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Singapore: National report for the Global Access to Justice Project

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REPUBLIC OF SINGAPORE*

1. GENERAL INFORMATION

A mere land mass of around 720 km^2, Singapore is a small, densely populated island city-state which became a sovereign republic with a parliamentary democracy on 9 August 1965. It was founded in 1819 as a trading port by Sir Stamford Raffles of the British East India Company and attained self-government between 1959 and 1963 before merging with Malaya, Sarawak, and Sabah to form the Federation of Malaysia.

The Constitution is the supreme law of the land. It provides for a popularly elected, non-executive president as the head of state vested with specific custodial powers, a Prime Minister (as head of government) and a Cabinet of Ministers, and a unicameral Parliament. Parliamentary elections, under universal adult suffrage and compulsory voting, must be held at least every five years. The leader of the political party that secures the majority of seats in Parliament will be asked by the President to become the Prime Minister (PM) who in turn will select his Ministers from elected legislators to form the Cabinet.

Modelled on the Westminster system and buttressed by the doctrine of the separation of powers, the Government comprises three branches: the Legislature, Executive, and Judiciary.[1] This doctrine has been judicially recognised in Singapore:[2] "All Constitutions based on the Westminster model incorporate the principle of Separation of Powers as part of their constitutional structure".[3] The Legislature, which is the primary law-making institution, is made up of Parliament and the elected president. Administering the laws is the Executive which is made up of the president and the Cabinet, the latter of which is responsible for the general direction of the Government and accountable to Parliament. The Judiciary interprets the laws and adjudicates in legal disputes. Singapore's legal system has its roots in English common law and practice.

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[1] Constitution of the Republic of Singapore (1999 Reprint), Arts 23, 38 and 93.

[2] *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947.

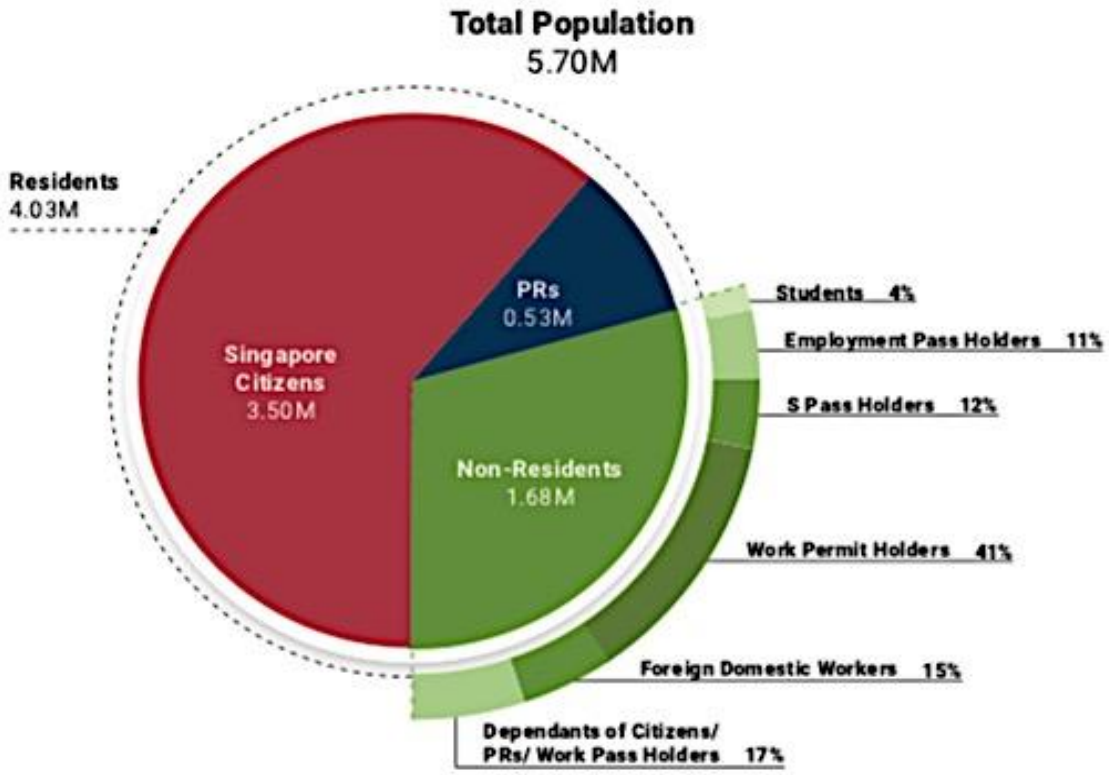
[3] *Ibid.*, at p. 957.

With independence, there has been a gradual - and increasing - movement towards developing an autochthonous legal and political system that is relevant and unique to its political, social and economic circumstances. The guiding principle is that the adoption of any legal practice or norm must be compatible with Singapore´s cultural, social and economic requirements. In this regard, the economic success of Singapore can be attributed, among others, to strong political leadership and the rule of law to build a new society and to entrench its economic survival while ensuring that the legal system is attuned to the needs and demands of the international community.

Demographics, ethnic groups, languages and religions

As of June 2019, Singapore's population stood at 5.7 million comprising 3.5 million citizens, 0.53 million permanent residents, and 1.68 million non-residents. Between June 2018 and June 2019, the citizen population grew by 0.8 per cent. The citizen population continues to age, with 16 per cent aged 65 years and above, compared with 15.2 per cent in 2018. Immigration remains a key plank of Singapore's population policy, augmenting the low birth rates of the citizen population. International marriages, in which one spouse is a non-citizen, comprise about 30 to 40 per cent of all marriages registered in Singapore.

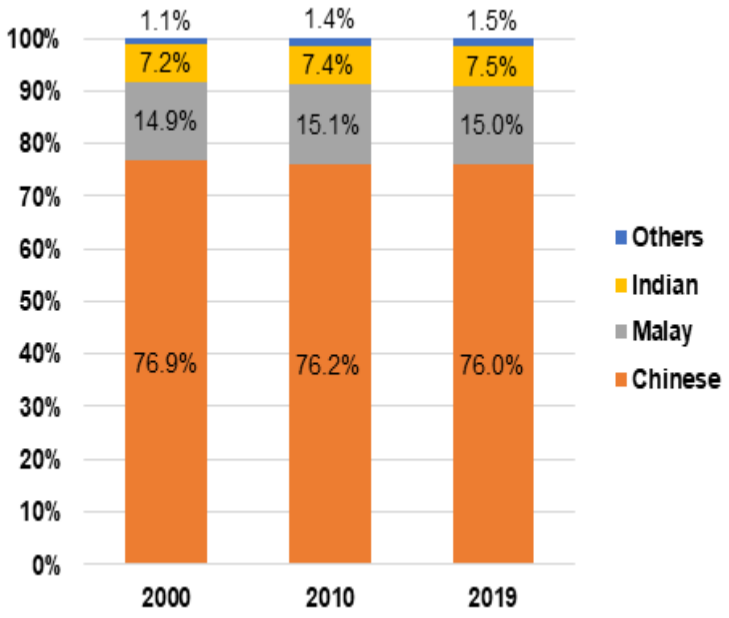
The non-resident population grew by 2.0 per cent, to reach 1.68 million as of June 2019. This increase was due largely to foreign employment growth driven by sustained growth in the services sector and the turnaround in the construction sector. By work pass type, foreign employment growth was mainly driven by an increase in work permit holders (often unskilled or low-skilled workers).



Source: Department of Statistics, Ministry of Manpower
Numbers may not sum up due to rounding.

Singapore is a multi-racial nation-state. The proportion of the various races in Singapore's citizen population has remained stable for much of the twentieth century, particularly since independence. As the majority community, the ethnic Chinese constitute about three-quarters of the citizen population. The Malays, recognised constitutionally as the indigenous people of Singapore, make up 15 per cent of the population.[4] The Indians are about 8 per cent of the population. The government is committed to maintaining the long-standing racial composition of the citizen population. Such a racial balance is believed to have contributed to Singapore's social stability and its multiracial character. Inter-racial marriages constitute about 20 to 25 per cent of all marriages registered in Singapore.

[4] See Article 152 of the Singapore Constitution.



Right from the outset of Singapore attaining self-government from the British in 1959, there is a *prima facie* parity among the four official languages (viz Malay, Tamil, Mandarin, and English). Language equality clearly recognises Singapore's multi-racial, multi-religious, and multi-lingual make-up as requiring careful management and the nurturing of trust and confidence among the different communities and between the government and the people. The Malay language is also the sole national language. This was and is an important symbolic political gesture recognising the Malays as the indigenous people of Singapore and the geopolitical realities in Singapore's locale. This state of affairs is provided for in Article 153A of the Singapore Constitution, which proclaims that:

> (1) Malay, Mandarin, Tamil and English shall be the 4 official languages in Singapore.
> (2) The national language shall be the Malay language and shall be in the Roman script:
> Provided that —
> (a) no person shall be prohibited or prevented from using or from teaching or learning any other language; and
> (b) nothing in this section shall prejudice the right of the Government to preserve and sustain the use and study of the language of any other community in Singapore.[5]

[5] This provision is also found in section 7 of the Republic of Singapore Independence Act (Act 9 of 1965), passed on 22 December 1965, but having retrospective effect to 9 August 1965 ('Singapore Day').

Singapore's national anthem and motto, *Majulah Singapura* ("Onward Singapore"), are both rendered in Malay. Military parade commands are issued in Malay and the Prime Minister begins the National Day Rally, his most important address to Singaporeans, in Malay.

Since independence, English is dominant as the language of education, commerce, and government. English was, of course, introduced by the British. During the colonial regime, English was the language for the colonial administrators and the small privileged population who had the opportunity of learning the language. English can be regarded as the surrogate *lingua franca* of Singaporeans. It did not ostensibly provide any racial group, including the ethnic Chinese majority, with any linguistic advantage. This choice of the English language was not only politically pragmatic but shrewd.

Besides being multiracial and multilingual, Singapore's multi-religious composition character is also another important manifestation of its diversity. In April 2014, Pew Research Centre ranked Singapore is ranked as the world's most religious diverse country or territory.[6]

Table 1: Changing Religious Demography:
Percentage Distribution of Resident Population aged 15 and over by Religion, 1980-2010[7]

Religion	*1980*	*1990*	*2000*	*2010*
Buddhism	26.7	31.1	42.5	33.3
Taoism	30.0	22.4	8.5	10.9
Islam	16.2	15.4	14.9	14.7
Christianity	9.9	12.5	14.6	18.3
Hinduism	3.6	3.7	4.0	5.1
Other religions	0.5	0.6	0.6	0.7
No religion	13.1	14.3	14.8	17.0

Singapore's Constitution provides for every person the right to profess, practise, and propagate his religion. While faith-inspired views are not excluded from the public domain, the Singapore government has sought to keep the public square and the religious realm separate even if the walls between them are not always watertight. Although secularism is a cardinal principle of political governance, the separation of religion and state is not found in Singapore's

[6] Pew Research Centre, "Global Religious Diversity: Half of the Most Religiously Diverse Countries are in Asia-Pacific Region," 4 April 2014 <https://www.pewforum.org/2014/04/04/global-religious-diversity/>.

[7] Saw Swee Hock, *The Population of Singapore*, Third Edition (Singapore: Institute of Southeast Asian Studies, 2012), p. 42. Saw, at p. 44, noted that "the close overlap of race and religion was cited in the 1947 Census Report as the reason for not collecting information on religion, and this was apparently the same reason for its exclusion in the 1957 and 1970 censuses".

Constitution. In Singapore's context, secularism is broadly understood as the governance principle of separating religion and state, and of the state being neutral vis-à-vis the various religious faiths and between religion and non-religion. There is no official religion in Singapore. At the same time, there is also no anti-establishment constitutional provision either. So fundamental is the freedom of religion that Emergency ordinances promulgated under Article 150 of Constitution shall not validate any provision inconsistent with "the provisions of this Constitution relating to religion, citizenship or language."

In recognition of the special position of the Malays who are the indigenous people of Singapore, Article 152 of the Constitution provides that:

> (1) It shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in Singapore.
>
> (2) The Government shall exercise its functions in such manner as to recognise the special position of the Malays, who are the indigenous people of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language.

Limited legal pluralism is also facilitated by Article 152 and embedded in Singapore's British-based common law legal system through some community autonomy for the indigenous Malay-Muslim community. In areas of Muslim personal law such as marriage, divorce and inheritance, Article 153 of the Singapore Constitution provides that, "The Legislature shall by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion". In turn, the Administration of Muslim Law Act (AMLA) (Cap. 3) is the main legislation by which Muslim religious affairs are regulated and by which the Islamic Religious Council of Singapore (MUIS), a statutory board, is constituted to advise the President and the government in matters relating to the Muslim religion. Article 153 is the only constitutional provision in which a religion is specifically mentioned.

Gross domestic product (2010 – 2018)

Year	Per Capita GDP (USD)	Per Capita GNI (USD)
2010	46727	47237
2011	52034	53886
2012	53077	55547
2013	53899	56967

2014	55560	57563
2015	51850	55647
2016	52775	56724
2017	56112	60306
2018	60205	64567

Gross national income (PPP)

In 2018, Singapore's gross national income at purchasing power parity per capita GNI (PPP) was USD 83,793.

Inequality index and poverty line

Singapore does not have an official poverty line. The Government's approach is to use broad definitions for the groups it seeks to help, set clear criteria to identify and assess those in need, and come up with tailored schemes. It regards a poverty line as not fully reflecting the severity and complexity of issues faced by the poor. It may also lead to those above the poverty line missing out on assistance. Singapore's assessment process for providing help to those in need is rigorous but also flexible to cater to the genuinely needy. This means that those who do not meet certain criteria in help programmes are also able to receive assistance. The Government also conducts regular reviews to ensure that social assistance provided to low-income families remains relevant to the low-income and vulnerable.

Singapore's Gini coefficient[8], based on household income from work per household member, was 0.452 in 2019, compared to 0.458 in 2018. After adjusting for government transfers, which includes Workfare[9] and Goods and Services Tax credits, the Gini coefficient was 0.398.[10] This reflects the redistributive effect of Government transfers.[11]

[8] The Gini coefficient measures income inequality on a scale of zero to one, with zero representing total income equality and one representing total inequality. Singapore's Gini coefficient is based on household income from work whereas data on OECD economies is based on income from all sources (which includes non-work income from investments and property).

[9] A wage supplement, introduced in 2007, the Workfare Income Supplement (WIS) Scheme is a broad-based measure that tops up the salaries of lower-income workers (bottom 20 per cent of wage earners) and helps them save for retirement. The Government enhanced the WIS in 2020 with the qualifying monthly income cap has been raised from $2,000 to $2,300.

[10] Government transfers and taxes reduced the Gini coefficient in 2020 to 0.375. This can be attributed to the significant amount of government support provided during the COVID-19 crisis in 2020, especially for households staying in the smaller HDB flats: see Department of Statistics, *Key Household Income Trends, 2020*; available online at <https://www.singstat.gov.sg/-/media/files/publications/households/pp-s27.pdf>.

[11] Department of Statistics, Singapore, *Key Household Income Trends, 2019*; available online at <https://www.singstat.gov.sg/-/media/files/publications/households/pp-s26.pdf>.

Singapore's Gini coefficient was 0.442 in 2000 and 0.454 in 2001. It last peaked in 2007 at 0.482.[12]

Life expectancy at birth

In 2020, life expectancy at birth was 83.9 years.[13]

Expected and mean years of schooling

In 2018, expected years of schooling was 16.3 years while the mean years of schooling was 11.5 years.

Human development index (HDI)

In 2019, Singapore's HDI was ranked eleventh in the world and in the "very high human development" category. Between 1990 and 2019, Singapore's HDI value increased from 0.721 to 0.938, an increase of 30.1 percent.[14]

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[12] "Income inequality in Singapore at lowest in almost two decades: SingStat," *Channel NewsAsia*, 20 February 2020; available online at <https://www.channelnewsasia.com/news/singapore/income-inequality-gini-household-singapore-lowest-2019-12453450>.

[13] See <https://www.singstat.gov.sg/find-data/search-by-theme/population/death-and-life-expectancy/latest-data>.

[14] See Singapore's country report in the 2020 Human Development Report at <http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/SGP.pdf>.

2. LEGAL SYSTEM

As a common law legal jurisdiction, the roots of Singapore's legal system can be found in the English legal system. Singapore's legal system has evolved over the years, building on its common law origins established by the British colonial administration. But legal autochthony is the hallmark of independent Singapore's legal system and essential to the rule of law. The sources of law include the Constitution (and related constitutional instruments), primary legislation, subsidiary legislation, common law, and international law.[15]

The Singapore Judiciary consists of the Supreme Court, State Courts, and Family Justice Courts. The Supreme Court consists of the High Court and the Court of Appeal and hears both criminal and civil cases.[16] The High Court consists of the General Division of the High Court ("General Division") and the Appellate Division of the High Court ("Appellate Division"). The Singapore International Commercial Court is a division of the General Division".[17] The Court of Appeal is the apex court.[18]

The State Courts comprise the District Courts, Magistrates' Courts, Coroners' Courts, Small Claims Tribunals, Employment Claims Tribunals, and the Community Disputes Resolution Tribunals.[19] In 2014, the Subordinate Courts were renamed as the State Courts, the Chief District Judge re-designated as the Presiding Judge of the State Courts (this position is held by a High Court Judge or a Judicial Commissioner), and the minimum statutory

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[15] Ministry of Law, "Our Legal System", available online at <https://www.mlaw.gov.sg/our-work/our-legal-system/>.

[16] For the structure of the courts system, please see: <https://www.supremecourt.gov.sg/who-we-are/the-supreme-court/structure-of-the-courts>. On the jurisdiction of the Supreme Court, please see: <https://www.supremecourt.gov.sg/who-we-are/the-supreme-court/supreme-court-jurisdiction>.

[17] The Constitution and the Supreme Court of Judicature Act ('SCJA'), among other statutes, were amended to create the Singapore International Commercial Court ('SICC') as a division of the High Court. The SICC has jurisdiction to hear and try actions which are "international and commercial in nature": SCJA, s 18D(a) (*international* and *commercial* are defined in the Rules of Court, O 110 r 1(2), which was introduced by the Rules of Court (Amendment No 6) Rules 2014 (S 850/2014). In addition to Supreme Court judges, Senior Judges and International Judges are appointed to sit in the Court; parties may be represented by foreign lawyers; and the Court is empowered to apply foreign law: SCJA, ss 18L–M.

[18] Section 3, Supreme Court of Judicature Act (Cap. 322, 2007 Rev Ed). Note also the Constitution of the Republic of Singapore Tribunal, established by Art 100 of the Constitution and comprising of at least three Supreme Court judges, to offer its advisory opinion in connection with a reference made to it by the President, on any question as to the effect of any constitutional provision which has arisen or appears likely to arise.

[19] Section 3, State Courts Act (Cap. 321, 2007 Rev Ed), and section 2 Community Disputes Resolution Act 2015 (Act 7 of 2015).

requirements for appointment as District Judges and Magistrates were raised.[20] The main intent was to raise the standing of the State Courts to better reflect their primary position within the judicial system, and to strengthen their quality. The bulk of cases (90 percent) litigated are dealt with by the State Courts, which the Chief Justice has described as "the gateway into the justice system for the vast majority of litigants".[21]

Within the State Courts, there are specialised courts such as the Coroners' Courts and the Community Courts.[22] The Coroner's Court holds inquiries into the death of a person when there is reason to suspect that a person has died in an unnatural manner, by violence, when the cause of death is unknown or in situations where the law requires an inquiry. The Community Court deals with special cases involving community resources and adopts a problem-solving approach to special categories of cases. Such cases include:

- Youthful offenders (aged 16 to below 21);
- Offenders with mental disabilities;
- Neighbourhood disputes;
- Attempted suicide cases;
- Family violence cases;
- Carnal connection offences committed by youthful offenders;
- Abuse and cruelty to animals;
- Cases which impact on race relations issues;
- Selected cases involving offenders aged 65 years and above.

The Family Justice Courts (FJC), headed by a Presiding Judge, comprise the Family Division of the High Court, the Family Courts, and the Youth Courts.[23] The FJC came into operation in October 2014 and brings together all family-related legal matters under a specialised body of courts, judges, and other family practitioners (like social workers, counsellors, probation officers) to better address the needs of families and youths in distress.

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[20] These significant changes to the subordinate court system were made via the Subordinate Courts (Amendment) Act (No 5 of 2014), which included renaming the legislation as the State Courts Act.

