. For example, the Law Society and the Singapore Psychiatric Association collaborate to enable more accused persons to have access to psychiatrists leading to “a sharper focus on key psychiatric issues in the prosecution and defence of criminal cases”. Furthermore, there are plans to have senior doctors to act as assessors and assist judges in medical litigation cases.³⁰³

What can be discerned clearly is the collective, collaborative effort by a wide variety of stakeholders in working towards the common goal of improving access to justice. The growing participation by civil society organisations in Singapore’s associational life, not directly concerned with the law, in improving access to justice demonstrate the extent to which ensuring the protection of one’s legal rights contributes to the development of social capital.

Overall, the legal aid framework has an intimate public-private-people collaboration in which community organisations provide help to the needy and vulnerable, with the government providing either financial or moral support and ensuring the legal infrastructure continues to be accessible to the wide variety of users. In keeping with the multiracial and multireligious ethos of Singapore, many of the volunteer welfare organisations provide their legal aid services to the community regardless of the beneficiaries’ religion, race, or language.

³⁰¹ Speech by Mr K. Shanmugam, Minister for Foreign Affairs and Law, at the Association of Muslim Lawyers’ Inaugural Lecture, 6 December 2013.

³⁰² See Justice Steven Chong’s speech titled, “Judicial Reform: Reshaping the Civil Justice System in Singapore,” at the Judicial Conference of the Supreme Courts of the G20, 10 October 2018 in Buenos Aires, Argentina, available at [https://www.supremecourt.gov.sg/docs/default-source/default-document-library/j20-paper---judicial-reform---justice-steven-chong-\(singapore\).pdf](https://www.supremecourt.gov.sg/docs/default-source/default-document-library/j20-paper---judicial-reform---justice-steven-chong-(singapore).pdf).

³⁰³ See Chief Justice Sundaresh Menon, ‘Law and Medicine: Professions of Honour, Service and Excellence,’ 23rd Gordon Arthur Ransome Oration, 21 July 2017, para 36.

(4) Provision and Promotion of Alternative Dispute Resolution

Besides the provision of legal aid, Singapore's approach to access to justice also encompasses providing more affordable means for people to resolve their disputes. This includes the establishment of dispute resolutions forums in addition to the courts and the promotion of the use of alternative dispute resolution (ADR). At a basic level, Singapore's ideational approach to dispute resolution is to create a system where the courts can provide expeditious resolution parties who seek a solution from the formal legal system. Part of this approach entails the strong support for the principle that the courtroom should be the *ultimum remedium* (forum of last resort).

To limit the use of litigation to resolve disputes, the state has established facilities and incentives for ADR and made them accessible as the first port-of-call for the settlements of disputes. In fact, the state's direct and active involvement in conflict management is a distinctive feature of the ADR framework in Singapore and is supported by a cultural approach, by which ADR is portrayed and promoted as being in accord with the values and norms of Singaporean society. Such a pervasive institutional and cultural commitment to ADR profoundly influences the behaviour of disputants resulting in disputants using ADR especially for relatively small commercial claims and social disputes.³⁰⁴

The efficiency and cost-effectiveness of such a system requires the application of proportionate judicial and party resources in the dispute resolution process. This, in turn, demands that trivial cases are diverted out of the court system, such as some non-injury motor accidents.³⁰⁵ By diverting minor commercial claims and social disputes to alternative forums, the courts are free to focus on complex cases and commercial claims of higher monetary value. More importantly, through an adroit use of and concerted promotion of ADR, a clear benefit is improved access to justice. While ADR is also a manifestation of a technocratic ethos emphasising the values and norms of efficiency, functionality and economic pragmatism, litigation-avoidance methods also reflects a larger movement towards moulding Singaporeans' views of ADR vis-à-vis litigation, with all its attendant socio-economic and political objectives and consequences. Disputing parties can still avail themselves to the legal system without concerns over access to justice since the alternative methods are more affordable.

Besides the courts, other dispute resolutions forums have been established. The establishment of the Small Claims Tribunals within the Subordinate Courts (now known as the State Courts) in 1985 was to provide a quick and inexpensive forum for the resolution of small claims, arising from disputes between consumers and suppliers, not exceeding SGD10,000.³⁰⁶ Other specialised dispute resolution forums include the Tribunal for the Maintenance of Parents (under the Maintenance of Parents Act (Cap. 167B, 1996 Revised Edition), and the complaints process for the Commissioner for Labour to resolve salary disputes. These fora have been established to serve the needs of different groups, particularly those in need. Their simplified procedures allow cases to be heard expeditiously, at much lower cost, and without the need for representation by lawyers.