[21] Response by Chief Justice Sundaresh Menon at the opening of the Legal Year 2020, 6 January 2020; available online at <https://www.supremecourt.gov.sg/docs/default-source/module-document/speech/oly-2020---speech-by-cj-(checked-against-delivery).pdf>.

[22] Supreme Court of Singapore, "Singapore Judicial System", at supremecourt.gov.sg/about-us/the-supreme-court/singapore-judicial-system (7 June 2019).

[23] Section 3, Family Justice Act 2014 (Act 27 of 2014).

A measure of limited legal pluralism is provided for in the establishment of the Syariah Court to administer Muslim law in specified personal matters such as those relating to Muslim marriages, divorce, and inheritance.[24] The Syariah Court has jurisdiction throughout Singapore to hear and determine all actions and proceedings in which all parties are Muslims or where the parties were married under the provisions of Muslim law and which involve disputes relating to (a) marriage; (b) divorces known in the Muslim law as *fasakh*, *khuluk* and *talak*; (c) betrothal, nullity of marriage or judicial separation; (d) the disposition or division of property on divorce or nullification of marriage; or (e) the payment of *emas kahwin*, marriage expenses (*hantaran belanja*), maintenance and consolatory gifts or *mutaah*.[25]

Civil Cases

The District Courts hear civil actions where the disputed amount does not exceed SGD250,000 or, in the case of road traffic accident claims or claims for personal injuries arising out of industrial accidents, does not exceed SGD500,000.[26] Parties may also agree, by a signed memorandum, to have the matter heard by the District Court, even though the sum in dispute exceeds the monetary limit of the jurisdiction of a District Court.[27] The Magistrates' Courts can hear civil actions where the disputed amount does not exceed SGD60,000.[28]

The Small Claims Tribunals have jurisdiction to hear a small range of civil claims not exceeding SGD20,000, or SGD30,000 if the claimant and respondent consent in writing.[29] The Small Claims Tribunals provide a quick and inexpensive forum for the resolution of small claims disputes arising out of sale of goods and provision of services, as well as other types of small value claims. To further this objective, lawyers are not allowed to represent any party in proceedings before the Tribunals.[30]

The High Court hears cases in the first instance as well as cases on appeal from the State Courts. Its jurisdiction is as follows:[31]

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[24] See, generally, Part III of the Administration of Muslim Law Act (Cap. 3, 2009 Rev Ed).
[25] On the jurisdiction of the Syariah Court Singapore, see section 35 of the Administration of Muslim Law Act.
[26] Section 2, State Courts Act and Supreme Court of Judicature (Transfer of Specified Proceedings to District Court) Order 2016.
[27] Section 23, State Courts Act.
[28] Section 2, State Courts Act.
[29] Section 2 read with s 5(4) of the Small Claims Tribunals Act (Cap. 308, 1998 Rev Ed).
[30] Section 23(3), Small Claims Tribunals Act.
[31] Supreme Court of Singapore, "Singapore Judicial System", at <www.supremecourt.gov.sg/about-us/the-supreme-court/Singapore-judicial-system>.

- Civil cases where the claim exceeds SGD250,000
- Probate matters if the estate exceeds SGD5,000,000
- Ancillary matters in family proceedings where assets equal SGD5,000,000 or more.

The Singapore International Commercial Court is a division of the General Division of the High Court and part of the Supreme Court of Singapore designed to deal with transnational commercial disputes.[32]

Criminal Cases

The Magistrates' Courts have the jurisdiction and power to try any offence for which the maximum term of imprisonment provided by law does not exceed 5 years or which is a fine-only offence.[33]

The District Courts have the jurisdiction and power to try any offence for which the maximum term of imprisonment provided by law does not exceed 10 years or which is a fine only offence.[34] However, their jurisdiction may be enlarged in certain circumstances.[35]

Notwithstanding the foregoing, a Magistrate Court's sentencing jurisdiction is (in general) limited to: (a) imprisonment not exceeding 3 years, (b) a fine not exceeding SGD10,000, and (c) caning not exceeding 6 strokes.

The District Court's sentencing jurisdiction (in general) is limited to: (a) imprisonment not exceeding 10 years, (b) fine not exceeding SGD30,000, and (c) caning not exceeding 12 strokes.[36] However, where the law expressly provides for it, the Magistrates' Court and the District Court also have the jurisdiction to impose sentences which exceed the above limits.

The High Court is empowered to try all cases, and may pass any sentence authorised by law.[37]

Appellate Courts

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[32] Supreme Court of Singapore, "Structure of the Courts", at <www.supremecourt.gov.sg/about-us/the-supreme-court/structure-of-the-courts>.
[33] Section 7, Criminal Procedure Code (Cap. 68, 2012 Rev Ed).
[34] Section 8, Criminal Procedure Code.
[35] Section 9, Criminal Procedure Code.
[36] Section 303(2) and s 303(3), Criminal Procedure Code.
[37] Section 303(1), Criminal Procedure Code; Supreme Court of Singapore, "Singapore Judicial System", at <www.supremecourt.gov.sg/about-us/the-supreme-court/singapore-judicial-system> (7 June 2019).

The General Division of the High Court hears appeals from the decisions of Family Courts, District Courts and Magistrate's Courts in civil and criminal cases, and decides on points of law reserved by special cases submitted by these courts.[38] In addition, the General Division of the High Court has general supervisory and revisionary jurisdiction over all subordinate courts in civil and criminal matters.[39] Appeals from decisions of the General Division will lie either in the Appellate Division (within the High Court) or the Court of Appeal.[40] The Appellate Division generally exercises civil jurisdiction only[41], and is generally constituted by three or any greater odd number of Judges.[42] Certain decisions of the Appellate Division may, with the leave of the Court of Appeal, be further appealed to the Court of Appeal.[43]

The Court of Appeal is Singapore's apex court, and exercises both civil and criminal jurisdiction. The Court of Appeal is generally constituted by three or any greater odd number of Judges.[44] The Court of Appeal has the power to order the transfer of appeals between the Appellate Division and the Court of Appeal. [45]

The Legal Profession in Singapore

The legal profession in Singapore is a fused one: A qualified person is admitted to the Singapore Bar as an "advocate and solicitor of the Supreme Court". Singapore-qualified lawyers require a practising certificate issued by the Supreme Court of Singapore. Foreign-qualified lawyers (as well as Singapore-qualified lawyers practising in foreign law practice entities) require registration with the Legal Services Regulatory Authority (LSRA), a department under the Ministry of Law.[46]

All lawyers must be attached to and registered under a law practice, for which there are both local and foreign law practices, and different forms of law practice entity and collaboration licences in these categories: Singapore Law Practices, licensed Foreign Law Practices,

[38] Sections 19 and 20, Supreme Court of Judicature Act.
[39] Section 27, Supreme Court of Judicature Act.
[40] Section 29C, Supreme Court of Judicature Act
[41] Section 31, Supreme Court of Judicature Act.
[42] Section 32(1), Supreme Court of Judicature Act.
[43] Sections 46 and 47, Supreme Court of Judicature Act.
[44] Section 50, Supreme Court of Judicature Act.
[45] Sections 29D and 29E, Supreme Court of Judicature Act.
[46] See, generally, the Legal Profession Act (Cap 161, 2009 Rev Ed).

Qualifying Foreign Law Practices[47], Joint Law Ventures, Formal Law Alliances, Group Practices and Representative Offices.[48]

The extent to which each type of lawyer can practise Singapore law depends on whether they are admitted to the Singapore Bar and the extent to which the law practice entity they are practising in is allowed to practise Singapore law. For example, Singapore-qualified lawyers practising in Singapore Law Practices can practise the full ambit of Singapore law, whereas foreign-qualified lawyers practising in Foreign Law Practices can only practise foreign law.

Non-lawyers who are employees of a firm (i.e. regulated non-practitioners registered under section 36G of the Legal Profession Act) are allowed to cumulatively hold not more than 25% of the total value of equity interests in the Singapore law practice. The threshold requirements are found in the Legal Profession (Law Practice Entities) Rules 2015. At the moment, non-lawyer ownership levels in law practices are generally low.[49]

The number of licensed practicing lawyers in the country (as of 31 Dec 2020):

Type of Lawyer Registration	Number
Registered Foreign Lawyers	1,246
Singapore lawyers	6,162
Total	7,408

The Law Society of Singapore

The Law Society of Singapore is established under Part V of the Legal Profession Act. Besides being statutorily responsible for professional practice, conduct and discipline, it carries out various statutory functions, including[50]:

[47] The QFLP licence allows licensees to employ Singapore lawyers to practise Singapore law in the "permitted areas" of legal practice as prescribed under the Legal Profession Act.

[48] Representative offices ("RO") are set up by a law practice based outside Singapore to undertake only liaison or promotional work in or from Singapore. An RO is not allowed to provide any legal services or conduct any other business activities in Singapore. In particular, it is not allowed to provide legal advice, conclude contracts or open or negotiate any letters of credit.

[49] For the different types of practices and registrations, see <https://app.mlaw.gov.sg/law-practice-entities-and-lawyers/licensing-or-registration-of-law-practice-entities/types-of-licence-or-registration/>. On individual registration, see <https://app.mlaw.gov.sg/law-practice-entities-and-lawyers/registration-of-individuals/types-of-individual-registration/>.

[50] Section 38, Legal Profession Act. On professional practice, conduct, and discipline, see Part VI of the Act.

- Maintaining and improving the standards of conduct and learning of the legal profession in Singapore;
- Facilitating the acquisition of legal knowledge by members of the legal profession;
- Assisting the Government and the courts in matters affecting legislation submitted to it, and the administration and practie of law in Singapore;
- Representing, protecting and assisting members of the legal profession in Singapore; promoting in any manner the Society thinks fit the interests of the legal profession in Singapore;
- Protecting and assisting the public in all matters ancillary or incidental to the law; and
- Making provision for or assisting in the promotion of a scheme whereby impecunious persons on non-capital charges are represented by lawyers.

The mission of the Law Society is to serve its members and the public by sustaining an independent bar which upholds the rule of law and ensures access to justice. As part of its mission in ensuring access to justice for the needy, the Law Society has established a Pro Bono Services Office. The Council of the Law Society, which consists of 5 statutory members and elected members, manages the affairs of the Law Society and ensures the proper performance of its functions under the Legal Profession Act.

Every Singapore lawyer who has in force a Singapore practising certificate is automatically a member of the Law Society.[51] Certain categories of foreign lawyers registered with the Legal Services Regulatory Authority are also automatically members of the Law Society, or can apply to be associate members of the Law Society.[52]

Singapore Academy of Law

In addition, there is the Singapore Academy of Law, a statutory body established in 1988.[53] The Academy undertakes statutory functions such as stakeholding services, law reporting, and the appointment of Senior Counsel, Commissioners for Oaths and Notaries

[51] Section 40, Legal Profession Act.
[52] Section 40A, Legal Profession Act.
[53] Cap. 294A, 1997 Rev Ed.

Public. The Academy is led by a Senate headed by the Chief Justice, and comprising the Attorney-General, the Supreme Court Bench, and key leaders of the law schools and various branches of the legal profession. All persons who are called as advocates and solicitors of the Supreme Court (whether practising or not) or appointed as Legal Service Officers, corporate counsel, faculty members of the three local law schools, and foreign lawyers in Singapore are required by law to be members.

Legal Representation

For civil cases, legal representation is not mandatory unless a party is a body corporate (a company, a limited liability partnership or an unincorporated association other than a partnership or registered trade union).[54] Such parties must be represented by lawyers in court proceedings unless the court grants leave for an officer of the body corporate to represent them.

The Singapore legal system and the judicial process is aware of more individuals as litigants-in-person - an individual who choose to conduct his own case in court, i.e., act in person. Litigants in person are held to the same standard of preparation and conduct that lawyers must follow. This includes complying with all the relevant laws and procedures. The court will not re-litigate a previously decided action.

For criminal cases, Art 9(3) of Singapore's Constitution safeguards the right to legal counsel. It provides that where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice (see Section 3.1 on Criminal Procedure).

For both civil and criminal cases, legal aid and assistance are available from Government-funded legal aid schemes as well as non-Government partners such as the Law Society Pro Bono Services (LSPBS), the Community Justice Centre (CJC), and other community, religious and voluntary welfare organisations (see Section 4 on Access to Justice and Section 5 on Legal Aid System).

Paralegals

In Singapore, "paralegals" do not fall within the purview of the Legal Profession Act. In the local context, "paralegal" refers to and includes a legal executive, legal secretary or legal

[54] Supreme Court of Singapore, "Information for Unrepresented Litigants", at <https://www.supremecourt.gov.sg/rules/court-processes/civil-proceedings/information-for-unrepresented-litigants>.

clerk and any other employee of a law practice, who performs paralegal functions and assists a solicitor as a paralegal, who does not have in force a practising certificate and is without regard to the designation of such employee.

Sections 29, 32 and 33 of the Legal Profession Act ("LPA") prohibit persons without a valid practising certificate from practising law in Singapore and such persons fall within the category of "unauthorised persons" under the LPA. Paralegals working across law practices in Singapore also fall within the category of "unauthorised persons". They are not allowed to practise law as an advocate and solicitor. Rule 8(1) of the Legal Profession (Professional Conduct) Rules requires a solicitor to exercise proper supervision over his employees and other staff at all times.[55]

The Singapore Judiciary

Article 93 of the Singapore Constitution states that "The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force". Reinforced by the constitutional doctrine of the separation of powers and through judicial review in constitutional law and administrative law, the Judiciary ensures the accountability of the Legislature and the Executive in their law-making and administrative decisions and actions.

As of 24 March 2021, there are 26 Judges (including the Chief Justice, 4 Justices of the Court of Appeal, 3 Judges of the Appellate Division of the High Court), 4 Judicial Commissioners, and 3 Senior Judges on the Supreme Court bench.[56] There are 16 other International Judges.[57]

Judicial Independence in Singapore

The courts are independent of and co-equal to the other branches of Government. Part VIII of the Constitution safeguards judicial independence. In a 2010 article, then Chief Justice Chan Sek Keong described the role of the judiciary in a democracy as well as the centrality of judicial independence in the judiciary's execution of its constitutional duties thus:

[55] See also Practice Circular on Supervision of Paralegals of 6 June 2014 issued by the Council of the Law Society of Singapore.

[56] Supreme Court, "Justices", available online at <https://www.supremecourt.gov.sg/who-we-are/the-supreme-court-bench/justices>.

[57] Singapore International Commercial Court, "Judges", available online at <https://www.sicc.gov.sg/about-the-sicc/judges>.

> In a democracy with a form of representative government (based on the doctrine of separation of powers), the Judiciary is one of three arms of government, co-equal in status, and vested with the power, among others, to check the Legislature and the Executive in their exercise of powers vested in them by law and the constitution of the State. Its other primary function is to adjudicate disputes between people and disputes between the people and the State or agencies of the State. The Judiciary acts as an impartial referee to decide what conduct is permissible or not permissible under applicable rules of conduct, whether the rules have been infringed or not infringed, and to provide the remedies for such infringements. To fulfil these functions, the Judiciary has to be independent of the other two arms of government. A Judiciary that is not independent would not be able to fulfil such a role, and would provide a weak foundation for democracy and its associated attribute (*ie*, the rule of law) to flourish. Conversely, the Judiciary requires the existence of the rule of law for continuous independence. There cannot be the rule of law without an independent Judiciary, and *vice versa*, but with both, there will be security, law and order, and stability, which are requisites for progress and the protection of political and civil rights.[58]

The Chief Justice and the Supreme Court Judges are appointed by the President if he, acting in his discretion, concurs with the advice of the Prime Minister: Art 95(1) of the Singapore Constitution. A person appointed under Art 95(1) shall hold office until he attains the age of 65; or such later time not being later than six months after he attains that age, as the President may approve: Art 98(1).

The President may, if he, acting in his discretion, concurs with the advice of the Prime Minister, appoint a person who is 65 years of age or older and who is either qualified for appointment as a Judge of the Supreme Court or has ceased to be a Judge of the Supreme Court, to be the Chief Justice, a Judge of Appeal or a Judge of the High Court for a specified period: Art 95(2).

Under Art 95(4) of the Constitution, the President may also, if he, acting in his discretion, concurs with the advice of the Prime Minister, appoint:

- A person who is qualified for appointment as a Judge of the Supreme Court to be a Judicial Commissioner of the Supreme Court;
- A person who has ceased to be a Judge of the Supreme Court to be a Senior Judge of the Supreme Court; or

[58] Chan Sek Keong, "Securing and Maintaining the Independence of the Court in Judicial Proceedings" [2010] 22 SAcLJ 229 at [30].

- A person who, in the opinion of the Chief Justice, is a person with the necessary qualifications, experience and professional standing to be an International Judge of the Supreme Court.

For the purposes of Art 95(4), a Judicial Commissioner, a Senior Judge or an International Judge of the Supreme Court may (a) be appointed to hear and determine a specific case only (subject to clause (10) for an International Judge); or (b) be appointed for a specified period: Art 95(5).

Safeguards for judicial independence

The Singapore Constitution also provides for several safeguards against political interference in the Judiciary. First, a key custodial power of Singapore's elected President is his discretionary power to veto key public office appointments. Under Article 22(1) of the Constitution, the President, acting in his discretion, may refuse to make an appointment to the office or to revoke any appointment such as the Chief Justice, Judges of the Supreme Court, and the Judicial Commissioners, Senior Judges and International Judges of the Supreme Court.[59]

Second, the removal of a person holding office as a Judge of the Supreme Court or a Judicial Commissioner, a Senior Judge or an International Judge of the Supreme Court, can only be effected on the limited ground of "misbehaviour or of inability, from infirmity of body or mind or any other cause, to properly discharge the functions of his office": Article 98(3), 98(4) and 98(5).

A tribunal of peer Judges will determine whether the case for removal as provided for in the Constitution has been made out. The President shall appoint a tribunal, consisting of not less than 5 persons who hold or have held office as a Judge of the Supreme Court, or persons who hold or have held equivalent office in any part of the Commonwealth, and shall refer that representation to it. Only where the tribunal recommends the removal of the person from office can the Judge be removed from office.

In addition, Parliament shall by law provide for the remuneration of the Judges of the Supreme Court and the remuneration and other terms of office (including any pension or

[59] In connection with the appointment of a Judge of the Supreme Court: Under Article 37IA(1) of the Constitution, the President must consult the Council of Presidential Advisors (CPA) before exercising any discretionary power conferred on him by the Constitution. Under Article 37IF(1), Parliament may, by resolution, overrule the President, where the President acts in his discretion to refuse to give the assent, concurrence or approval that was sought, and the President's decision was made contrary to the CPA's recommendation.

gratuity) of a Judge of the Supreme Court shall not be altered to his disadvantage after his appointment: Article 98(6), 98(7) and 98(8).

Fourth, the Constitution also restricts parliamentary discussion of the conduct of a Judge of Supreme Court except on a substantive motion of which notice has been given by not less than one-quarter of the total number of the Members of Parliament. Where a matter is under consideration or awaiting decision by a court of law, reference should not be made in Parliament to matters which are *sub judice*.[60]

State Courts Judges

In the subordinate courts, however, State Courts judges and magistrates do not enjoy security of tenure as they are public service officers in the Singapore Legal Service. However, under Article 111(3) of the Constitution, the Legal Service Commission (LSC) is constitutionally vested with the powers to appoint, confirm, emplace on the permanent establishment, promote, transfer, dismiss and exercise disciplinary control over officers in the Legal Service. In this regard, the LSC is tasked with ensuring the independence, impartiality and integrity of the subordinate courts.

The Legal Service Commission is constituted under Part IX of the Constitution of the Republic of Singapore. Article 111(1) of the Constitution provides that the Commission's jurisdiction shall extend to all officers in the Singapore Legal Service. Article 111(2) and Article 111(2A) of the Constitution provides that the LSC shall consist of the Chief Justice, as President; the Attorney-General; the Chairman of the Public Service Commission ("PSC"); and at least three but not more than six other members, each of whom shall be appointed by the President of Singapore if he, acting in his discretion, concurs with the advice of the person nominating the member(s), based on the following arrangements:

(i) At least one but not more than two persons nominated by the Chief Justice;

(ii) At least one but not more than two persons nominated by the Chairman of the PSC; and

(iii) At least one but not more than two persons nominated by the Prime Minister.

[60] *Standing Orders of the Parliament of Singapore* (as amended on 8 May 2017), S.Os. 21 and 50; available online at <https://www.parliament.gov.sg/docs/default-source/default-document-library/standing-orders-of-the-parliament-of-singapore.pdf>.

If the Chief Justice, the Chairman of the PSC or the Prime Minister, as the case may be, nominates two persons, at least one must be a person who has, for an aggregate period of not less than ten years, been a qualified person within the meaning of section 2(1) of the Legal Profession Act. These Members of the LSC shall hold office for such period as the President may specify (being not shorter than three years and not longer than five years) and be eligible for re-appointment.

The Public Prosecutor

The Attorney-General plays the key role as the Public Prosecutor. Section 11 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") provides that the Attorney-General shall be the Public Prosecutor, with control and direction of all criminal prosecutions and proceedings under Singapore law. The prosecutorial function is completely divested from the Cabinet, and constitutionally vested solely in the Attorney-General.

Under Art 35(8) of the Constitution, the Attorney-General has the power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence. He acts independently in deciding who to prosecute, and what charges to bring.[61] The Attorney-General, in his capacity as the Public Prosecutor, is "the guardian of the people's rights, including the rights of the accused".[62]

The office of Attorney-General is established by and protected under the Constitution. The Attorney-General is appointed by the President, acting in his discretion, concurring with the advice of the Prime Minister, from among persons who are qualified for appointment as a Judge of the Supreme Court: Art 35(1) of the Constitution. Under Article 22(1) of the Constitution, the elected President, acting in his discretion, may refuse to make (or to revoke) an appointment as Attorney-General if he does not concur with the advice or recommendation of the Prime Minister.

The Attorney-General (AG) performs a critical role in advancing the rule of law. As the chief legal advisor to Government and drafter of laws, the AG advises Government on how to govern and advance its policy objectives within the framework of the rule of law. In his

[61] Menon CJ's speech to the Annual Berstein Lecture in Comparative Law at Duke University Law School (1 November 2018), at [21]-[23]. On the issue of the publication of prosecutorial guidelines, see https://www.agc.gov.sg/legal-processes/publication-of-prosecution-guidelines

[62] See *Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 883 at [93], citing the apex court's earlier decisions in *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 and *Bachoo Mohan Singh v Public Prosecutor* [2010] 1 SLR 966.

capacity as Public Prosecutor, the AG is responsible for administering even-handed and fair criminal justice by conducting all criminal prosecutions independently of Government. The Attorney-General's Chambers also represents Singapore at international negotiations and dispute settlement proceedings, and acts as the central authority for mutual legal assistance in criminal matters and extradition.

The Attorney-General may only be removed from office by the President if the President, acting in his discretion, concurs with the advice of the Prime Minister. The Prime Minister must not tender such advice except for inability of the Attorney-General to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and except with the concurrence of a tribunal consisting of the Chief Justice and two other Judges of the Supreme Court nominated for that purpose by the Chief Justice: Art 35(6) of the Constitution. His remuneration is determined by the President and cannot be amended to his disadvantage during his tenure: Arts 35(11), (12) of the Constitution.

The Attorney-General holds a high constitutional office equal in status with that of the Judiciary.[63] The exercise of prosecutorial discretion is subject to judicial review only on grounds of abuse and contravention of constitutional protections and rights.[64]

Past Attorneys-General have attested to the fact that Cabinet Ministers and officials in the Civil Service are respectful of the independence of the Attorney-General and do not seek to influence his prosecutorial decisions.[65]

The Attorney-General may be appointed for a specific period, and shall vacate his office upon the expiration of that period, unless he is removed with cause. Otherwise, the Attorney-General shall hold office until he attains the age of 60. However, the President (if she, acting in her discretion, concurs with the advice of the Prime Minister) may permit an Attorney-General who has attained the age of 60 to remain in office for such fixed period as may have been agreed between the Attorney-General and the Government: Art 35(4)(b) of the Constitution.

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[63] *Yong Vui Kong v AG* [2011] 2 SLR 1189 at [139]; *Ramalingam Ravinthran v AG* [2012] 2 SLR 49 at [43].

[64] *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [148]-[149]; *Ramalingam Ravinthran v AG* [2012] 2 SLR 49 at [17].

[65] See Menon CJ's speech to the Annual Berstein Lecture in Comparative Law at Duke University Law School (1 November 2018), at footnote 67; citing AG Lucien Wong, "Prosecution in the Public Interest" at paras 18 and 20; Prime Minister Lee Hsien Loong, Speech at the 150th Anniversary of the AGC (31 March 2017): AG VK Rajah, Speech at the Opening of the Legal Year 2017 at para 21. See also Cheong Suk-Wai, *In Chambers: 150 years of Upholding the Rule of Law* (Singapore: Straits Times Press, 2017) and S. Jayakumar, *Governing a Singapore Perspective* (Singapore: Straits Times Press, 2020), pp. 88-91.

The offices of Deputy Attorneys-General are also established by the Constitution. The Deputy Attorney-General is appointed by the President, acting in his discretion, concurring with the advice of the Prime Minister, from among persons who are eligible for appointment as an Attorney-General: Art 35A(1) of the Constitution. Like the Attorney-General, he may only be removed with cause: Art 35A(9), (10) of the Constitution; and his terms of service may not be altered to his disadvantage during his term in office: Art 35A(12) of the Constitution.

A Deputy Attorney-General holds office until the end of the specific period he is appointed for (without prejudice to re-appointment); or if no period is so specified, until he attains the age of 60: Art 35A(6) of the Constitution. The President may, on the advice of the Prime Minister, permit a Deputy Attorney-General who has attained the age of 60 to remain in office for such fixed period as may be agreed between the Deputy Attorney-General and the Government: Art 35A(7) Constitution.

Officers from the Crime Division of the Attorney-General's Chambers (AGC) are empowered to act as Deputy Public Prosecutors (DPPs) and Assistant Public Prosecutors (APPs) under the authority of the Public Prosecutor. There are duties inherent to the role of the prosecutor. Prosecutors are more than advocates and solicitors. They are "'ministers of justice' assisting in the administration of justice (see *R v Banks* [1916] 2 KB 621 at 623)".[66] The apex court stated that:

> The duty of prosecutors is not to secure a conviction at all costs. It is also not their duty to timorously discontinue proceedings the instant some weakness is found in their case. Their duty is to assist the court in coming to the correct decision. Although this assistance often takes the form of presenting evidence of guilt as part of the adversarial process, the prosecutor's freedom to act as adversary to defence counsel is qualified by the grave consequences of criminal conviction. The certainty required by the court before it will impose these consequences is recognised in the presumption of innocence enjoyed by the accused. For this reason, a decision to prosecute in the public interest must be seen as compatible with a willingness to disclose all material that is prima facie useful to the court's determination of the truth, even if it is unhelpful or even detrimental to the Prosecution's case.[67]

The Court of Appeal has stated that, "The Prosecution acts at all times in the public interest. In that light, it is generally unnecessary for the Prosecution to adopt a strictly adversarial position in criminal proceedings".[68] Justice Steven Chong (as he then was) speaking extra-judicially to

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[66] *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 at [109].
[67] *Id.*
[68] *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 at [37].

Legal Service Officers and Assistant Public Prosecutors on 10 November 2011 put it in these terms:

> The accused, the Court and the community are entitled to expect that in performing his function in presenting the case against an accused person, the Prosecutor will act with fairness and detachment with the sole and unadulterated objective to establish the whole truth in accordance with the law. ... The role of the Prosecutor therefore excludes any notion of winning or losing a case. ... His role is to seek and achieve justice, and not merely to convict. The role is to be discharged with an ingrained sense of dignity and integrity.[69]

Availability of Legal Services

Singapore's legal services sector has grown steadily over the years. The nominal value-added (VA) of the sector increased by more than 40%, from $1.61 billion in 2010 to $2.31 billion in 2020. During the same period, the value of legal services exported from Singapore grew by about 80% from $528 million to an estimated $947 million. Singapore's efforts to further grow the legal sector are continuing. For instance, in early 2017, the Working Group on Legal and Accounting Services under the Committee on the Future Economy recommended steps to further develop Singapore as a global exchange for financing, brokering, structuring, and dispute resolution for international commercial transactions.[70]

Through prudent planning of manpower needs and the gradual liberalisation of the legal sector in Singapore, there is no shortage of legal services in Singapore. The government seeks to promote Singapore's development in international legal services and dispute resolution. With the establishment of the Singapore International Commercial Court, the Singapore International Mediation Centre and the Singapore International Arbitration Centre, the objective is to offer a comprehensive suite of dispute resolution options to support the needs of business. To this end, and to ensure the adequate provision of legal services, the government ensures that there is a reliable and sufficient supply of lawyers trained at the three local law schools.

In addition, there are ongoing measures to strengthen the entire professional training regime to ensure that the quality of training remains robust and the process for accessing

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[69] See "The Role and Duties of a Prosecutor – The Lawyer Who Never "Loses" a Case, Whether Conviction or Acquittal", at para. 8; available online at <https://www.supremecourt.gov.sg/Data/Editor/Documents/J%20Steven%20Chong%20Speeches/The%20Role%20and%20Duties%20of%20a%20Prosecutor%20(10.11.11).pdf>.

[70] Para 22 of the report of the Committee for the Professional Training of Lawyers (March 2018); available online at <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/report-of-the-committee-for-the-professional-training-of-lawyers.pdf>.

training opportunities remains fair, regardless of economic conditions. As the Committee for the Professional Training of Lawyers noted of the importance of professional training in the provision of legal services: "Ultimately, these are the means by which the profession can be assured that future generations of lawyers are imbued not only with sound technical skills, but also the right professional values".[71] In other words, the emphasis must be about ensuring that the legal professionals and legal services remain relevant, resourceful, and robust.

. . . . .

[71] Report of the Committee for the Professional Training of Lawyers (March 2018), p. 1.

3. PROCESS AND PROCEEDINGS: OVERVIEW

Criminal Procedure

Criminal Investigation

Generally, officers of the Singapore Police Force are responsible for the investigation of criminal offences. Information first received about alleged criminal offences is recorded in first information reports.[72] In addition, other law enforcement agencies are authorised under specific legislation to investigate certain types of offences. For example, officers of the Central Narcotics Bureau (CNB) are empowered to investigate drug offences under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed); officers of Singapore Customs are empowered to investigate customs offences under the Customs Act (Cap 70, 2004 Rev Ed). All corruption offences under the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) are investigated by the Corrupt Practices Investigation Bureau (CPIB), a government agency under the Prime Minister's Office, operating with functional independence and helmed by a Director who reports directly to the Prime Minister.[73]

Certain legislation also empower officers of regulatory agencies to investigate regulatory offences. For example, officers of the National Environment Agency can investigate environmental offences under the National Environment Agency Act (Cap 195, 2003 Rev Ed) and Environmental Public Health Act (Cap 95, 2002 Rev Ed).

The relevant law enforcement agency may commence investigations into the complaint or police report if there is reason to suspect that an offence may have been committed. As part of the investigations, the law enforcement agency will interview witnesses, including the suspect(s) or accused person(s), and also gather documentary, scientific, forensic and physical evidence, if necessary. If the investigations reveal that there is no evidence or insufficient evidence to show that an offence has been committed, no further action will be taken against the suspect. If there is sufficient evidence to prove that an offence has been committed, action

[72] Section 14 of the Criminal Procedure Code ("CPC").

[73] The functional independence of the CPIB is safeguarded by Article 22G of the Singapore Constitution which provides that: "Notwithstanding that the Prime Minister has refused to give his consent to the Director of the Corrupt Practices Investigation Bureau to make any inquiries or to carry out any investigations into any information received by the Director touching upon the conduct of any person or any allegation or complaint made against any person, the Director may make such inquiries or carry out investigations into such information, allegation or complaint if the President, acting in his discretion, concurs therewith".

may be taken against the suspect, for instance, the suspect may be given a warning or charged in court.[74]

To assist them in investigations, the police have powers to compel production of documents or things (s 20 of the CPC), examine witnesses (ss 21 and 22 of the CPC), conduct searches (ss 24 to 34 of the CPC, ss 77 to 78 of the CPC) and seize property (s 35 of the CPC). Police officers can exercise powers of arrest under the CPC. Part VI (Division 1) of the CPC sets out the circumstances in which a police officer may arrest a person without a warrant.[75] Part VI (Division 2) of the CPC covers arrest with a warrant.

Under the CPC, a suspect who is arrested must generally be brought before the relevant court without unnecessary delay: ss 67 and 74 of the CPC. A person who is arrested without a warrant shall not be detained in custody for a longer period than under all the circumstances of the case is reasonable and such period shall not exceed 48 hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrates' Court: s 68 of the CPC. In this regard, Article 9(4) of the Singapore Constitution provides: "Where a person is arrested and not released, he shall, without unreasonable delay, and in any case within 48 hours (excluding the time of any necessary journey), be produced before a Magistrate, in person or by way of video-conferencing link (or other similar technology) in accordance with law, and shall not be further detained in custody without the Magistrate's authority". Other specific pieces of legislation also empower other law enforcement agents to make arrests. For example, s 15 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) empowers the Director or a special investigator of the CPIB to arrest a person who is reasonably suspected of being concerned in an offence under the said Act without a warrant.

Two brief flowcharts setting out the procedure of the commencement of criminal investigations against an accused are annexed hereto.

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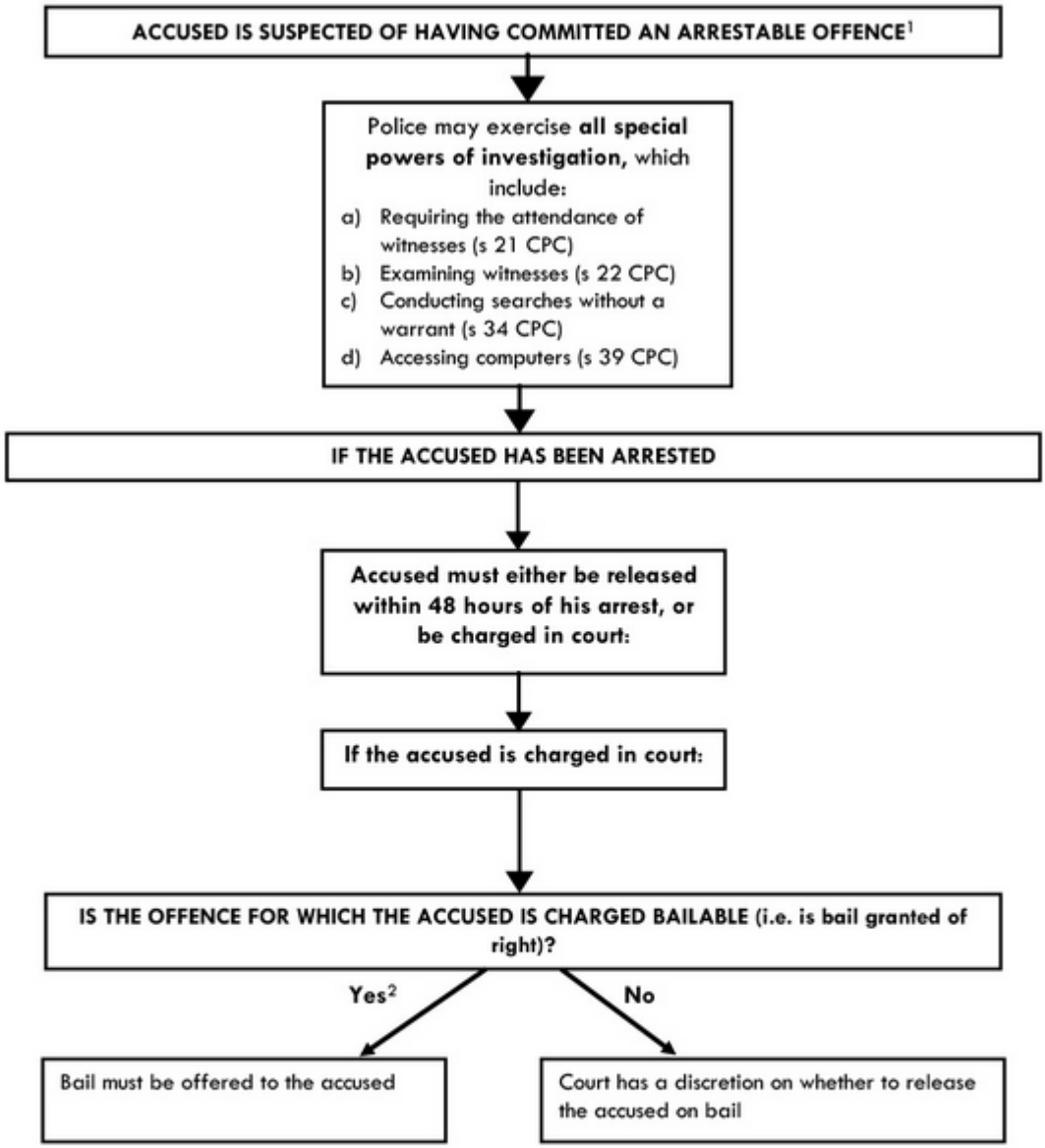
[74] There could be cases where no further action is taken due to lack of public interest. There could also be cases where the action takes the form of a composition fine, or diversionary programmes.

[75] Section 65 (under Division 1) of the CPC allows a police officer to arrest any person accused of committing a non-arrestable offence, if he refuses to give his name and address.

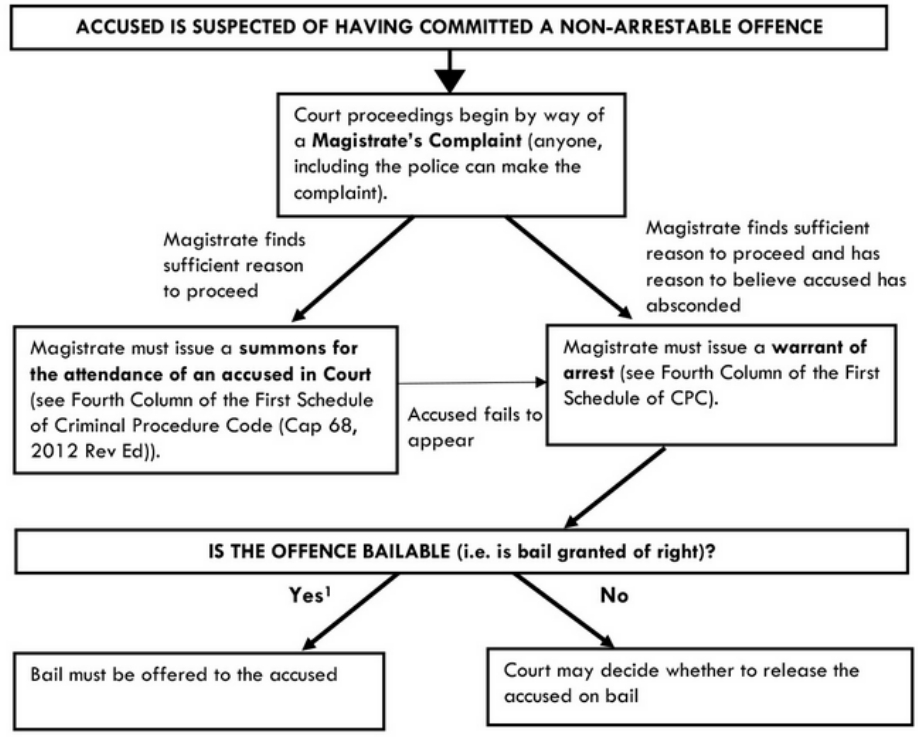
Chart 3. Commencement of investigations (arrestable offence)



[1] An arrestable offence is an offence for which an arrest can be made without a warrant. To check if an offence is an arrestable offence, see the Third Column of the First Schedule of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). If it relates to offences other than those stipulated under the Penal Code (Cap 224, 2008 Rev Ed), see if there is a specific power of arrest in the relevant legislation. If there are none, the default rule in the Third Column of the First Schedule of the CPC is that offences that are punishable with imprisonment for 3 years or more are arrestable.

[2] See Fifth Column of First Schedule of the CPC for offences which are bailable.

Chart 4. Commencement of investigations (non-arrestable offence)



[1] See Fifth Column of First Schedule of the CPC for offences which are bailable.

GLOBAL ACCESS TO JUSTICE Project

Criminal Prosecution

The law enforcement agencies investigate into the alleged offences and submit their investigation papers and recommendations to the Attorney-General's Chambers (AGC). The decision to prosecute or not is for the Attorney-General, in his role as the Public Prosecutor, to make. The Public Prosecutor's decision to prosecute or not to prosecute is brought solely on the basis of the law, and his assessment of the public interest. Prosecutorial discretion is exercised to advance the public interest.[76]

The prosecutorial function is constitutionally vested in the Attorney-General. Under Art 35(8) of the Constitution, the Attorney-General has the power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence. Section 11 of the Criminal

[76] Lucien Wong, "Prosecution in the Public Interest," speech by the Attorney-General of Singapore at the Singapore Law Review Lecture 2017; available online at <https://www.agc.gov.sg/docs/default-source/default-document-library/singapore-law-review-annual-lecture-2017---prosecuting-in-the-public-interest.pdf>.