³⁰⁴ See my 'Harmony as Ideology, Culture, and Control: Alternative Dispute Resolution in Singapore,' *Australian Journal of Asian Law*, vol. 9, no. 1 (2007), pp. 120-151.

³⁰⁵ For example, the "FIDReC-NIMA Scheme," administered by the Financial Industry Disputes Resolution Centre Ltd ("FIDReC"), targets a limited segment of non-injury motor accident cases (i.e. cases involving insurance companies, and where claim amount is less than SGD3,000). It further only requires that mediation and adjudication by FIDReC be first undertaken before the commencement of court proceedings; it does not bar court proceedings per se: see <http://www.fidrec.com.sg/website/aboutfidrec.html>. A large proportion of motor accident claims (injury and non-injury cases) are in fact commenced in the courts, and are referred to court-annexed ADR processes at first instance.

³⁰⁶ This limit can be raised to SGD20,000 if both parties agree to it and file a Memorandum of Consent. A claim cannot be split or divided to bring it within the Tribunals' jurisdiction.

In multi-racial, multi-lingual and multi-religious Singapore, mediation is clearly the preferred mode of dispute resolution. Unlike other jurisdictions where mediation was introduced as a diversionary measure to deal with backlogs and delays, Singapore's motivation was different. Mediation was singled out as being in accord with Singapore's Asian traditions and cultures, and promoting it ensures their continuance. Community mediation is also strongly advocated and promoted as an effective means of settling relational disputes at the grassroots level. Following the recommendation of the Inter-Agency Committee on ADR, the Community Mediation Centres Act (Cap 49A, 1998 Revised Edition) was enacted in 1997 to spearhead this endeavour. The Community Mediation Centre (CMC) promotes mediation as an effective means of addressing disputes regardless of whether users have been referred voluntarily. Although members of the public can bring their social disputes to CMC, community mediation remains largely dependent on referrals by the authorities. Cases are often referred to the CMC by the Magistrates' Court (without the need for consent of all the parties), the police, or other strategic partners like the Housing and Development Board (HDB).³⁰⁷ The norms of mediation apply to community mediation. Parties are not required to produce evidence when undergoing mediation at the CMC. Access to the CMC is very affordable. Volunteer mediators are assigned to each case and legal representation is not allowed. When the disputants come to an agreement, a legally binding settlement is signed.

Efforts are also placed on developing 'soft' infrastructure as part of efforts to popularise community mediation in the residential heartlands. That mediation skills can be taught and imparted is a core belief underpinning the putative national mediation movement.³⁰⁸ Community leaders are encouraged to undergo training as mediators or as facilitators/persuaders of mediation. Their role is to visit and persuade the disputing parties to use mediation as a means of resolving their conflict. Community leaders are ideal candidates as they usually have affinity with other members of their own community and can therefore be trusted to facilitate, mediate and resolve disputes with knowledge and empathy of the local situation. The usual benefits canvassed are that relationships can be preserved, while also saving time and expense, and engendering public trust and confidence in the justice system.

VI. Recommendations

The landmark change to criminal legal aid in 2015 manifested a fundamental shift in the government's thinking and philosophy towards legal aid and, more broadly, access to justice. It is important to continue to strengthen the overall framework for access to justice by recognising that the administration of justice is not just another public service. Access to justice is a public good, with legal aid serving members of the public when they are at their most vulnerable. It reflects the basic ethos of a society and represents the commitment to ensuring that justice is not denied and not delayed but is given effect to promptly and affordably with those legitimately requiring legal aid obtaining them. Unmet legal needs undermine the rule of law. Singapore's approach to legal aid and, more broadly, access to justice seeks to consider and manage the "demand" and "supply" of legal aid. The following are some recommendations that can refine an increasingly robust legal aid regime in Singapore that involves the public, private, and people sectors in co-creating a sustainable system for the access to justice.

³⁰⁷ Eighty percent of Singaporeans live in public housing estates developed by the HDB.

³⁰⁸ Frontline officers in government agencies are being taught basic mediation techniques as well. See "Frontline govt officers learn mediation skills," *The Straits Times*, 6 October 2018.