Procedure Code provides that the Attorney-General shall be the Public Prosecutor, with control and direction of all criminal prosecutions and proceedings.

The Attorney-General/Public Prosecutor can delegate the exercise of prosecutorial powers. The Deputy Attorney-General assigned by the Attorney-General to have control and direction of criminal prosecutions and proceedings under the CPC or any other written law has all the powers of the Public Prosecutor.[77] Deputy Public Prosecutors and Assistant Public Prosecutors can be appointed by the Public Prosecutor to carry out the duties of the Public Prosecutor.[78]

Private individuals may also conduct their own prosecutions in summary cases before a Magistrate's Court for any offence for which the maximum term of imprisonment provided by law does not exceed three years or which is punishable with a fine only.[79] Where a person wishes to initiate a private prosecution for offences outside the scope allowed under s 11(10) of the CPC, he may be permitted to do so by the Public Prosecutor via a fiat issued under s 12 of the CPC.

In general, criminal proceedings are heard *inter partes*, that is, in the presence of the accused and/or his counsel (where he is represented). The court may proceed to hear and determine a complaint of a criminal offence in the accused's (and his counsel's) absence in narrow circumstances set out in s 156 of the CPC. There are safeguards for such *ex parte* proceedings: there is a requirement for sufficient notice to be given to the accused, and a power for the court to declare that the *ex parte* proceedings are void. The court must declare the proceedings void only if the accused proves, on a balance of probabilities, that he was unaware of the summons or notice to attend court as well as the *ex parte* proceedings, and provided the application to declare the *ex parte* proceedings declared void was made within 21 days after the accused first knew of either of the summons or notice to attend court or of the *ex parte* proceedings.

In addition, the CPC sets out some other narrow exceptions to the general requirement for an accused's attendance at a criminal proceeding. For example, ss 232(3)–(4) allow a court to grant a complete discharge to the accused on the application of the Public Prosecutor in the absence of the accused. A brief flowchart setting out the procedure of the commencement of criminal proceedings against an accused is annexed hereto.

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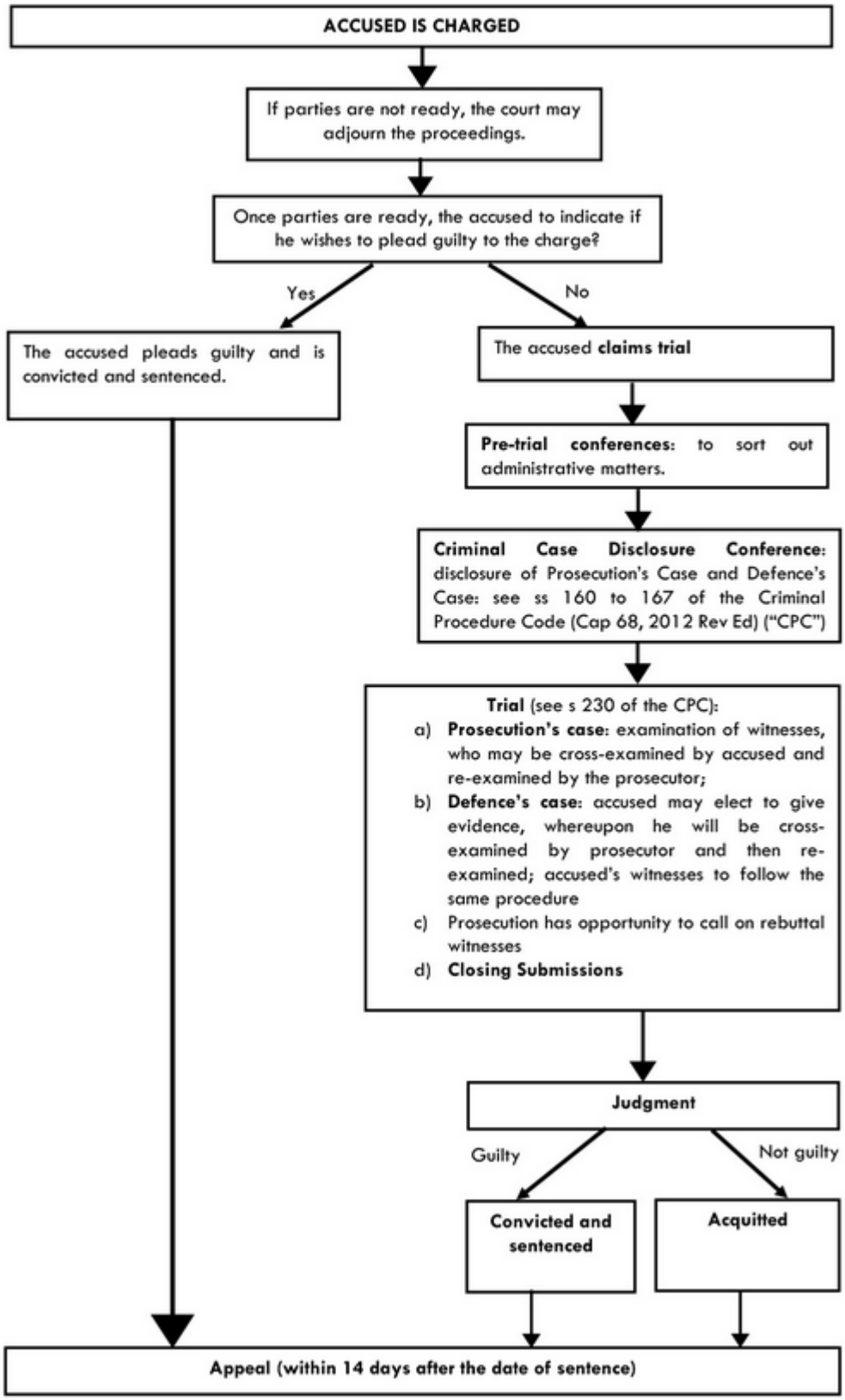
[77] Section 11(2) of the CPC.
[78] Section 11(5) of the CPC.
[79] Section 11(10) of the CPC.

Chart 5. Commencement of court proceedings



According to the *World Justice Project Rule of Law Index 2020*, Singapore ranked 12th (out of 128 countries) globally for the rule of law, with an overall score of 0.79 (out of 1, with 1 indicating the strongest adherence to the rule of law).[80] For criminal justice in particular, Singapore was placed 6th globally, with a score of 0.79. Under the breakdown of this score, Singapore had a score of 0.74 for the sub-factor of "due process of law". In addition, according to the World Bank's Worldwide Governance Indicators for 2017, Singapore was ranked in the 97th percentile for the rule of law, and 98th percentile for control of corruption.[81]

To further strengthen the criminal justice framework, the Criminal Justice Reform Act 2018 (No. 19 of 2018) was enacted in 2018. One key aspect of the framework is the establishment of the Criminal Procedure Rules Committee, chaired by the Chief Justice, pursuant to s 428A of the Criminal Procedure Code. Comprising representatives from the Judiciary, the Bar, and the Government, the committee is tasked with regulating and prescribing the procedure and practice in Singapore's criminal courts. This committee has the power to make court-related procedural rules to keep the court process nimble and up-to-date in the face of changing conditions. The initial contributions are also expected to be promulgated in 2021.

Civil Procedure

There are two ways, or originating processes, by which civil proceedings may be commenced. The first is by way of a writ of summons (Writ), which is utilised where there are substantial disputes over the facts of the case. The other method is by way of originating summons (OS). An OS is utilised where (i) the dispute is centered on legal issues and there are no substantial disputes of fact, or (ii) it is prescribed by law (e.g. pursuant to Section 124(1) of Building Maintenance and Strata Management Act, it is clearly mentioned that all applications made to the court under the said Act must be commenced by originating summons only).

Where a Writ is filed, a Plaintiff must file and serve the Writ and statement of claim on the Defendant. If the Defendant wishes to contest the claim in a Writ, he must file a memorandum of appearance after receiving the Writ and thereafter file and serve his defence on the Plaintiff. The Defendant may make a counterclaim in the same action and will then, in

[80] World Justice Project, *Rule of Law Index 2020*, available online at <https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf>.

[81] World Bank, "Worldwide Governance Indicators" (2019), available online at <http://info.worldbank.org/governance/wgi/#reports%3E.>.

that event, file a defence and counterclaim. A Plaintiff may then file and serve a Reply (and defence to counterclaim, if any) as a response.

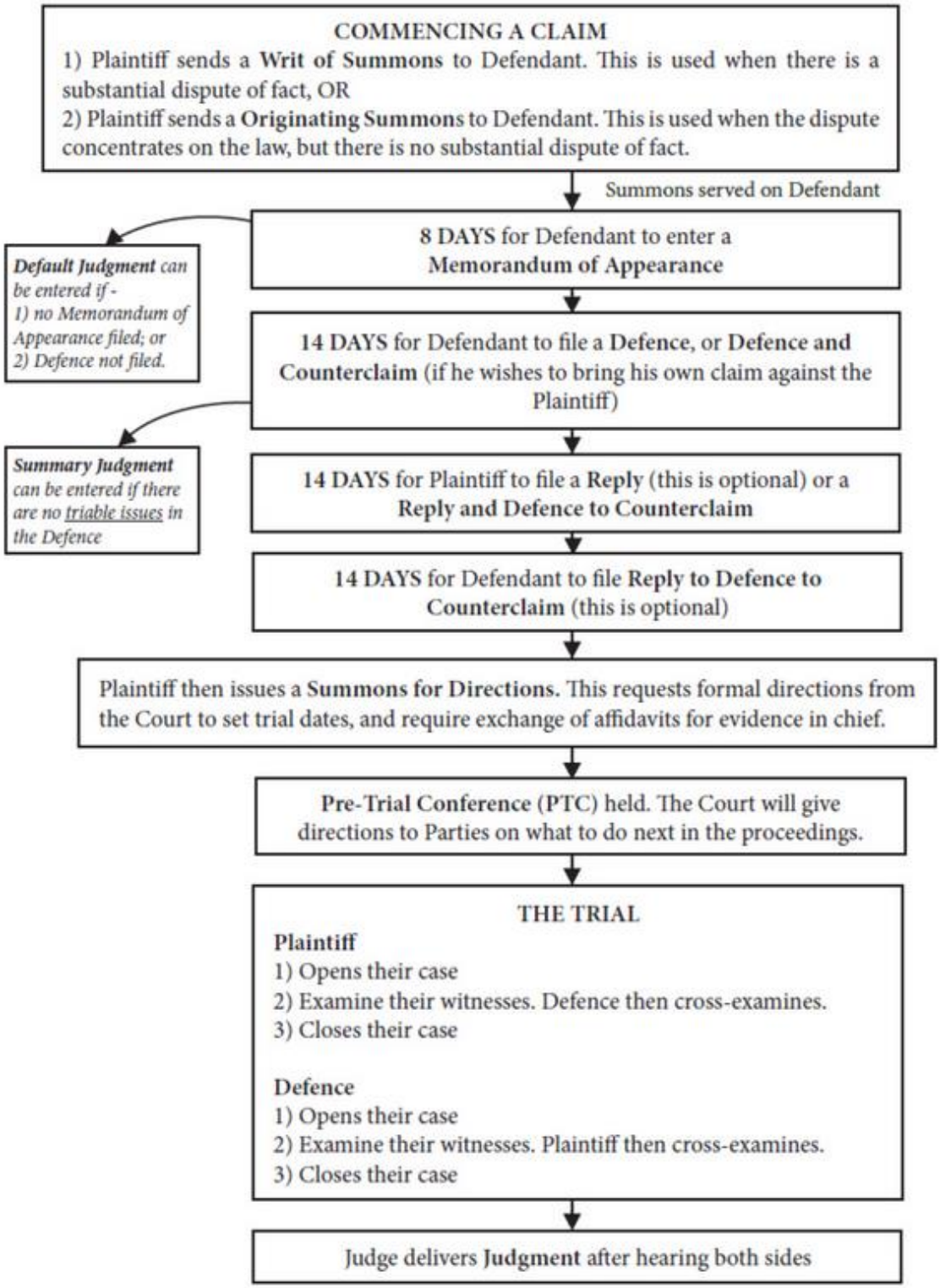
The Court will, thereafter, by way of exercising its case management powers, or pursuant to the application of parties, give directions on the various administrative and/or procedural matters leading up to trial. These include setting the time for parties to disclose and exchange documentary evidence, requiring parties to make requests for additional documents, if necessary, and the filing of the affidavits-of-evidence-in-chief of the witnesses (factual or expert). The scope of documents that must be disclosed and witness evidence that may be tendered are limited to those that are relevant to the issues in dispute between parties as discerned from the pleadings and necessary for the fair disposal of the matter and/or for saving costs.

Once the interlocutory matters are resolved and the matter is ready for trial, the case is fixed for trial before a judge. Typically, the plaintiff presents its case first followed by the defendant. Witness evidence in civil trials is usually introduced by way of written witness statements (known as affidavits of evidence-in-chief or "AEICs"). The opposing party then cross-examines the witness on any of the matters arising in the case. The party who introduced the witness has a right to re-examine the witness to clarify answers given in the course of cross-examination. After trial, parties submit written closing submissions following which the Judge who presided over the trial will render a decision.

The litigation system in Singapore is adversarial, which means parties are solely responsible in discharging their burden of proof according to their pleaded cases; judges generally do not actively seek evidence on their own initiative nor do they depart from the four walls of the pleadings. A chart summarising the writ procedure is set out in Chart 6[82].

[82] Adapted from "Know the Law Now!" by The Law Society of Singapore, p. 20

***Chart 6. Summary of the writ procedure*[11]**



There are mechanisms that encourage parties to resolve their disputes through settlement — alternative dispute resolution mechanisms are discussed in section 3.3. Apart from those mechanisms, the procedural rules on costs also incentivise parties to seriously consider settlement before trial.

(i) *Simplified Civil Process for Magistrate's Court claims*

A simplified civil process applies to Magistrate's Court claims filed on or after 1 November 2014: see O 108 of the Rules of Court. Parties to a District Court action filed on or after 1 November 2014 may also opt into the simplified process by consent. The simplified process features upfront disclosure of documents together with early and robust case management, with the primary aim being to facilitate early resolution of the dispute. Parties are required to file and serve a list of documents with their pleadings to give parties early information of each other's cases to facilitate early assessment.

A Case Management Conference (CMC) will generally be convened about 50 days after the Defence is filed. Prior to the CMC, parties are to exchange proposals and negotiate with a view to settling the matter at the earliest opportunity. At the CMC, the Court will help parties to identify and narrow the issues, deal with relevant interlocutory matters, fix timelines to manage and control the progress of the case and assist parties to settle the whole or part of the case.[83] Applications for summary judgment, discovery and interrogatories are excluded[84] and the Court will manage these aspects of a case at the CMC along with other interlocutory matters. In cases where parties require expert evidence to be adduced, a single joint expert is to be appointed. The evidence of the single joint expert is subject to cross-examination by parties.

Every case dealt with at a CMC may be referred for the most appropriate mode of alternative dispute resolution (ADR) where either the parties consent to use ADR for the resolution of their dispute or the Court is of the view that referral to ADR would facilitate the expeditious resolution of the dispute.[85]

If parties are unable to resolve their dispute and the case has to proceed to trial, the CMC judge will give directions for either a simplified trial or a full trial. Simplified trials are

[83] Paragraph 20(11) of State Courts Practice Directions.
[84] Order 108 r 4, Rules of Court.
[85] Order 108 r 3(3), Rules of Court.

conducted with specific time limits being given to parties allocated for examination, cross-examination and re-examination for each witness and closing submissions.[86]

(ii) Court's discretion in ordering costs

The court, when exercising its discretion as to costs to be awarded to parties at the end of proceedings shall take into account, where appropriate, the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution.[87] While this is just one of the factors to be considered by the courts when making an order for costs, it has the effect of encouraging parties to attempt dispute resolution, at the very least, with a view to obtaining a favourable costs order at the end of proceedings.

To this end, the Supreme Court Practice Directions provide that a party may make an offer, in the prescribed form, for the dispute to be referred to ADR.[88] The offer may be made at any time during proceedings and the opposing party must formally respond within 14 days[89] or else that party will be "deemed to be unwilling to attempt ADR without providing any reasons".[90]

(iii) Offers to settle

The civil procedure rules also encourage parties to attempt settlement through the exchange of offers to settle.[91] One party may make an offer to the other party at any time of the proceedings before the court gives judgment. If the offeree does not accept the offer and eventually receives a judgment that is a poorer outcome than what was offered, the offeror may be compensated by costs starting from the time the offer was made.

External perceptions of Singapore civil justice system

Besides being known for being efficient and the impressive case management, external perception of Singapore civil justice system is positive, which attests to the effort to instill a high regard for the rule of law in the civil realm. For instance, the World Justice Project's *Rule*

[86] Order 108 r 5, Rules of Court.
[87] Order 59 r 5(c), Rules of Court.
[88] Paragraph 35C of Supreme Court Practice Directions, and Form 28, Appendix A of Supreme Court Practice Directions. The Supreme Court Practice Directions are available online at <https://epd.supremecourt.gov.sg>.
[89] By way of Form 29, Appendix A of Supreme Court Practice Directions.
[90] Paragraph 35C(3) of the Supreme Court Practice Directions.
[91] Order 22A, Rules of Court

of Law Index 2020 ranked Singapore 6th worldwide and 1st in Asia in respect of civil justice. The *Rule of Law Index* assessed:

- whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system;
- whether civil justice systems are accessible and affordable as well as free of discrimination, corruption, and improper influence by public officials;
- whether court proceedings are conducted without unreasonable delays and if decisions are enforced effectively; and
- the accessibility, impartiality, and effectiveness of alternative dispute resolution mechanisms.

Similarly, Singapore has also been consistently ranked among the top two countries in the World Bank's *Ease of Doing Business* survey. In 2020, it was ranked second after New Zealand. A high ease of doing business ranking means the regulatory environment is more conducive to the starting and operation of a local firm. Indicators include the ease of enforcing contracts and resolving insolvency.

Alternative Dispute Resolution (ADR)

In Singapore, alternative dispute resolution (ADR) can arguably be said to be "appropriate dispute resolution" rather than "alternative dispute resolution". ADR, by and large, does not take place in the shadow of the law; in fact, it very much operates under the aegis of the law. In Singapore, there is the recognition that access to justice can also take place outside the courtroom, primarily through ADR. Increasingly, disputants are encouraged and facilitated to look beyond the traditional court-based approaches to resolve their disputes. As discussed above (on civil procedure), ADR is integrated into the litigation process in the courts. In other words, litigation is promoted as a last resort.

The ADR movement started tentatively in the mid-1980s when the government envisaged Singapore as a major dispute resolution centre capitalising on its strategic geographic position as well as its goal of becoming a one-stop business centre. In the throes of the severe economic recession of 1985, the Economic Review Committee recommended the establishment of an arbitration centre in Singapore as part of a comprehensive package to make Singapore's economy competitive. In August 1986, Singapore acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in which each

contracting State is required to recognise and enforce arbitral awards made in another contracting State.

In May 1996, the government created the Inter-Agency Committee on Alternative Dispute Resolution to examine how ADR processes, and in particular mediation, could be promoted in Singapore. In its July 1997 report, the Committee recommended, *inter alia*, that in order to prevent Singaporeans from becoming too litigious, less expensive and non-adversarial methods of dispute resolution should be encouraged for all forms of commercial, social and community disputes.

The goal of offering a full suite of ADR services while creating a Singapore brand of ADR was reiterated in the government's major economic review in 2002-2003. This review reiterated the importance of the legal profession contributing to Singapore's aspirations to be a business and services hub. In particular, it recommended that Singapore should aim to be an "important dispute resolution centre for the region".[92] In August 2006, the government appointed Justice V K Rajah to head the Committee to Review the Legal Services Sector "to ensure that Singapore remains at the cutting edge as an international provider of legal services".[93] To bolster its claim as a neutral, impartial, and effective ADR centre, Singapore leverages significantly on its corruption-free and efficient reputation.

A very recent example of the dynamic approach to ADR, sensitive to the realities of the day, is the SGUnited Mediation Initiative. In light of the economic and commercial hardships brought about by the COVID-19 global pandemic, the Supreme Court, in collaboration with the Singapore Mediation Centre (SMC), launched the SGUnited Mediation Initiative to help litigants resolve their disputes quickly and avoid protracted litigation. Under this initiative, the Supreme Court identifies cases suitable for mediation and then refers them to the SMC for mediation at no charge to parties.[94] This took place in July and August 2020. By facilitating mediated settlements through this initiative, the Supreme Court hopes to provide access to

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[92] See 'Report of the Working Group (Legal Services)', Economic Review Sub-Committee on Service Industries (2002), p. 2 at para 4. The report also outlined the strategy recommended for the promotion of Singapore as an ADR service centre.