First, the government should continue with its regular reviews of the means test, with a periodic root-and-branch review of the legal aid regime. Regular reviews can ensure that the means test stays relevant and continues to facilitate access to justice by targeting those most in need. As such, the means test must keep pace with living costs so that vulnerable people are not unwittingly excluded. It is timely to consider whether legal aid should only be restricted to the very poor. Article 47 of the European Charter of Fundamental Rights and Freedoms puts it well: “Legal aid shall be available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice”.

While the current means test appears to be working well, the proposed legislative amendments (which were tabled in Parliament in October 2018) to update and simplify the means criteria, and to align them with means criteria more commonly used in current social support schemes, will simplify and shorten the application process for legal aid. The amendments will also provide greater flexibility for LAB to help those who fail the means test but have extenuating circumstances, and improve the administration of legal aid. Together, these amendments will strengthen access to justice for those who with limited means.³⁰⁹

Second, at a systemic level, it bears reminding that the stakeholders in the legal system have to keep an eye on the costs of using the legal system. These include court fees, lawyers’ professional fees, and the like. Access to justice is also compromised if people decide not use the legal system because the costs are prohibitive or perceived to be prohibitive. Similarly, the legal fraternity must not rest on its laurels in making pro bono services a professional priority and an integral part of the commitment to social justice. It is crucial that justice remains affordable and that people are not priced out of justice. Continual reviews and reforms to the costs of legal representation and the use of court system are necessary to ensure that access to justice is robust. The legal fraternity should also assess and appraise the social impact of their pro bono work, including the clients’ satisfaction and cost effectiveness.

Third, notwithstanding the official emphasis on mediation and the state’s self-ascribed definition of Singaporean society as consensus-seeking, the use of ADR (especially mediation) as a means of promoting access to justice has to managed carefully to ensure the rights of individuals are not compromised. To be clear, a non-adversarial mode of dispute resolution would be preferred, as it provides significant savings in time and costs, as well as preserving relationships between members of that society. However, even as ADR is preferred, resolving disputes involving the indigent and disadvantaged must not prevent stakeholders from critically inquiring into the proper access to judicial adjudication and relief, and the proper balance between social consensus and harmony and an individual’s rights and interests in the matter at hand. The apparent fixation with settlement and settlement rates, and the preservation of traditional norms, raises the question of whether equity, fairness and procedural protections are, in fact, optimally internalised in Singapore’s ADR framework, especially in legal aid cases. In short, the need to manage the costs of legal aid to the public purse should not marginalise the use of litigation in legal aid cases. Adjudication also enables the application and dissemination of law, educating the citizenry on the law’s obligations and remedies as well as limitations. For a small nation-state, adjudication offers democratic governance the opportunities to observe the state’s authority and power being exercised, and for the citizens to participate in the creation of norms even in ordinary cases.

Even as the legal fraternity, the government and the Judiciary continue to nurture and promote the pro bono culture and framework in Singapore, it is also timely to consider the link between pro bono practice and legal professionalism. Lawyers enjoy a monopoly over the provision and delivery of legal services, and this tends to result in an artificially high market value for such services. In turn, this can affect people, especially

³⁰⁹ “‘Sandwiched class’ too may need pro bono legal help,” *The Straits Times*, 15 October 2017.

the indigent, in accessing legal services.³¹⁰ Pro bono clients may also present ethical issues for lawyers that are often different from those of fee-paying clients.³¹¹ As the legal fraternity pursues pro bono legal work in a more significant way, the potential ethical challenges and dilemmas arising out of the professional monopoly should be identified and addressed. Currently, the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) applies to all practising lawyers, including those providing pro bono legal services. It is worth considering whether there should be specific regulations and/or guidance for lawyers providing pro bono work. Given the intimate ties between pro bono work and legal aid, both the lawyers and the clients would benefit if clients are not “short-changed” merely because they are receiving pro bono legal services.

VII. Conclusion

*Justice that cannot be accessed because it is beyond the reach of those who need it ceases to serve its fundamental role of assuring legitimacy in our social framework.*³¹²

Singapore promotes access to justice through the provision of legal aid and other legal services and infrastructure that serve both the underprivileged and the community at large. To improve access to justice, the Government has been providing more funds as well as institutional support for civil and criminal legal aid to Singaporeans and permanent residents in need as well as foreign migrant workers working in Singapore. The provision of legal aid and other legal services is delivered through a strong partnership between the government, the legal fraternity and other community partners.³¹³ It is a rich landscape of stakeholders motivated by a unity of purpose in ensuring access to justice as an integral part of the rule of law.