[93] This objective of developing Singapore as a centre for dispute resolution was augmented by the *SingaporeLaw* initiative, officially formed and supported by the Singapore Academy of Law and the Ministry of Law in 2006.[93] Under this initiative, strategies and activities were planned to increase the international profile of Singapore law and to promote Singapore as a centre for dispute resolution as well as an international provider of legal services. In particular, efforts were directed at attracting Indian and Chinese parties in their disputes with foreign parties to use Singapore as a seat of arbitration.

[94] In SMC's 23-year-history, it has mediated more than S$10 billion worth of disputes. In 2019, a case with S$110 million in dispute was successfully mediated at SMC, demonstrating that mediation can be applied to relatively high-value commercial disputes.

additional avenues for parties to resolve their disputes.[95] When mutually acceptable outcomes are achieved from a successful mediation, parties can save costs as well as minimise the emotional toll that accompanies the litigation.

(a) Compulsory diversion of disputes to dispute resolution mechanisms

In Singapore, the compulsory diversion of disputes to dispute resolution mechanisms occurs within and outside the formal judicial machinery. To encourage the use of ADR, most of these mechanisms are government-financed or otherwise a formal part of the government structure.

Compulsory ADR: Presumption of ADR in the State Courts

Paragraph 35(9) of the State Courts Practice Directions provides that a presumption of ADR is applied to all civil cases.[96] For this purpose, the State Courts encourage parties to consider the Court Dispute Resolution (CDR) or ADR processes as a "first stop" for resolving the dispute, at the earliest possible stage and will, as a matter of course, refer appropriate matters to the CDR process or other ADR processes.

The judge-driven CDR process, which is a pre-trial case management process which employs specific CDR modalities such as Early Neutral Evaluation (ENE), judicial mediation and judge-direction negotiations, is overseen by the State Courts Centre for Dispute Resolution Cluster of the State Courts (CDRC). The CDR gives the parties the opportunity to resolve their disputes more expeditiously and economically compared to determination through the trial process. Neutral evaluation, mediation and conciliation and neutral evaluation are undertaken as part of the CDR process. The CDRC conducts CDR hearings which are pre-trial conferences convened under Order 34A of the Rules of Court.[97]

Aside from the CDR process, the State Courts encourage parties to consider using other ADR processes, including mediation at the Singapore Mediation Centre or Singapore International Mediation Centre, mediation under the Law Society Mediation Scheme, and/or

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[95] See media release of 29 May 2020 issued by the Supreme Court and the SMC, "SGUnited Mediation Initiative to help litigants move on from Covid-19"; available at https://www.mediation.com.sg/wp-content/uploads/2020/05/Media-Release-SGUnited-Mediation-Initiative-FINAL.pdf.

[96] The direction reads as:

> 'A "presumption of Alternative Dispute Resolution" applies to all civil cases. For this purpose, the Court —
>
> (a) encourages parties to consider the appropriate CDR or ADR processes as a "first stop" for resolving the dispute, at the earliest possible stage; and
>
> (b) will, as a matter of course, refer appropriate matters to the appropriate CDR or ADR process.'

[97] Paragraph 35(2), State Courts Practice Directions.

arbitration under the Law Society Arbitration Scheme, and mediation and/or arbitration by private service providers.

A personal injury claim or a "non-injury motor accident claim" filed in the State Courts will be automatically managed by the CDR process. In such a claim, where parties are represented by counsel, the CDRC will give an ENE the case on liability and/or quantum to encourage parties to settle. As mentioned above, the Court may refer a Magistrate's Court action for CDR or ADR at the CMC. To facilitate the Court's decision on the most appropriate CDR or ADR process for the case, parties and their counsel must read and complete the CDR/ADR Form prior to the case management conference.[98] For any other civil case in the State Courts, parties may request for ADR at any time in the proceedings. A judge in the State Courts hearing a civil matter may also refer the case for ADR at any stage of proceedings. In particular, the parties and their solicitors must complete and file the CDR/ADR form when taking out or responding to a Summons for Directions application[99] or prior to the first Pre-Trial Conference (if no Summons for Directions or application for summary judgment, striking out, stay, transfer or consolidation of proceedings has been taken out for the case) to facilitate such referral.[100]

Several pre-action protocols are also in place for specific types of cases that would require pre-action steps to be taken prior to filing of a claim in court (and which steps include exchanging of proposals as part of pre-action negotiations). The specific types of cases are matters involving (1) Non-injury motor accident claims, (2) Medical negligence claims (3) Personal injury claims, (4) defamation, and (5) Business-to-Business debt claims.[101] The respective forms and pre-requisite steps to be taken as part of pre-action negotiations are set out in the protocol documents.

Prior to October 2018, the State Courts used two main dispute resolution techniques as part of its case management strategy, namely, mediation and neutral evaluation. Since then, the State Courts have begun using conciliation as a new court dispute resolution tool. The judge's role during conciliation is to direct the parties through the negotiation process, and to suggest optimal solutions for their consideration. During conciliation, the judge plays a more active

[98] Form 7 in Appendix A, State Courts Practice Directions.
[99] Paragraph 26(3), State Courts Practice Directions.
[100] Paragraph 36(5), State Courts Practice Directions.
[101] Appendices C, D, E, K and L of State Courts Practice Directions.

role than in mediation, where the mediator's role is primarily to assist the parties in identifying key interests and to guide them to formulate their own solutions.[102]

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 the 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).[103] 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.

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.

(b) Voluntary or consensual diversion of disputes

Voluntary or Consensual ADR in the Supreme Court

The Supreme Court Practice Directions set out the requirement that solicitors must advise their clients on the various methods of alternative dispute resolution (ADR) available to resolve a dispute.[104] The methods described in the practice directions are mediation, neutral evaluation, expert determination, and conciliation.[105] The intent is for ADR to be considered at the earliest possible stage to facilitate the just, expeditious and economical disposal of civil cases. This is

[102] Keynote address by Justice See Kee Oon, Presiding Judge of the State Courts, "State Courts: 2020 and Beyond," 8 March 2019; available online at <https://www.statecourts.gov.sg/cws/Resources/Documents/State_Courts_Workplan2019_KeynoteAddress(FINAL).pdf>.

[103] Eighty percent of Singaporeans live in public housing estates developed by the HDB.

[104] Paragraph 35B of Supreme Court Practice Directions.

[105] Appendix I of Supreme Court Practice Directions.

especially where ADR may save costs, achieve a quicker resolution, and a surer way of meeting the litigants' needs.

Voluntary – Where ADR is sought by the initiative of one party

The Supreme Court Practice Directions provide[106] that a party may make an offer, in the prescribed form[107], for the dispute to be referred to ADR. The offer may be made at any time during proceedings and the opposing party must formally respond within 14 days.[108] If the opposing party fails to respond, that party will be deemed to be unwilling to attempt ADR without reason. This is a factor that the court may consider in exercising its discretion in an award as to costs, including costs of any claim or issue in any proceedings or of the entire action[109].

Consensual – Where ADR is sought by mutual agreement

If parties are willing to attempt ADR, directions may be given by the court in relation to the relevant civil case, including an adjournment of pending proceedings in court with stipulated timelines for the completion of the ADR process.[110] Where mediation is conducted under the SMC or SIMC, the Mediation Act 2017 provides for the mediated settlements to be enforceable in the Singapore Courts.[111]

(c) Policy drivers in development of ADR processes

At a basic level, Singapore's ideational approach to dispute resolution is to emplace a system in which the courts can expeditiously provide resolution for parties who seek out the legal system to resolve their disputes. That the courtroom should be the *ultimum remedium* (the forum of last resort) is a principle studiously subscribed to. To limit litigation's reach, the state has sought to establish adequate facilities and incentives for ADR and make them accessible as the first port-of-call when parties seek to resolve their disputes.

The state's direct and active involvement in conflict management is a distinctive feature of the ADR framework in Singapore. This statist and judicial commitment is buttressed by a cultural approach in which ADR is portrayed as being in accord with the values and norms of

[106] Paragraph 35C of Supreme Court Practice Directions.
[107] Form 28, Appendix A of Supreme Court Practice Directions.
[108] Paragraph 35C(3) of the Supreme Court Practice Directions. (See also Form 29, Appendix A of Supreme Court Practice Directions.)
[109] Paragraph 35C(5) of Supreme Court Practice Directions.
[110] Paragraph 35C(4) of Supreme Court Practice Directions.
[111] Section 12 of the Mediation Act 2017.

Singaporean society. Such an attitudinal and institutional configuration profoundly influences the behaviour of disputants. By and large, disputants in relatively small commercial claims and social disputes are encouraged to use ADR.

Such an efficient and cost-effective system entails the application of proportionate judicial and party resources in the dispute resolution process. This proportionate use of judicial resources demands that much lower value cases, including those routinely involving disputes of facts such as non-injury motor accidents, be diverted out of the court system. By channelling minor commercial claims and social disputes to alternative forums, the courts are freed to focus on complex cases and commercial claims of higher values (generally above SGD250,000 for the High Court) that are deemed important or more appropriate for litigation. Inherent within the dispute resolution framework is the emphasis on preserving the façade of a harmonious society.

Notwithstanding the initial economic impetus, the non-economic benefits of and salutary effects of ADR accruing to the larger population enamoured the policy makers by the mid-1990s. Here, socio-cultural and political objectives exert a prominent influence in the non-commercial sphere. Specifically, ADR in Singapore is primarily geared towards the ultimate objective of a less litigious society. Then Law Minister S. Jayakumar expressed concern with the trend of Singaporeans becoming more litigious. He characterised litigation as "adversarial justice… a zero-sum game, often leaving no feasible way to save face".[112] In many respects, the government is drawing from its own positive experience in industrial relations where the abiding focus is on consensus, leading to industrial harmony and stability, for the common good.

Given the perennial concern with maintaining ethnic relations on an even keel in heterogeneous Singapore, ADR can help promote a more harmonious, civil and gracious community where social conflicts can be resolved amicably.[113] A society with a preference for ADR conveys a picture of a harmonious place that is conducive to and facilitative of business operations and harmonious living. Besides, such a society would have "less need for lawyers than a society which relies on judicial institutions to resolve such disputes".[114] Legal services

[112] "Singapore Government Favors Increased Use of ADR" (1996) 7 World Arbitration and Mediation Report 86.

[113] See the website of the Community Mediation Centre (CMC) at <https://cmc.mlaw.gov.sg>. The CMC's mission is: "To provide an attractive, practical and convenient solution for social and community disputes in Singapore".

[114] Report of the First Committee on Supply of Lawyers (1993), para 4.9.

were regarded as 'transfer-seeking activities' rather than producing wealth directly.[115] Indeed, the belief is that too many lawyers would result in an over-litigious society.[116] The first Committee on Supply of Lawyers noted that:

> Unnecessary legal work, both as an economic function and a social function, may be generated to meet the available supply of legal services. This will not only result in the creation of an over-litigious society, but will also lead to a lowering of standards of professional conduct and quality of legal services. These consequences would also aggravate the wasteful diversion of manpower resources into the legal profession.[117]

Singapore's state-led ADR movement is constructed as being culturally appropriate to Singapore. This particular self-image of consensus and harmony vis-à-vis conflict management requires the background and contextual understanding of Singapore's governing elites' emphasis on values and culture in the governance of the Singaporean society. In this regard, the importance and influence of Singapore's "Shared Values"—in particular, "Consensus, not conflict"—on the ADR regime in Singapore cannot be discounted.[118] While no explicit link has been drawn connecting the Shared Values to the ADR framework in Singapore, the significance of the Shared Values lies in its subtle influence on the inculcation of the "ADR-first mindset" through the state-accorded importance of consensus and conflict avoidance.

Singapore's emphasis and preference for ADR as the primary mode of dispute resolution reflects its culture, its value-system, and the norms adhered to. As a swifter, cheaper form of dispute resolution, ADR is seen as more in alignment with Singapore's cultural values and harmony promoting. As it has often been observed, litigation is often portrayed as breeding disharmony and has limitations in dealing with particular disputes such as relational disputes. The basic values of a society are often revealed in its dispute-settlement processes, reflecting the culture in which they are embedded. In turn, the processes by which disputes are managed

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[115] *Ibid*., para 2.3.

[116] The number of lawyers is closely managed by the state through, *inter alia*, controlling the enrolment of law undergraduates at Singapore's three law schools. (Prior to January 2007, Singapore had only one law school.)

[117] *Ibid*., para 2.3.

[118] This movement towards a national ideology of sorts culminated in 1991 when the government introduced the Shared Values to consolidate the cultural essence of Singapore's multiracial society. It would also contribute to Singapore's long-term growth as a "distinctive Asian nation", as then Prime Minister Goh Chok Tong had described Singapore. Officially adopted in 1993, Singapore's Shared Values are: (1) Nation before community and society above self; (2) Family as the basic unit of society; (3) Community support and respect for the individual; (4) Consensus, not conflict; and (5) Racial and religious harmony (see further Government of Singapore, White Paper on *Shared Values*, 1991).

involves a reflexive relationship which will influence the legal culture in which they are embedded. Where access to justice is concerned, such an ideational approach necessary emphasises not just the quest for justice but also *how* such justice is attained. Hence, the focus on institutional design undergirded by values resonate in the dispute resolution institutions.

Simplification of law and by-passing legal processes

Many of the examples cited in the earlier parts of this Section seek to significantly reduce the cost and time required of judges, parties and/or others to ascertain the applicable legal rules or to present and/or investigate the operative facts in particular categories of cases. A key feature of the litigation process in the Supreme Court and State Courts is the Pre-Trial Conference ("PTC"), which is a proactive case management mechanism provided for under Order 34A of the Rules of Court (for cases before the Supreme Court).

At the PTC, the Court monitors the progress of the cases and gives the necessary directions in order for the just, expeditious and economical disposal of the action. They include identifying the facts that are agreed upon or are in dispute; clarifying the issues between the parties; and attempting to reach a resolution by way of a voluntary agreement.

PTCs are usually conducted by a Registrar and the first PTC is usually scheduled six weeks after the filing of the Writ. If the Writ is served, the first PTC will be re-scheduled to within eight weeks from the date on which the Writ is served or the Memorandum of Appearance is filed. At PTCs, the Registrar will usually seek an update on the status of an action. Directions will then be given for the parties to progress the action in an expeditious and fair manner e.g., the filing of interlocutory applications and the timelines therein. An action may go through several PTCs. Parties who reach a settlement at a PTC may record the settlement before the Registrar. Otherwise, trial dates will be given for matters that cannot be settled.[119]

PTCs may also be conducted by Judges ("JPTCs") to facilitate a more active role in case management. JPTCs are usually scheduled after the completion of the discovery process and again after the exchange of the affidavits of evidence-in-chief of the witnesses.

[119] See write-up on PTCs available at the Supreme Court website at <https://www.supremecourt.gov.sg/rules/court-processes/civil-proceedings/pre-trial-matters/pre-trial-conference-(ptc)>.

Other examples that significantly reduce the cost and time required of judges, parties and/or others to ascertain the applicable legal rules or to present and/or investigate the operative facts in particular categories of cases can be found in the following laws:

- *Consumer Protection (Fair Trading) Act* (Cap. 52A)

The Act allows for consumers (individuals not acting in the course of a business) to have non-conforming goods repaired or replaced by the supplier. The applicable threshold is that of conformity to the applicable contract at the time of delivery and the remedies offered to the consumer are not premised on the liability of the supplier for the non-conformity.

- *Women's Charter* (Cap. 353, 2009 Rev Ed)

Section 95 of the Women's Charter provides for irretrievable breakdown of marriage as the sole ground for divorce. This is proven through establishing one of several prescribed conditions e.g. living separately for 4 years, or the spouse having deserted the family for a continuous period of 2 years from the date of filing the writ.[120] None of the conditions listed in section 95(3) requires the proving of fault on the part of the opposing spouse.

- *Carriage by Air (Montreal Convention,1999) Act* (Cap. 32B, 2008 Rev Ed)

Where personal injury or death to a passenger is concerned, an airline cannot limit or exclude liability for damages for such injury where the damages claimed does not exceed 100,000 special drawing rights (approximately SGD188,000).[121]

- *Protection from Harassment Act* (Cap. 256A, 2015 Rev Ed)

The Act provides more ways for a respondent to prove a contravention under the Act in Protection Order applications. The requirement to prove a contravention under the Act will be deemed satisfied where:

i. the victim shows that the perpetrator has been convicted of a relevant offence under the Act or the Penal Code (e.g. voluntarily causing hurt); or
ii. the court is satisfied that the perpetrator has voluntarily caused hurt to the victim.

As for examples that permit the judge, tribunal, arbitrator, or other adjudicatory body substantially to abandon the usual statutory or precedential rules and to base the decision upon

[120] Section 95(3) of the Women's Charter.
[121] See Article 21 in the Schedule to the Carriage by Air (Montreal Convention,1999) Act.

an appraisal of the equities of the individual dispute (with regard to small, modest or otherwise socially significant claims), two examples can be cited. The first is that of the Industrial Arbitration Court (IAC), which was set up to adjudicate in disputes arising from agreements made between unions and employers. It offers an alternative to industrial action by enabling fair, fast and inexpensive arbitration.[122] The IAC is not bound by the Evidence Act (Cap. 97, 1997 Rev Ed) and it may enquire into a matter in any way that it thinks just.[123]

The second example is under clause 28(3) of the UNCITRAL Model Law on International Commercial Arbitration, which has the force of law in Singapore[124], the arbitral tribunal is entitled to determine the dispute as *amiable compositeur* or on the basis of the Latin maxim *ex aequo et bono*. In other words, the tribunal is entitled to determine the dispute by reference to general notions of fairness and equity rather than in accordance with a strict application of legal rules.

The tribunal may decide so only if parties have expressly authorised it to do so.[125] The same power is not extended to tribunals presiding over arbitrations that fall within the domestic Arbitration Act (Cap. 10, 2002 Rev Ed).

Summary

Notwithstanding the official emphasis on mediation and the state's self-ascribed definition of Singaporean society as consensus-seeking, the use of ADR as a means of promoting access to justice has to be 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. Any apparent fixation with settlement and settlement rates should not derogate from traditional norms and preserving equity, fairness and procedural protections within 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

[122] More information on the Industrial Arbitration Court are available online at <www.iac.gov.sg>.
[123] Section 60(1)(b) of Industrial Relations Act (Cap. 136, 2004 Rev Ed).
[124] Section 3 of the International Arbitration Act (Cap. 143A, 2002 Rev Ed) ("IAA").
[125] Article 28(3) of the Model Law, First Schedule of the IAA.

marginalise the use of litigation where necessary in legal aid cases. In this regard, 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 where the government is dominant, adjudication enhances democratic governance by providing opportunities to observe the state's authority and power being exercised in accordance with the rule of law, and for the citizens to participate in the creation of legal norms even in ordinary cases.

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4. ACCESS TO JUSTICE, EQUAL ACCESS TO COURT AND FAIR TRIAL

The Singapore Government recognises and is genuinely committed to access to justice as an integral component of a society governed by the rule of law. Put simply, access to justice is understood in Singapore as ensuring that justice is not the exclusive preserve of a few, but available equally to all Singaporeans and people living in Singapore. This should come as no surprise as the legal system will only be of value to its stakeholders if it remains highly relevant. The government regards access to justice as being extremely important, and the public debate often centres on how to improve access to justice. This is despite there being no explicit constitutional or legislative provision guaranteeing 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. Chief Justice Sundaresh Menon described access justice in the following manner:

> When we speak of access to justice, it is customary to think in terms of access to the justice that is dispensed in the Courts and I begin with some observations on this. The first point I want to make is a short one: the dispensation of justice by the Court is the very last stage of a process that is often quite long. That process begins with fact finding efforts that may or may not involve police and enforcement agencies, and most times it will involve extensive advice, legal assessment and finally case preparation on the part of the lawyers. In our adversarial system of litigation, if justice is going to be delivered by the Courts, we are dependent to a very significant degree on cases being properly prepared and presented by those at the front-end of the process, namely lawyers and where relevant, the enforcement agencies. These are the first agents of the legal structure that provides the public with their first "Access to Justice".
> … Access to justice need not entail having to access the Courts if consensual outcomes can be reached in a way that secures acceptable outcomes which disputing parties can accept and move on from. This requires a mindset change from lawyers with a shift of focus towards finding resolution in the client's best interest having regard to all the circumstances. Again, I would encourage practitioners to examine the case for using mediation more vigorously than hitherto and to incorporate this as a part of the standard menu when counselling clients.
> … Most of the audience today is made up of practising lawyers. The law is your living and it is entirely legitimate that it is so. But we must

> not forget that being a legal professional necessarily carries an additional element of working to ensure that the users of the system come first; that they can access the system; and that we do our part to make it so. A judicial system with the best judges and lawyers would fail in its objective of administering justice if it remained a showpiece that was not accessible to every man.[126]

Equality is one of the foundational principles of independent Singapore given the unhappy political sojourn in the Malaysian federation. In the Proclamation of Singapore, then Prime Minister Lee Kuan Yew declared, on behalf of the people and Government of Singapore, that "Singapore shall be forever a sovereign democratic and independent nation, founded upon the principles of liberty and justice and ever seeking the welfare and happiness of her people in a more just and equal society".[127]

The fundamental liberty of equality before the law and equal protection of the law is encapsulated in Article 12 of the Singapore Constitution:

> 12.—(1) All persons are equal before the law and entitled to the equal protection of the law.
>
> (2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

The concept of equality embodied by Article 12 does not, however, demand absolute parity between persons regardless of differences between them, but only that persons should be treated the same way as other persons in a similar situation to them.

While Article 12 is the main provision in the Constitution guaranteeing equality to all persons, there are also other provisions relating to equality. For instance, Article16 prohibits discrimination on specified grounds where education is concerned. Articles 152 and 153 place on the Government a responsibility to care for the interests of racial and religious minorities, and in particular to recognise the special position of the Malays and to regulate Muslim religious

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[126] Sundaresh Menon CJ's opening address at the inaugural Litigation Conference 2013 on 31 January 2013; available online at <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/media-room/opening-address-by-chief-justice-sundaresh-menon-at-the-litigation-conference-2013.pdf>.

[127] See the Independence of Singapore Agreement 1965 (1985 Rev Ed), which contains the Proclamation of Singapore; available online at <https://sso.agc.gov.sg/Act/ISA1965>.

affairs. In addition, Article 154 provides that that all persons who are in the same Government service grade must be treated impartially regardless of their race, subject to the terms and conditions of their employment and to other provisions of the Constitution. In Part VII of the Constitution, a procedure is prescribed for the Presidential Council for Minority Rights to ensure that statutes do not contain "differentiating measures", that is, measures which discriminate against any racial or religious community.

Strong Whole-of-Government Will and Leadership in Ensuring Access to Justice

The political will to provide and ensure access to justice, initially and primarily through legal aid, has been a lodestar in the development and growth of the legal system 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 as a specific area of focus and of the broader concerns of access to justice, which often requires reforms to not only policies and processes but also systemic values, norms, and practices.

Thus, Singapore's access to justice system adopts a holistic approach, embracing the provision of legal aid, enhancing pro bono work, the functioning of the courts, expansion of ADR within and without the court system, the expansion of legal services and their affordability, and attending to specific needs of individuals, communities, and businesses.

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.[128] 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 fulfil 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 or their inability to access the justice system. 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

[128] As a practising 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.

meaningful access 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 was 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. The relative success of Singapore in broadening access to justice goes beyond an effective and efficient legal aid regime.

Meaningful access to justice in Singapore results from four key pillars: Strong whole-of-government will in ensuring access to justice, a multi-stakeholder approach and collaboration on legal aid and pro bono work, 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.

Access to justice has been a key plank of the development of the justice system in Singapore, driven primarily by the Judiciary and having the support of the government. The shared purpose of developing a system of laws and justice is disciplined by shared values. Singapore's abiding concern with access to justice benefits from the shared commitment of the Government – in this case, the three branches viz the Executive, Judiciary and the Legislature, and the legal fraternity as well.

Within the government, the Ministry of Law is tasked with the responsibility for the policy and framework on access to justice. The Law Ministry's vision is: "A Trusted Legal System; A Trusted Singapore", and its mission is that of "Advancing access to justice, the rule of law, the economy and society through policy, law and services".[129] In a recent statement, the then Senior Minister for Law said:

[129] See the Ministry of Law website at <https://www.mlaw.gov.sg/about-us/ourvision-mission-corevalues/>.

> Access to justice is an important consideration for the Government as it is a fundamental pillar of Singapore society. It is a measure of how far we have come as a society, how mature we are as a society, how caring and compassionate we are as a society, and we measure that with reference to the accessibility the common man has to the justice system. There is no point in having a first-world justice system, top rankings all the time, rule of law, major Conventions happening in Singapore attended by people from around the world, when our own citizens are not able to access the justice system. That is a fundamental motivation that we have, when we design our laws.[130]

The Judiciary remains abidingly committed to access to justice. This goes beyond the efficiency that it is reputed for. The Supreme Court's vision is "A Leading, Trusted Judiciary. Ready for Tomorrow". Its mission is "Accessible Justice that commands trust, respect and confidence". Supporting the vision and mission are the "FAIR" values of fairness, accessibility, independence, integrity and impartiality, and responsiveness".[131] Similarly, for the State Courts, its vision is that of "A trusted and forward-looking Judiciary that delivers justice," and its mission is to administer justice with quality judgments, timely and effective dispute resolution, and excellent court services".[132]

In the opening of the Legal Year 2020, the Chief Justice emphasised the continual imperative to build a system that better meets society's justice needs.[133] He proposed three principles of accessibility, proportionality, and peace-building to guide the redesign of the justice system.[134] The Chief Justice reiterated that, "A justice system that is founded on these

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[130] Speech by Mr Edwin Tong, Senior Minister of State for Law & Health, at the launch of Law Awareness Weeks @CDC 2019, 4 September 2019 at Keat Hong Community Club; available online at <https://www.mlaw.gov.sg/news/speeches/speech-by-sms-edwin-tong-law-awareness-weeks-launch-cdc-2019-keat-hong-community-club>.

[131] See the Supreme Court's website at <https://www.supremecourt.gov.sg/about-us/vision-and-mission/vision-mission-and-values>.

[132] See the State Courts' Justice Statement which encapsulates the vision, mission and values of the State Courts, and represents the collective aspirations of the State Courts at <https://www.statecourts.gov.sg/cws/AboutStateCourts/Pages/TheJusticeStatement.aspx>. In addition, the State Courts' Court Charter has timelines for the delivery of "timely and quality justice": see <https://www.statecourts.gov.sg/cws/AboutStateCourts/Documents/Court%20Charter_Jan%202020.pdf>.

[133] The context laid out by the Chief Justice at para 41 of his Response: "These enduring problems are a legacy of a justice process that was conceived in a different era and which was founded on a philosophical preference for argument and adjudication as *primary* methods of dispute resolution. That model of justice is increasingly straining to meet the needs of modern society – one which is evolving faster than ever before; inhabits both the online and offline worlds; faces increasing socio-economic stratification; and confronts a polarised world more prone to conflict and division than peace and multilateralism".

[134] These principles are elaborated in an earlier speech by the Sundaresh Menon CJ, Negotiation and Conflict Management Group (NCMG) ADR Conference 2019, "Technology and the Changing Face of

values holds out the promise of justice as a public service available to all, rather than being the exclusive preserve of a few". On accessibility, the Chief Justice stated that this should be understood in terms of "closing the 'justice gap'" or the problem of unequal access to justice which he conceptualised as having three dimensions:

> [A] *physical* gap, which concerns the physical distance between an individual and the institutions of justice; a *resources* gap, which deters the individual from seeking legal recourse due to concerns over cost; and a *literacy* gap, which follows from a lack of awareness about one's legal rights and remedies. A justice system that seeks to minimise the level of injustice in society must necessarily be interested in closing each of these gaps, thereby enhancing and equalising access to justice.

On the second principle of *proportionality*, this entails that "the nature, complexity and cost of the processes and solutions offered by the justice system (bears) suitable relation to the nature, complexity and size of the legal problem in question". This is as much a resource-saving principle that promotes the efficient allocation of scarce judicial resources as a recognition that disputes have varying needs which call for different types of solutions.

The third principle in the re-design of the justice system is *peacebuilding*, which is "the aspiration that the justice system should not merely *keep* the peace by enforcing rights and obligations, but should also strive to *build* lasting peace by repairing and reinforcing relationships and rebuilding our sense of community. In so doing, the justice system would act prophylactically to prevent further and potentially more serious instances of rule-breaking and rights violations".

Notwithstanding the evolving impact of the COVID-19 pandemic, the Singapore judiciary seeks to embark on the institutional redesign of aspects of Singapore's justice system based on the above principles that equalises access to justice, recognises that various disputes can be resolved in different ways, and strives to build lasting peace. The aim is to deliver "fair outcomes that are available to all, as a means of achieving real and lasting peace in our community". To attain this vision, the Chief Justice stated that there is the need to conceptualise the idea of a court in the following manner:

> (a) The courts moving from a traditionally reactive approach to proactively resolving disputes in the most appropriate manner;

Justice" (14 November 2019): <supremecourt.gov.sg/docs/default-source/default-document-library/ncmg---keynote- lecture.pdf>.

(b) The courts offering an extended suite of assistive services to empower and educate its users;

(c) That adjudication is part of a wider universe of dispute resolution methods; and

(d) The justice system actively connects users with particular needs to sources of help, whether within or outside the justice system.

Access to justice, therefore, is not merely an end in itself but that it is also a means to an important end. This broader conception of access to justice has benefits that extend beyond the users of the justice system:

> Seeing justice as a public service also entails helping the public better understand how justice is administered. This involves offering the public greater insight into the deliberative process by which judges decide cases, the nature of the judicial function, the powers of the courts and the limits of those powers. We can seed that basic understanding through court engagement and outreach, so as to promote the reasoned scrutiny of court decisions and more meaningful public discourse about the law.

Undoubtedly, access to justice is a fundamental pillar of Singapore society. The Government takes a multi-faceted approach to ensure access to justice, for example:

- Working with the Judiciary to enhance the court process such that it will be streamlined, easier, simpler, and as far as possible, cheaper for the litigant, or someone who has to defend a case.[135] In recent years, the Civil Justice Commission and the Civil Justice Review Committee, set up by the Supreme Court and the Ministry of Law respectively, have recommended various reforms including:
    - Simplifying the court forms to make it easier to navigate, easier to understand, easier to fill up, and this allows people to do it on their own without lawyers as far as possible.
    - Introducing simplified forms and procedures for cases that frequently involve unrepresented litigants.

[135] Speech by Mr Edwin Tong, Senior Minister of State for Law & Health, at the launch of Law Awareness Weeks @CDC 2019, 4 September 2019 at Keat Hong Community Club; available online at <https://www.mlaw.gov.sg/news/speeches/speech-by-sms-edwin-tong-law-awareness-weeks-launch-cdc-2019-keat-hong-community-club>.

- Enabling litigants (especially laypersons) to have better information and understanding of the litigation process.
- Building up capabilities in alternative dispute resolution to complement court proceedings, to ensure that disputes can be resolved quickly, amicably and affordably, for example, through community mediation, and to free up judicial resources for more deserving matters.
- Civil and criminal legal aid is available for persons of limited means who are unable to afford their own lawyers. These government-funded legal aid schemes are co-delivered with strong support from the legal fraternity and civil society. (see Section 5 – Legal Aid System)
- Adopting a multi-stakeholder approach towards providing the community greater access to pro bono legal advice and assistance. Other than legal aid funded by the government, legal services are also provided to persons of limited means by a rich landscape of community partners, with the support of the legal fraternity. This includes various regular and ad hoc programmes organised by LSPBS, the CJC, and other community, religious and volunteer welfare organisations.

The Singapore judiciary has always accorded utmost priority to the continual enhancement of the accessibility of justice for all. Several initiatives in the last decade have impacted both the domestic and international communities that use the court system. For example, the Family Justice Courts were established on 1 October 2014 with the goal of delivering an improved family justice system for Singaporeans. The key reforms included the provision of increased support and assistance to litigants in the pre-litigation, litigation and post-litigation stages of family dispute resolution with important changes in both procedure and process. The ambition of a new mode of family justice is matched by the determination to make for a less acrimonious journey through the legal system for families in distress. As Chief Justice Sundaresh Menon noted in the Judiciary's annual report of 2014/2015, "… the accessibility of our justice system (is) what viscerally concern our citizens. We must therefore continue to design our legal frameworks and our processes with these imperatives in mind".[136] These efforts are paying off as more couples are choosing less contentious divorce process.[137]

[136] See the Judiciary's annual report of 2014/2015, p. 44; available online at <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/supreme-court-2014-2015.pdf>.

[137] See, for instance, "More couples choosing less contentious divorce process," *The Straits Times*, 23 May 2020.

To conclude this section, it is worth reiterating that access to justice has been a key plank of the development of the justice system in Singapore, driven primarily by the Judiciary and having the support of the government. Put simply, access to justice is understood as Singapore as ensuring that justice is not the exclusive preserve of a few, but available equally to all Singaporeans and people living in Singapore. The specific measures taken to improve access to justice is elaborated in the rest of this country study.

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5. LEGAL AID SYSTEM

History of Legal Aid

More than sixty years ago in 1958, Singapore was the first country in Southeast Asia to enact a legal aid scheme, including the establishment of the Legal Aid Bureau (LAB) to provide legal aid to persons of limited means.[138] The constitutional framework, however, does not provide specifically for the right to legal aid. The legislation that deals primarily with legal aid is the Legal Aid and Advice Act (LAAA) (Cap. 160, 2014 Rev Ed). Earlier, when the Legal Aid and Advice Ordinance (the LAAA's predecessor) was enacted in 1956, it contemplated the provision of legal aid in both criminal and civil cases. However, the provisions relating to criminal cases were held in abeyance because of the perceived incongruity of devoting State resources to both the prosecution and the defence of accused persons. Over the course of independent Singapore's history, legal aid as part of the overall access to justice has broadened significantly.[139] Members of Parliament, civil society, and the legal fraternity make regular calls for more people to qualify and receive government-funded legal aid.

Legal aid is regarded as an integral component, necessary but not sufficient, for achieving access to justice, equal access to court, and fair trial. As indicated, in section 4 on access to justice, other components matter significantly as well. They include keeping an eye on the costs of using the court system, non-litigious modes of dispute resolution, the use of diversionary strategies and institutions, a multi-stakeholder approach and collaboration specifically on legal aid but generally on access to justice, a growing pro bono culture and a societal concern with not just justice but having the ability to access justice. These pillars are supported by the foundation of a strong political will in ensuring access to justice in both form and substance.

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[138] 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.

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

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

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 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).[140] 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).[141] In a historic philosophical shift in 2015, the government began to directly fund criminal legal aid which provided a significant boost to access to justice.

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.

As indicated earlier, even before Singapore attained self-government or independence, there was already a system of legal aid in place.[142] 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

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

[141] 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.

[142] 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).

> the country have no opportunity either to understand their powers under it or to have full access to it …[143]

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.[144]

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 perhaps 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".[145] 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

[143] *Singapore Parliament Reports*, vol. 1, col. 1965, 6 June 1956.
[144] *Singapore Parliament Reports*, vol. 1, cols. 1957-1958, 6 June 1956.
[145] 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>.

> 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.[146]

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 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.[147] 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 2017, 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".[148] 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".[149] 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".[150]

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[146] *Singapore Parliament Reports*, vol. 64, col. 1349, 7 July 1995.

[147] 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.

[148] 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.

[149] *Ibid.*, at para 29.

[150] *Ibid.*, at para 32.

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.[151]

Civil Legal Aid – Legal Aid Bureau

Civil legal aid is provided by the Legal Aid Bureau (LAB), a department under the Ministry of Law. The LAB provides civil legal aid in close partnership with the legal fraternity. Then Chief Minister David Saul Marshall first mooted the idea of legal aid in 1955. He was of the view that the justice system was "one of the principal pillars of the development of this territory". It supported the rule of law. A legal aid regime could help to ensure that even those of limited means could have equal access to the legal system.

The Legal Aid and Advice Bill was read for the first time on 4 April 1956. The Legal Aid and Advice Ordinance 1956 was passed and the LAB came into operation on 1 July 1958, making Singapore the first country in Southeast Asia to enact a legal aid scheme.

The legislative framework for the provision of civil legal aid is laid out in the Legal Aid and Advice Act (LAAA).[152] The Act and the subsidiary legislation, Legal Aid and Advice Regulations[153], set out *inter alia* the scope and general conditions of civil legal aid, application procedure, the powers of the Minister for Law, and the Director of Legal Aid. More details of the framework will be covered in subsequent sections. In November 2018, Parliament passed a set of legislative amendments to the Legal Aid and Advice Act, to simplify the means test, provide greater flexibility to grant aid, and improve the administration of civil legal aid.[154]

Since its establishment, the Legal Aid Bureau (LAB) has received about 400,000 applications for legal aid, assistance and advice. In 2020, the LAB received more than 7,700 applications, of which 82 per cent satisfied the means requirements. This indicates that the means test is appropriately calibrated.

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[151] See Singapore's 2016 Universal Periodic Review national report at para 14 stated: "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".

[152] Cap. 160, 2014 Rev Ed.

[153] Rg 1, 1995 Rev Ed.

[154] For details on the amendments, see Ministry of Law press release of 1 October 2018, "Strengthening Access to Justice through the Legal Aid and Advice (Amendment) Bill, available online at <https://www.mlaw.gov.sg/news/press-releases/strengthening-access-to-justice-through-the-legal-aid-and-advice-amendment-bill>.

The Government recognises and is committed to legal aid as an integral part of ensuring access to justice, and that it is one of the many mechanisms in delivering access to justice. Singapore's approach towards this is a partnership between the Government, the private sector, the legal fraternity, and civil society, so that other than legal aid funded by the Government, legal services are also provided to persons of limited means by a rich landscape of community partners, religious, and volunteer welfare organisations, with the support of the legal fraternity (i.e. law firms, volunteer lawyers, and law student volunteers).

The Government regularly acknowledges the role of volunteers in promoting access to justice, especially when it comes to the provision of legal aid. A recent endorsement described volunteer lawyers as "the heart and soul and lifeline of the pro bono system … Both LAB and CLAS would not have been possible without the volunteer lawyers who have devoted their time and effort to taking the cases. Indeed, the foundation of our pro bono schemes rests on the dedicated and selfless efforts of our many volunteers".[155]

Criminal Legal Aid for Non-Capital Offences – Criminal Legal Aid Scheme (CLAS)

The Law Society started the Criminal Legal Aid Scheme (CLAS) in 1985 as a ground-up initiative by the Law Society and its volunteer lawyers. CLAS provides aid to accused persons facing non-capital criminal charges and who cannot afford their own lawyers. Historically, as noted in the introduction of this section, the Singapore Government did not provide funding as the State had already invested effort in investigating and prosecuting the accused persons. However, the Government made a philosophical shift in 2013 to fund criminal legal aid, for cases which would benefit from such aid.

The enhanced CLAS was launched in 2015, and continues to be administered by the Law Society Pro Bono Services (LSPBS) with Government co-funding. This close collaboration among the LSPBS, the criminal Bar, the courts, and the government in the enhancement of the criminal legal aid scheme is a sea-change from the past where the government regarded its funding of criminal legal aid as going against the interests of the state. The average number of persons who received full representation each year between 2015 and 2020 grew to 1,330, or more than three times the number of cases that was assisted by the programme before the enhancement to CLAS was launched.

[155] Speech by Mr Edwin Tong, Senior Minister of State for Law & Health, at the launch of Law Awareness Weeks @CDC 2019, 4 September 2019, at Keat Hong Community Club; available online at <https://www.mlaw.gov.sg/news/speeches/speech-by-sms-edwin-tong-law-awareness-weeks-launch-cdc-2019-keat-hong-community-club>.

Legal Assistance Scheme for Capital Offences (LASCO)

All persons facing capital charges in the High Court are ensured of legal representation under the Legal Assistance Scheme for Capital Offences (LASCO). Under LASCO, anyone facing a capital charge is eligible to be assigned counsel by the State free of charge. No means test or other eligibility criteria is imposed. In most cases, two counsel will be assigned – one to lead, and one to assist. LASCO is administered by the Registrar of the Supreme Court.

Legal Aid Budget

The Legal Aid Bureau (LAB), which provides civil legal aid to persons of limited means, is funded by the Government. Table 1 tabulates the Government's past expenditure on civil legal aid in recent years.