In developing and enhancing the overall framework for access to justice, all the stakeholders fully recognise that the administration of justice is not just another public service. It is, arguably, *sui generis*. In this regard, the courts are not mere providers of service to the “users” who appear before them. The value of such a service is not only specific to the users themselves (and to those who are remunerated for their participation in the court proceedings) but extend to others who may well derive a benefit from the establishing, clarification, or amplification of legal issues and the law. Thus, the mere existence of the courts is a necessary but insufficient condition for the rule of law to prevail. The imperative to attend purposefully to unmet legal needs continues to sustain Singapore’s approach to legal aid and, more broadly, access to justice.

Like the approach towards human rights and the rule of law, access to justice in Singapore is not just conceived as an end in itself but also as a process, a means to the end of good governance denominated by a stable political order, social equity and justice, and grounded in social consensus of the common good. Government spending on legal aid can be likened to an important form of social investment. Pro bono work and lawyering can provide needed intimate connection between law and lawyering and the public good.

³¹⁰ Lorne Sossin, a Canadian legal scholar, puts it aptly, “In other words, pro bono is the *quid pro quo* for lawyers’ wealth and privilege”: Lorne Sossin, “The Helping Profession: Can Pro Bono Lawyers Make Sick Children Well?” in Adam Dodek and Alice Wooley (eds.), *In Search of the Ethical Lawyer: Stories from the Canadian Legal Profession* (Vancouver: University of British Columbia Press, 2016), pp. 150-163 at 152.

³¹¹ This includes conflicts with fee-paying clients, clients with diminished capacity, clients with multifaceted legal problems over and above what a pro bono lawyer have agreed to work on.

³¹² Chief Justice of Singapore Sundaresh Menon, Keynote address at the Subordinate Courts Workplan, 1 March 2013.

³¹³ It is, however, arguable whether legal aid in Singapore is an implicit constitutional right. If there is a constitutional right to legal aid, then the right is a ‘hybrid’ one: It imposes a positive obligation of funding on the state, while it is also an integral part of the right to a fair trial.

As society evolves and matures, the substantive content of access to justice will adjust to the societal changes and norms. The provision and delivery of legal aid in Singapore will have to evolve and adjust accordingly. The longstanding position that the state ought not to fund criminal legal aid has decisively given way to a broader conception of what access to justice is and requires, as well as enhancing the administration of criminal justice. Increasingly, prosperity will not be measured only by material wealth and pragmatic indicators (like GDP) but also by post-material considerations of the “wellbeing” of an individual and of society, especially the disadvantaged and the indigent. Wellbeing is determined by both tangible (e.g., health and security) and intangible factors such as happiness and the substantive content and quality of fundamental freedoms that Singaporeans and non-Singaporeans living in Singapore enjoy.

As a component of the rule of law, access to justice, broadly conceived and not narrowly confined to the provision of legal aid, is therefore critical to Singapore’s nation-building process.

Annex 1

Table 19: No. of Legal Aid Applications to Legal Aid Bureau (2013-17)³¹⁴

Financial Year	2013	2014	2015	2016	2017
No. of applications for legal aid	10,070	9,490	9,190	9,053	9,012

Table 20: Statistics for LSPBS’ Programmes³¹⁵

Programme	No. of cases (FY2017)
Criminal Legal Aid Scheme (CLAS)	2,741 applications (all received basic legal advice), of which 1,790 granted aid
Community Legal Clinics	1,522 attendees
Civil Legal Clinics	62 attendees
Family Legal Clinics	128 attendees
Law Works Clinics Legal Clinics	113 attendees
Ad Hoc Pro Bono Referral Scheme	31 applications, 26 assignments

³¹⁴ Source: Legal Aid Bureau website.

³¹⁵ Source: Law Society 2018 Annual Report.

Table 21: Statistics for CJC’s Programmes³¹⁶

Programme	No. of cases/interactions (CY2015)
HELP Services	8,650
OSLAS	2,837
UCF	2,759
GPS	91
PJP	61
FLIP	51

Table 22: Annual Pro Bono Hours (2009-2014)³¹⁷

Annual Pro Bono Hour Survey of Practising Lawyers

To obtain fuller information on the pro bono commitment of members, the Law Society had included since 2010 a non-mandatory section in the “Application Form for Approval to E-file Practising Certificate” to request practitioners to provide information on their pro bono involvement in the preceding year (the “survey”). New practice rules were, however, introduced from 1 March 2015 providing for the mandatory reporting of pro bono hours for lawyers applying for a practising certificate (Legal Profession (Mandatory Reporting of Specified Pro Bono Services) Rules 2015).