	FY 2014-15 (Actual)	FY 2015-16 (Actual)	FY 2016-17 (Actual)	FY 2017-18 (Actual)	FY 2018-19 (Actual)	FY 2019-20 (Actual)	FY 2020-21 (Budget)
Operating Expenditure	5.69m	5.76m	5.65m	6.52m	6.66m	9.50m	7.19m
Development Expenditure	0.24m	1.11m	1.57m	0.66m	0.40m	0.26m	0.06m
Total Expenditure	5.93m	6.87m	7.22m	7.18m	7.06m	9.76m**	7.25m

*** Note: includes a lump sum top up to Legal Aid Fund of $3m*

The LAB also maintains a Legal Aid Fund made up of monies collected by way of costs (i.e., the amount awarded by the court to the winning party in a case) and applicants' contributions (contributions are assessed based on the applicant's income and assets, and the amount of work done for their cases). The Fund is then used to defray the expenses, fees and allowances payable to Assigned Solicitors and to meet the out-of-pocket expenses incurred in connection with the application for legal aid.

Where funding for criminal legal aid is concerned, the Criminal Legal Aid Scheme (CLAS) is administered by the Law Society Pro Bono Services (LSPBS) with Government

providing the bulk of the funding, with an annual funding commitment of up to $3.5 million to cover operational costs, honoraria and disbursements.[156]

With prudent fiscal planning and the commitment to access to justice, the legal aid service has not experienced any large-scale funding cuts.

Legal Aid Providers

As indicated above, state-funded legal aid is provided by various organisations. For example, the LAB provides civil legal aid. The CLAS under LSBPS provides criminal legal aid for non-capital offences, and LASCO administered by the Registrar of the Supreme Court provides criminal legal aid for capital offences. In both civil and criminal legal aid, legal aid providers must be qualified lawyers under Singapore laws.

The state provides the bulk of the funding for civil and criminal aid. On the other hand, the legal aid providers while having their own sources of funds rely heavily on volunteers providing pro bono services that ensure this potent combination of appropriate funding and a good dose of public service.

Civil Legal Aid

The LAB's in-house lawyers are Legal Service Officers (LSOs) (i.e., employed by the Government). Apart from relying on its in-house lawyers, the LAB also partners with the legal fraternity to deliver civil legal aid, including Assigned Solicitors who volunteer for LAB.

The Assigned Solicitors (AS), who are qualified lawyers from private practice, take on LAB cases. Cases assigned to the AS include cases where there is a conflict of interest (e.g. both parties are legally aided), or involved specialised areas of law such as Syariah Court proceedings or medical malpractice, or urgent and complex cases. About one-third of LAB cases are assigned to Assigned Solicitors; the rest of the cases are handled by LAB's in-house lawyers.[157]

The number of lawyers signing up to be Assigned Solicitors with LAB has increased steadily since 2015, when there were 36 new sign-ups. Since 2015, the sign-ups have increased

[156] Ministry of Law press release, "Enhanced Criminal Legal Aid Scheme set to provide greater access to justice," 19 May 2015; available online at <https://app.mlaw.gov.sg/news/press-releases/enhanced-clas-to-provide-greater-access-to-justice>.

[157] See Lim Hui Min, Joan Pang and Adrian Gerard Woon, "Fighting for the Underdog – The Assigned Solicitors of the Legal Aid Bureau," *The Singapore Law* Gazette, March 2018; available online at <https://lawgazette.com.sg/news/updates/fighting-for-the-underdog-the-assigned-solicitors-of-the-legal-aid-bureau/>.

to an average of 49. To date, there are 668 AS who can potentially take on assigned cases, which is 11% of 6,162 practicing lawyers in Singapore. In 2020, 211 Assigned Solicitors took up at least one case from the Bureau.[158]

Assigned Solicitors volunteer to take up cases on a pro bono basis, as a way of contributing back to society. They are paid a nominal sum of up to $1,000 for simple cases and 50% of the taxed costs for more complex cases.[159] Payments for Assigned Solicitors' services come from the Legal Aid Fund, as prescribed in the Legal Aid and Advice Regulations.

As long as the cases are meritorious and within the scope of the governing legislation, there are no restrictions on the LAB taking legal action against unlawful acts committed by the Government itself, large corporations, politically influential persons etc.[160] Whether a case is meritorious is decided by the Legal Aid Board, comprising the Director of Legal Aid (DLA) and at least two independent lawyers from the LAB's Panel of Solicitors (who are private practitioners).[161] With effect from 16 October 2019, DLA can, without reference to the Legal Aid Board, approve applications for legal aid in straightforward cases, e.g. uncontested adoption proceedings, simple uncontested divorce proceedings, non-disputed proceedings for Grant of Letters of Administration or Probate. This streamlines the process and shortens the time needed for straightforward cases.[162]

Under Section 17 of the Legal Aid & Advice Act, all ongoing court proceedings will be stayed for a period of 14 days from the day on which the notification is filed in Court on behalf of a legally-aided person. This gives LAB/AS additional time to peruse the case, determine if the case is meritorious, etc. and take the necessary steps to protect the applicant's interest. The LAB/AS are not required to pay court filing fees when filing documents in Court for such cases.[163] Legally aided persons are also exempted from furnishing the required deposits for filing of appeals or bankruptcy applications against a creditor. The LAB is also given

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158 Speech by Minister in Prime Minister's Office, and Second Minister for Finance and Education, Ms Indranee Rajah, at the Legal Aid Bureau's 60th Anniversary Dinner, 14 November 2019; available online at <https://app.mlaw.gov.sg/news/speeches/speech-indranee-rajah-legal-aid-bureau-60-anniversary-dinner>.

159 Legal Aid Bureau, *The Assigned Solicitor Guide* (2019); available online at <https://lab.mlaw.gov.sg/files/The-Assigned-Solicitor-Guide.pdf>, pp. 44-45.

160 Colin Cheong and Lim Hui Min, *Access to Justice: 50 Years of Legal Aid* (Singapore: Straits Times Press, 2008), pp. 124-128.

161 Legal Aid Bureau, "Grant of Aid," at < https://lab.mlaw.gov.sg/legal-services/grant-of-aid/>.

162 Ministry of Law, "Strengthening Access to Justice through the Legal Aid and Advice (Amendment) Bill," at <https://app.mlaw.gov.sg/news/press-releases/strengthening-access-to-justice-through-the-legal-aid-and-advice-amendment-bill>.

163 Legal Aid Bureau, *The Assigned Solicitor Guide* (2019); available online at <https://lab.mlaw.gov.sg/files/The-Assigned-Solicitor-Guide.pdf>, pp. 41-42.

exemptions of fees for the conduct of certain searches (e.g. bankruptcy searches) required for most cases. Furthermore, the law states that the Court cannot order costs against legally-aided persons, except in cases where legal aid was obtained improperly. These privileges apply to both LAB in-house and assigned cases.

The LAB is also empowered by statute to make the necessary inquiries as to the merits of the case (see s 7 Legal Aid & Advice Act). This may involve provision of information from other public bodies, provided the relevant requirements are met.

Criminal Legal Aid – CLAS

Criminal legal aid under CLAS is delivered through a strong partnership with the legal fraternity. The support of law firms and volunteer lawyers has been critical in enabling CLAS to serve three times as many cases today compared to 2014, prior to Government funding. Four schemes were introduced in 2015 to grow the pool of lawyers taking on CLAS cases and to provide additional support to pro bono criminal legal aid[164]:

a. Merits Testers: 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 to LSPBS on whether the case satisfies the legal merits test level of aid to be given.
b. Memorandums of Understanding (MOUs): A law firm may sign an MOU with LSPBS where the law firm pledges to take up a fixed number of CLAS cases each year.
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 CLAS 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.
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.

[164] Ministry of Law press release, "Enhanced Criminal Legal Aid Scheme set to provide greater access to justice", 19 May 2015; available online at <https://app.mlaw.gov.sg/news/press-releases/enhanced-clas-to-provide-greater-access-to-justice>.

As a result of the above schemes, in 2019, 4 Fellows, 2 Advocates and 229 CLAS volunteer lawyers from both MOU firms and other law firms represented an accused or assisted on at least one case.[165] Volunteers take up CLAS cases on a pro bono basis and receive an honoraria as a token of appreciation for their pro bono contributions. Volunteers can also claim for disbursements for CLAS cases. The Government provides funding to LSPBS to cover honoraria and disbursements for CLAS cases.

LASCO[166]

Under LASCO, anyone facing a capital charge is eligible to be assigned counsel by the State free of charge. Practising lawyers, of good standing and reputation, apply through the Supreme Court to become LASCO Counsel.[167] Those who qualify are on the Register of Assigned Counsel maintained by the Registrar of the Supreme Court. Any advocate and solicitor who is of good standing and reputation is eligible to apply to be emplaced on the Register. In addition, an applicant seeking to be emplaced within a particular category of LASCO Counsel must meet the criteria applicable to that category including number of years in practice and experience in criminal and capital trials.[168]

When there is a case, counsel on the list are notified. Any counsel may volunteer for the case. The LASCO Selection Panel then assigns the counsel to the case after deliberation. As at 31 January 2021, around 170 lawyers are LASCO counsel. All assigned counsel are paid an honorarium for professional services rendered.

Quality Assurance

All lawyers who provide civil and criminal legal aid must be qualified lawyers under Singapore laws. Their professional conduct are regulated by the Legal Profession Act and other subsidiary legislation.

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165 Law Society of Singapore Annual Report 2019, p. 18; available online at <https://www.lawsociety.org.sg/About-Us/Annual-Reports>.

166 For more details on LASCO, see the write-up on the Supreme Court website at <https://www.supremecourt.gov.sg/rules/court-processes/criminal-proceedings/legal-assistance-scheme-for-capital-offences-(lasco)>.

167 The guidelines for emplacement as a LASCO counsel can be found at the Supreme Court website at <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/guidelines-to-lasco25793833f22f6eceb9b0ff0000fcc945.pdf>.

168 Supreme Court, "Legal Assistance for Capital Offences (LASCO)," at <https://www.supremecourt.gov.sg/services/self-help-services/legal-assistance-for-capital-offences>.

For LAB's in-house lawyers, in line with the civil service's training and development requirements, substantial time and resources are invested into continuing education and/or skills training every year. Some of the training are mandatory, others are self-initiated.

For all volunteer lawyers who take up CLAS, LAB and LASCO cases, they must have valid Practicing Certificates issued by the Law Society of Singapore. As qualified lawyers, they are required to undergo a minimum amount of continuing education/skills training before they can renew their practicing licenses annually. Additionally, the LAB's Assigned Solicitors are required to attend a mandatory briefing session conducted by the LAB before they can be assigned LAB cases.

For both civil and criminal legal aid under LAB and CLAS, there are mechanisms to monitor the quality of work provided proactively, including monitoring the timelines for cases and assessing the quality of lawyers' written work. There are avenues for applicants who are unhappy with the quality of legal aid services rendered to submit their feedback, which is then investigated.

Criminal Legal Aid

Scope of criminal legal aid

The Criminal Legal Aid Scheme (CLAS)

The Criminal Legal Aid Scheme (CLAS) covers offences under 16 statutes[169]:

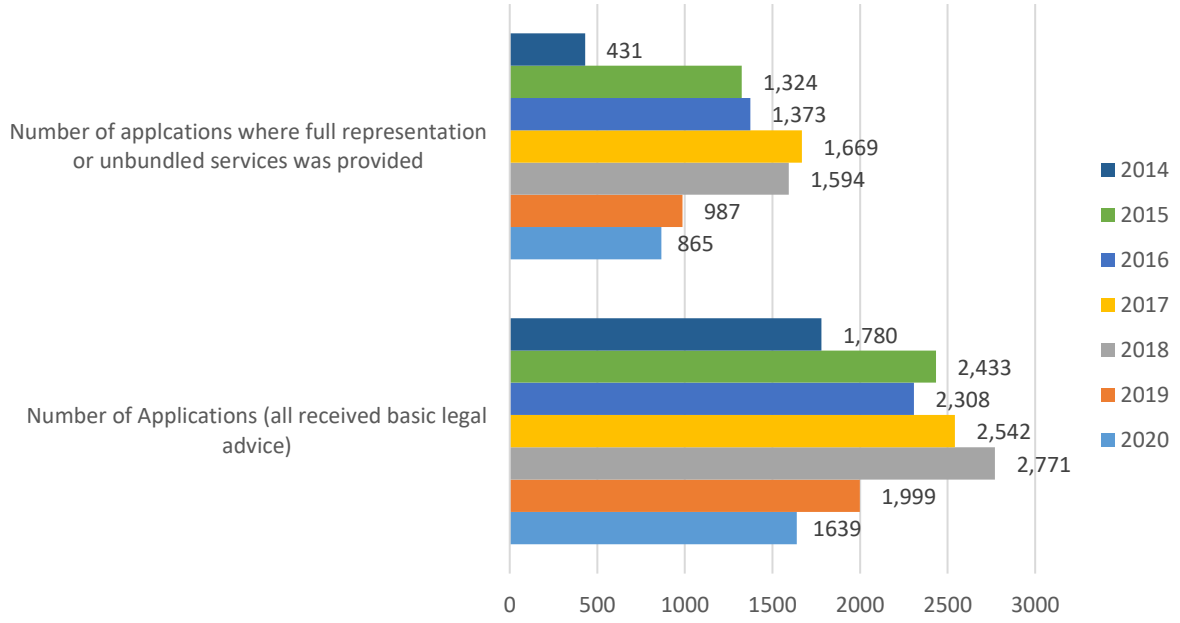
1. Arms & Explosives Act (Cap. 13)
2. Arms Offences Act (Cap. 14)
3. Computer Misuse Act (Cap. 50A)
4. Corrosive & Explosive Substances & Offensive Weapons Act (Cap. 65)
5. Dangerous Fireworks Act (Cap. 72)
6. Enlistment Act (Cap. 93)
7. Explosive Substances Act (Cap. 100)
8. Films Act (Cap. 107)
9. Miscellaneous Offences (Public Order and Nuisance) Act (Cap. 184)
10. Misuse of Drugs Act (Cap. 185)
11. Moneylender's Act (Cap. 188) [Sections 14 & 28]
12. Penal Code (Cap. 224)

[169] Law Society Pro Bono Services, "Criminal Legal Aid Scheme," at <https://www.lawsocprobono.org/Pages/Criminal-Legal-Aid-Scheme.aspx>.

13. Prevention of Corruption Act (Cap. 241)
14. Undesirable Publications Act (Cap. 338)
15. Vandalism Act (Cap. 341)
16. Women's Charter (Cap. 353) [Sections 65(8) and 140(1)(i)]

The statistics related to the number of applications and number of accused persons receiving full representation for 2014 to 2020 are provided in the chart below.

Chart 7: Number of CLAS applications & legal aid provided



As the chart above shows, the number of and proportion of applications that secured full legal representation or unbundled services[170] increased significantly from 2015. This can be attributed to the provision of Government funding from 2015 onwards and the strong support of the legal fraternity. The enhanced CLAS is now able to serve almost four times as many accused persons compared to pre-enhanced CLAS. In addition, all CLAS applicants now receive basic legal advice, regardless of whether they are eventually granted legal aid. This basic service was not provided prior to 2015.

[170] The CLAS had discontinued the 'unbundled services' where volunteer lawyers help draft mitigation pleas for APs and the APs represent themselves in court. Not only was the take-up rate for such services low but the stakeholders observed that applicants would benefit more if they were represented by a lawyer instead of being a litigant-in-person.

Support for victims and witnesses

While victims and witnesses do not come under the scope of criminal legal aid programmes (CLAS and LASCO), vulnerable witnesses (including victims) can receive support under the Witness Support Programmes run by the Courts in partnership with volunteers from the CJC and the Singapore Children's Society (SCS).[171]

Eligibility criteria for criminal legal aid

CLAS

To qualify for CLAS, an applicant must meet three requirements:

(1) Charged in Singapore with one of the criminal offences covered,

(2) Satisfy the means test, and

(3) Satisfy the legal merits test.[172]

Means Test

Under the means test, persons with a disposable income of not more than SGD10,000 per annum and a disposable capital of not more than SGD10,000 may be granted legal aid.

1. Disposable income is the income of the applicant together with the income (if any) of the applicant's spouse for the 12 months immediately preceding the date of the application, after deducting:
    a. $6,000 for the applicant;
    b. $6,000 for the working spouse;
    c. Up to $6,000 for each dependent;
    d. An amount not exceeding $20,000 for rent (if any);
    e. The applicant's contribution to the Central Provident Fund (CPF); and
    f. The spouse's contribution to the CPF
2. Disposable capital is the property which an applicant is possessed of or to which he is entitled to, excluding:
    a. The subject-matter of the proceeding;

[171] See further information provided by the State Courts and the Family Justice Courts at <https://www.statecourts.gov.sg/cws/CriminalCase/Documents/Community%20Court_Witness%20Support%20Programme_2015_03.pdf> and <https://www.familyjusticecourts.gov.sg/support-network/vulnerable-witness-support-programme> respectively.

[172] Law Society Pro Bono Services, "Criminal Legal Aid Scheme," <https://www.lawsocprobono.org/Pages/Criminal-Legal-Aid-Scheme.aspx>.

b. The wearing apparel of the applicant;
c. The tools of trade of the applicant;
d. Household furniture used by the applicant in his house;
e. A dwelling-house with an annual value of up to $13,000, or a Housing and Development Board flat, that is owned and exclusively used by the applicant and his family as their home;
f. Savings of the applicant of up to $30,000, if he is aged 60 and above;
g. Moneys standing to the credit of the applicant's account in the CPF; and
h. The total surrender value of one or more life policies held by the applicant, up to the amount of $46,000

Depending on the results of the means test, applicants may need to pay a co-payment. The co-payment amount is based on their assessed means. This ensures that applicants also contribute towards their defence, and do not abuse the system.

Merits Test

The merits test assesses whether the applicant has a good reason to bring or defend the case under the law.

LASCO

To reiterate, legal aid is available for all persons, regardless of nationality, facing a capital charge under LASCO. No means test or other eligibility criteria is imposed for LASCO.

Process for obtaining criminal legal aid

For CLAS, on-bail applicants may apply in person at the CLAS Office within the State Courts premises, or online at LSPBS' website. Remanded applicants may apply through their remand institutions. Applicants whose applications are rejected may make an appeal against the decision to the CLAS.[173]

[173] *Id*.

Civil Legal Aid

Scope of civil legal aid

The LAB provides three types of services:

1. Legal aid – representation by a legal aid lawyer in civil proceedings such as proceedings under the Women's Charter, in Court of Appeal, the High Court, the District Courts, the Magistrate's Courts, and the Syariah Court;
2. Legal advice – oral advice by lawyers on questions of Singapore law and the practical steps a person may take in the circumstances in his/her case; and
3. Legal assistance – drafting of wills and deeds of separation.

The LAB has received about 400,000 applications for legal aid since its establishment. In recent years, the LAB has received around 9,000 applications per year. Most applications relate to matrimonial, monetary claims and probate matters. Refer to the table below for the breakdown of types of cases in recent years:

Number of Applications by Subject Matter

Calendar Year	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
Matrimonial	4,825	4,733	4,482	4,230	4,481	4,276	3,425
Adoption	63	65	56	62	59	92	71
Claims	1,061	890	827	910	938	1027	966
Probate Matters	672	622	604	650	689	647	532
Property Matters	250	233	214	203	214	187	235
Others	2,771	2,811	2,777	2,957	3,131	3265	2,493
Total	**9,642**	**9,354**	**8,960**	**9,012**	**9,512**	**9,494**	**7,722**

Eligibility criteria for civil legal aid

To qualify for civil legal aid at the LAB, an applicant must be a citizen or a permanent resident of Singapore. He must also satisfy both the means test and the merits test. The purpose of the means and merits tests ensures that legal aid is provided to those who cannot afford basic private legal services, and that public funds are not spent pursuing fruitless claims. The LAB may provide legal aid and advice to foreigners who are involved in applications under The Hague Convention on the Civil Aspects of International Child Abduction.[174]

[174] The Hague Convention on the Civil Aspects of International Child Abduction is the main international agreement that covers international parental child abduction. It provides a process through

Means Test

From 16 October 2019, the Ministry of Law implemented new means test procedures for civil legal aid. Of significance is the change in how an applicant for legal aid is assessed. The previous disposable income and disposable capital criteria is now replaced with the "per capita household income" and the annual value of the applicant's place of residence, savings, and investments. This method is aligned with the means test more commonly used in various government social support schemes. The amendments to the law empower the Ministry of Law with the flexibility to establish such means criteria, which is set out in the subsidiary legislation.[175]

The qualifying limit for the revised means test does not materially impact the number of households eligible for legal aid. These changes seek to improve access to justice.[176] From a procedural viewpoint, the changes simplify the application process and reduce the amount of paperwork for applicants, which shortens the application process.