Please see the following tables for a summary of the survey results:

Number of Lawyers Declaring Pro Bono Hours	2009	2010	2011	2012	2013	2014
No. who declared zero pro bono hours	2,530	2,569	2,534	2,471	1,266	2,886
No. who declared some pro bono hours	1,034	1,168	1,177	1,343	1,494	2,479
No. who did not declare pro bono hours	0	24	22	193	1,744	587
Total	3,564	3,761	3,733	4,007	4,454	5,952
No. contributing at least 25 pro bono hours per annum	331	414	431	469	519	646
Number of Pro Bono Hours	2009	2010	2011	2012	2013	2014
Total number of pro bono hours declared	35,634	45,094	45,247	53,766	66,743	68,256
Ave. number of pro bono hours / lawyer	10	12	12	13	15	13

- New practice rules were introduced from 1 March 2015 providing for the mandatory reporting of pro bono hours for lawyers applying for a practising certificate (Legal Profession Mandatory Reporting of Specified Pro Bono Services Rules 2015). The data is captured by the Supreme Court in the application by lawyers for a practising certificate.

³¹⁶ Source: Community Justice Centre’s 2016 Annual Report.

³¹⁷ Source: Law Society 2015 Annual Report

- Since the Supreme Court took over the renewal of practicing certificates, the Law Society no longer collects this information.
- With mandatory reporting, the data collected will also enable a more holistic appraisal of the pro bono

Annex 2

Activities by the LSPBS targeted at members of the public to raise legal literacy

- (1) Working with the Community Development Councils and the People's Association, the Law Society has organized the Community Legal Clinics Network and annual Law Awareness Weeks @ CDC public legal literacy event.³¹⁸ Since 1998, the Law Society has also produced and circulated a "Know the Law" publication to provide basic legal information, including reference point on legal issues and where to seek legal help, to members of the public.
- (2) The Law Awareness Weeks (LAWs) @ CDC is a public legal literacy event, held annually since 2015. It is tailored for non-legally trained audiences, with the intention of breaking down the legal jargon into easy-to-understand elements. These presentations aim "promote awareness, instill a basic understanding of the law, and empower Singaporeans to navigate basic legal issues. LAW aims to bring together all members of our community to ensure equal access to legal knowledge for all".³¹⁹
- (3) The National Trades Union Congress (NTUC) and the Law Society of Singapore launched 'Law Works' on 19 January 2013. This initiative is aimed at educating working people on their legal rights in Singapore. Under the partnership, a series of legal primer talks for targeted groups of working people will be held, and monthly legal clinics will be organised to provide general legal advice and guidance. Legal resources in the form of a compendium of pocket series booklets (quick reference guides in online and hardcopy formats) are being co-developed and made available. These will cover various aspects of the labour law. The first pamphlet, 'I want to be a Freelance Professional', was launched concurrently with the broader campaign.³²⁰ NTUC is a national confederation of trade unions (or the umbrella trade union body or labour movement) as well as a network of professional associations and partners across all sectors in Singapore.
- (4) With the National Council of Social Services (NCSS), the Law Society piloted the Appropriate Adult (AA) Service. This AA Service aims to provide assistance to persons with intellectual or mental disability (PWIDs) who are required to give a statement to the Police during investigation. The role of the Appropriate Adult is to help the PWID communicate more effectively during the police interview so that the PWID does not misunderstand the questions asked or that he is not misunderstood by the Investigation Officer. This will help ensure that statements recorded are reliable. From 1 January 2016, MINDS (Movement for the Intellectually Disabled of Singapore) took over the administration of AA Service from the Law Society.

³¹⁸ The Community Development Councils (CDCs) were established by the People's Association Act (CDC Rules & Regulations 1997) to build a tightly-knit, compassionate and self-reliant community in Singapore. Its mission statement is "To build a caring and cohesive community, where we assist the needy, bond the people and bonnect the community". See <https://www.cdc.org.sg>. The People's Association is a statutory board with the mission "to build and to bridge communities in achieving one people, one Singapore by connecting Government and people, and by bringing people closer to one another".

³¹⁹ See further at <http://probono.lawsociety.org.sg/Pages/LawAwareness.aspx>

³²⁰ Information obtained from <http://probono.lawsociety.org.sg/Pages/Law-Works.aspx>