The means test criteria, effective from 2019, is as follows:

a. The average Per Capita Gross Monthly Household Income (PCHI) must be SGD950 or lower for the last 12 months prior to the application;
b. The Annual Value of applicant's place of residence owned by the applicant must be SGD13,000 or lower; and
c. The applicant's savings and non-CPF investments must be SGD10,000 or lower, if he is younger than 60 years old. Applicants aged 60 and above are allowed to have savings and non-CPF investments of SGD40,000 or lower;
d. The applicant must not own any other property besides his/her place of residence.

The latest set of amendments also provide the Legal Aid Bureau with greater flexibility to assist otherwise deserving applicants 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

which a parent can seek to have his/her child returned to the home country. The Hague Convention also deals with issues of international child access which often arises when a parent or guardian lives in a different country from the home country of the child.

[175] The new criteria are set out in the First Schedule to the Legal Aid and Advice Regulations.

[176] Ministry of Law press release, "Simpler and More Efficient Civil Legal Aid Application Process with Greater Flexibility to Grant Aid," 9 Oct 2019, available online at <https://app.mlaw.gov.sg/news/press-releases/simpler-and-more-efficient-civil-legal-aid-application-process>.

applicant's extenuating circumstances, such as illness that required major expenditure or extremely onerous caregiving obligations.[177] The Ministry of Law has since set up the Civil Legal Aid Means Test Panel to exercise the Minister's new discretion. The independent Panel consists of seven members with background in law, social services, and grassroots service. They help review means test appeals and repeat applications on a case-by-case basis, taking into account the detailed circumstances of the case. The Panel will consider deserving applicants for legal aid who may not satisfy the means criteria but, due to their extenuating circumstances, would not be able to afford basic legal services without causing significant hardship to themselves and their families.[178]

Merits Test

The merits test assesses whether the applicant has a good reason to bring or defend the case under the law.

Process for obtaining civil legal aid

Applicants may either register their case online or go to the LAB office to make an application. About one-third of LAB's cases are assigned to Assigned Solicitors; the rest of the cases are handled in-house. Cases which are usually assigned to an Assigned Solicitor include those where there is a conflict (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.

If an applicant fails the means test but has certain extenuating circumstances (for example, if they have a very serious illness and cannot afford legal services as they need to pay for major medical procedures), they may contact the Ministry of Law Services Centre (which administers the means test) for further assistance. In addition, if the applicant has any new evidence in support of his case, which has not been previously brought to attention for the purposes of assessing the merits of the case, the applicant may register a new case with LAB to surface the new evidence.

[177] Previously, the Legal Aid Bureau had the discretion to grant legal aid to those who fail the means test under only four prescribed circumstances: The 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.

[178] Although an applicant may be deemed to have satisfied the means test because of the Panel's discretionary power, the grant of aid is still subject to the applicant passing the merits test.

Holistic Legal Services

Persons who seek legal aid and assistance often have other personal, social, and family problems, and may need social services in addition to legal services. Organisations providing legal aid and assistance in Singapore often partner with social service agencies to conduct social service referrals, so as to better support vulnerable parties in need of other forms of assistance. Examples of referral to other social assistance include:

1. CJC's Legal Information and Knowledge Services (LINKS) programme provides interim financial support, grocery vouchers and food rations for needy court users with ongoing court proceedings. If CJC assesses that the party requires further specific assistance, CJC may refer the party to other relevant social service agencies.
2. LSPBS refers needy CLAS applicants to CJC's LINKS program for interim financial support and further referrals to other relevant social service agencies if necessary. This is convenient for CLAS applicants as the CLAS Office and CJC are both located in the State Courts premises
3. LAB officers are trained to carry out social service referrals if they assess that applicants for legal aid also have unmet/unresolved social needs or problems. For example, applicants may be referred to the PAVE for cases involving family violence, or to MSF, for applicants who may have housing issues, safety issues with their living environment or severe family dysfunction. MSF then refers the cases to an appropriate Family Service Centre (FSC) for help.

Alternative sources of legal assistance

Other than legal aid funded by the government, the legal fraternity and a rich network of community partners provide pro bono legal services. There is a rich tapestry of alternative sources of legal assistance. 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".[179] 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".[180]

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. Over 10,000 individuals receive 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.[181] 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. 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.[182] There were 380 lawyers, and 275 first-time student volunteers in 2018/2019, enabling legal assistance to be brought to the public housing estates where 80 per cent of Singaporeans reside in.

Other than the Community Legal Clinics, the 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

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[179] 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; …

[180] Correspondence with the Law Society of Singapore.

[181] The Community Legal Clinics is a collaborative effort of the LSPBS, the Community Development Councils (CDCs), the People's Association, as well as the broader legal community.

[182] 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.

in remand, and Law Works Clinics to assist union members. The LSPBS also has an Ad Hoc Pro Bono Referral Scheme, which provides civil or criminal legal representation for exceptional cases not covered by the LAB or CLAS. Cases are generally referred to LSPBS from social welfare organisations, lawyers, Members of Parliament, or government agencies.

(b) Community Justice Centre (CJC)

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 Development[183]), 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 programmes:

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.[184] 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).

[183] 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.

[184] 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.

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 the CJC assesses that the party requires further specific assistance, it 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 centres, religious organisations, and volunteer welfare organisations that provide legal support to members of the public. Some legal clinics cater specifically to foreigners providing free legal advice for migrant workers. They include the legal clinics by the Foreign Domestic Worker Association for Skills Training (FAST) and the Migrant Workers' Centre (MWC).

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.

. . . . .

6. COSTS OF RESOLVING DISPUTES WITHIN THE FORMAL JUDICIAL MACHINERY

Singapore's civil justice system is well-regarded domestically and internationally. In the last perception survey conducted by the Ministry of Law in August 2020, 90 percent of Singaporeans had trust and confidence in Singapore's legal system.[185] The respondents agreed that the legal system was fair and efficient. Internationally, Singapore's civil justice system was ranked sixth out of 128 countries in the 2020 World Justice Project Rule of Law Index.[186]

The regard for Singapore's civil justice system today is the result of sustained and concerted efforts by the Government, the Courts, the Attorney-General's Chambers, the legal profession and various other stakeholders in the legal industry. The civil justice system works relatively well for the majority of users and stakeholders. Nevertheless, there is a need to continue reviewing and improving the system for users who may face difficulty in navigating the system. One perennial concern is the costs of using the system, which can potentially affect access to justice.

Overview of judicial costs for litigants

Litigants are generally required to pay filing fees when they start court proceedings. Filing fees are payable at various stages in civil proceedings, usually when applications and documents are filed or lodged with the Court, upon the sealing of any document, and for the provision of copies of documents.[187] Most of these filing fees, and the circumstances in which

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[185] 90% of Singaporeans stated they had trust and confidence in our legal system;

- 95% agreed that Singapore is governed by the rule of law;
- 87% agreed that we have a fair legal system;
- 90% agreed that we have an efficient legal system;
- 76% agreed that legal aid is accessible to those of limited means; and
- 61% agreed that our legal system is affordable.

The Ministry of Law's perception survey was last conducted in 2020. I am grateful to the Ministry for providing these figures for this study.

[186] The World Justice Project (WJP) *Rule of Law Index® 2020*; available online at <https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf>. Of the seven indicators of civil justice, Singapore did not fare as well on the "accessibility & affordability" indicator where it was rated at 0.63. It also did marginally better for the "no improper government influence" indicator with a rating of 0.70. The scores for these two indicators were below the High rating, suggesting that these areas have the largest room for improvement.

[187] See, generally, Rules of Court, Order 91, Rule 1. Most of the court fees payable can be found in Appendix B of the Rules of Court. In addition, hearing fees (based on the duration of hearing) may be payable for matters heard or tried in the High Court or the Court of Appeal.
Apart from Court Fees, for matters before the Court of Appeal, an appellant may be required to provide a security deposit for the respondent's costs in an appeal.

they are payable (including on appeal), can be found in the respective subsidiary legislation below:

S/N.	Court	Legislation
1.	Community Disputes Resolution Tribunals (CDRT)	Second Schedule of CDRT Rules 2015
2.	Small Claims Tribunals (SCT)	N. A.
3.	Employment Claims Tribunals	First Schedule of Employment Claims Rules 2017
4.	Family Justice Court	Fourth Schedule of Family Justice Rules 2014
5.	Magistrate's Court	Order 90A of the Rules of Court
6.	District Court	
7.	Supreme Court	

Hearing fees are payable for certain matters (e.g., hearings before the Court of Appeal, before a High Court Judge, and certain hearings before a Registrar) and are charged based on the duration of hearing.[188] Most of these hearing fees can be found in the respective subsidiary legislation below.

S/N.	Court	Legislation
1.	Community Disputes Resolution Tribunals (CDRT)	First Schedule of CDRT Rules 2015
2.	Small Claims Tribunals (SCT)	Schedule of SCT Rules
3.	Employment Claims Tribunals	First Schedule of Employment Claims Rules 2017
4.	Family Justice Court	Fifth Schedule of Family Justice Rules 2014
5.	Magistrate's Court	Appendix B of Rules of Court
6.	District Court	
7.	Supreme Court	

[188] See, generally, Rules of Court, Order 90A.

Apart from filing fees and hearing fees, other types of court fees include taxation costs, urgent handling charges, fees for inspection of court files, translation and interpreter fees, commissioning fees and the Sheriff/Bailiff's fees in relation to enforcement proceedings. These are set out in Appendix B of the Rules of Court.

Regular Civil Justice Reforms

The Singapore Government is aware that the costs for litigants can be a significant barrier to access to justice. For example, if litigation becomes a luxury which few can afford, or which many who can but prefer to do without, the result is likely to be a denial of justice. The Government regularly reviews Singapore's legal system to ensure that it is progressive, taking into account changing socio-economic needs, technological developments and industry trends.

Recently, the Civil Justice Commission (CJC) and Civil Justice Review Committee (CJRC) were set up by the Supreme Court and Ministry of Law respectively in January 2015 and May 2016 to review Singapore's civil justice system. The complementary reviews sought to transform and modernise the litigation process, with efficiency and a keen eye on costs. What follows is a description of both reviews.[189]

Civil Justice Commission (CJC)

The CJC was set up by the Chief Justice with the following terms of reference:

- To transform, not merely reform, the litigation process by modernising it, enhancing efficiency and speed of adjudication and maintaining costs at reasonable levels;
- To simplify rules, avoid outdated language without discarding established legal concepts, eliminate time-consuming or cost-wasting procedural steps, ensure fairness to all litigants, make good use of advancements in information technology and allow greater judicial control of the entire litigation process;
- Such other aspects as the Chief Justice may direct from time to time.

The CJC's key recommendations include:

1. Granting the courts greater control and flexibility over proceedings:

[189] The description of the review is primarily extracted from the Ministry of Law press release, "Public Consultation on Proposed Reforms to the Civil Justice System," 26 October 2018; available online at <https://www.mlaw.gov.sg/news/press-releases/public-consultation-reforms-to-civil-justice-system>.

- When an action is commenced, the court will take control instead of leaving parties to determine the pace and intensity of the proceedings;
- The trial judge and registrar will be given the autonomy and flexibility to manage their cases.

2. Allowing the court to determine the number of applications that parties can file and when parties can file them:
   - Among other objectives, this is to minimise the practice of seeking to amend pleadings very close to the commencement of trial or even on the first day of trial, resulting in wastage of trial time and possibly resulting in adjournment of the trial.
3. Making changes to the provisions governing appeals which aim at:
   - Speeding up appeals from applications in an action by requiring the parties to file only written submissions with the appeal proceeding as a rehearing based on documents filed by the parties, and hearing all such appeals together;
   - Allowing lower courts maximum autonomy in procedural matters with appellate intervention only if substantial injustice will be caused;
   - Moving parties quickly from procedural skirmishes to the main battle on the merits of the case;
   - Saving costs and reducing prolixity by requiring succinct documents to be filed with the imposition of page limits which can only be exceeded if the Court approves and with the payment of a fee;
   - Requiring less formality for appeals in applications, and more formality only for appeals on the merits after trials;
   - Making appellate hearings more effective by allowing parties to make only such oral submission as the appellate court orders.
4. Review of the legal costs framework.

The CJC also recognised the need to ensure that the Rules of Court provide flexibility for a court to do right for each individual case, and ensure that parties will not be denied justice because of accidental procedural flaws. The Rules of Court regulate and prescribe the procedure and practice to be followed, mainly in civil proceedings in the High Court and the Court of Appeal.

Public consultation on the Civil Justice Reform proposals took place from 26 October 2018 to 31 January 2019. There was broad support for the majority of the proposals and most respondents welcomed the proposed amendments to reform the civil justice system. Presently, adjustments to the proposals are being made to take into account the feedback received (for example, on the issue of costs), where appropriate. It is estimated that legislative amendments required to implement the new rules will be tabled in Parliament in 2021 and the new Rules of Court will be implemented thereafter. What is evident from the review is the recognition that for the Rules of Court to be effective and efficient, which will often result in cost savings for litigants, the consideration of access to justice is paramount.

Civil Justice Review Committee (CJRC)

The CJRC was established on 18 May 2016 by the Ministry of Law.[190] The CJRC noted that the current civil justice system had worked very well for the large majority of users and stakeholders. However, it noted that there was a need to continue reviewing and improving the system for users who may face difficulty in navigating the system. The CJRC noted that users may face difficulties arising from:

(a) The cost of civil litigation, to the value of the claim, which has led to costs being disproportionate to the value of the claim;

(b) The potential inequality of resources between litigants, which may lead to unfair outcomes;

(c) The unnecessary protraction of proceedings, particularly by parties seeking tactical advantages; and

(d) The challenges encountered by parties when enforcing civil judgments in their favour.

To this end, the CJRC was tasked to make recommendations in relation to:

(a) Enhancing the following areas: (i) judicial control over litigation; and (ii) pre-trial, trial, and post-trial procedures;

(b) Professional training requirements and public education measures to support the recommendations; and

(c) A review mechanism to assess the implementation of the CJRC's recommendations two years post-implementation.

[190] Report of the Civil Justice Review Committee is available online at <https://www.supremecourt.gov.sg/Data/Editor/Documents/Annex%20B_CJRC%20Report.pdf>.

The following guiding objectives were adopted by the CJRC in its review: Advancing access to justice for all persons, including litigants-in-person and SMEs; and ensuring fairness, affordability, timeliness, simplicity, and effectiveness for all litigants, these being the core values of the Singapore civil justice system.

The CJRC's key recommendations cover reforms to pre-trial procedure, trial and appeals procedure and post-trial procedure. The key recommendations were:

(1) Enhance judicial control over civil litigation

- Judges can order parties to focus on key issues and provide case management direction to fit individual cases, and this would help reduce the length and cost of proceedings;
- The enhanced judicial control also includes the following:
    - Enable Judges to work with parties to formulate the List of Issues which crystallises the issues in dispute, and determine matters such as the scope of disclosure of documents, as well as the scope of factual and expert evidence which should be adduced.
    - Issue directions relating to factual witnesses, e.g. the number of factual witnesses, the necessity and scope of evidence to be adduced, the manner in which evidence will be adduced;
    - Exercise greater control of the conduct of trial by directly questioning witnesses, restricting the issues and time for examination of witnesses, and direct the order in which any speech or evidence by a witness should be made.

(2) Implement default case management track with options.

- Majority of cases to proceed along a default track with streamlined procedure, with options available for time- and cost-intensive procedures.
- Parties will be given the flexibility and autonomy to select options for general discovery or the use of party-appointed experts, by mutual consent.
- If parties are unable to agree, the court will retain the discretion to allow the option on an application by any party.

(3) Introduce professional training requirements and public education to support the recommendations.

- Conduct public education to inform members of public of key features of the new civil justice framework;
- Conduct training for Judges and lawyers to ensure that they are suitably equipped with the skills to navigate the new civil justice system.

(4) Review the implementation of the CJRC's recommendations two years post-implementation.

- The Ministry of Law works with the courts to assess the implementation of its recommendations after two years. They should do the following:
    - Determine if the new procedures have led to time- and cost-savings;
    - Determine if parties prefer the default positions or the options for more time-and cost-intensive procedures;
    - Find out if court users' (litigants, witnesses and counsel) navigation of the civil justice system has been aided by an active judge, who gives guidance at each stage of the proceedings.

The above recommendations are aimed at ensuring that Singapore's civil justice system remains accessible and affordable for all users. What is notable about the recommendations is the emphasis on enhanced judicial control which will reduce the length and cost of proceedings. As the CJRC observed at paras 27 and 28 in its report:

> Ultimately, enhancing judicial control over litigation furthers the public interest. It strikes a proper balance between the interests of litigants (and their counsel) in advancing their cases in the best possible manner, and the public duty of our judicial institutions to ensure that court machinery is not abused. Enhancing judicial control requires us to rethink the role of the judge in an adversarial system, and the purpose of procedural rules.

Exemption from judicial costs

Legally aided persons in civil legal aid cases are not required to pay court filing fees, and the law states that the Court cannot order costs against legally-aided persons, except in cases

where the Grant-of-Aid issued to the aided person was obtained by fraud or misrepresentation, or where the aided person acted improperly in bringing or defending any legal proceedings, or in the conduct of those proceedings.[191] (See also section in chapter 5 on Legal Aid Providers – Civil Legal Aid). The Rules of Court also provide, where applicable, for the of waiver of hearing fees (see O 90A r 2 of the Rules of Court) and court fees (O 91 r 5 of the Rules of Court).

Mechanisms to reduce costs by variations to courts and procedures

In Singapore, there are conscious attempts to reduce costs for litigants by creating courts of special jurisdiction within the Judiciary and by providing simplified procedures within the regular courts for certain categories of disputes. Several courts of special jurisdiction discussed below have been set up to significantly reduce the cost of court proceedings to almost a nominal fee. A good example is that of personal protection orders under the Women's Charter which can be applied for at a filing fee of SGD1.00.

Are there ways of resolving the matter without going to trial? The CRDC provides a forum for litigants to explore various options with a view to resolving their disputes without going to trial. For all civil cases that commence in the State Courts, CDR will be available as an option at no cost to litigants.

The following are some examples of special or simplified procedures designed to reduce the expense of resolving certain categories of disputes:

Civil Cases

- ***Small Claims Tribunals (SCT)***[192]

The SCT were established to provide a quick and inexpensive forum for the resolution of specified small value civil disputes and statutory claims. These Tribunals hear claims not exceeding $20,000. This limit can be raised to $30,000 if both parties agree to it and file a Memorandum of Consent online. Since 10 July 2017, the SCT have employed an electronic case filing and management system called CJTS (Community Justice and Tribunals System) that allows parties involved in disputes to file claims and access Court e-services from the comfort of their homes or any place with an internet connection. Lawyers are not allowed to

[191] Section 14(3) of the Legal Aid and Advice Act.

[192] More details on the SCT can be obtained from the State Courts' website at <https://www.statecourts.gov.sg/cws/SmallClaims/Pages/GeneralInformation.aspx>.

represent any of the parties in the SCT. The applicable fees for filing a claim or counterclaim are:

Claim / Counterclaim Amount	**Individual**	**Other Entity**
Up to $5,000	$10	$50
Between $5,000 and $10,000	$20	$100
More than $10,000 and up to $20,000	1% of amount claimed	3% of amount claimed
More than $20,000, up to $30,000*	1% of amount claimed	3% of amount claimed

After a claim is filed, a Consultation date will be fixed for parties to appear before the Registrar in Court. At a Consultation, the Registrar will: (a) Assess if a claim is within the Tribunals' jurisdiction; (b) Give parties an opportunity to discuss their cases with a view to resolving their dispute amicably; (c) Where parties are unable to settle a matter, fix the matter for a Hearing before a Tribunal Magistrate, or make such other orders as it deems fit

After a case is fixed for hearing, the hearing can occur within 24 hours of the date of the Consultation. At the hearing, both parties will have a chance to present their cases to the Tribunal Magistrate. The Tribunal Magistrate will consider the parties' documents or other evidence, the evidence of witnesses (if any) and decide on the case in accordance with the law. An order made by the Tribunal Magistrate is binding on the parties.

- ***Employment Claims Tribunals (ECT)***[193]

The ECT provide employees and employers with a speedy and low-cost forum to resolve their salary-related disputes and wrongful dismissal disputes. Since 7 January 2019, the ECT have been employing the CJTS to allow parties involved in disputes to file claims and access Court e-services from the comfort of their homes or any place with an internet connection. Lawyers are not allowed to represent any of the parties in the ECT.

The ECT hears the following claims:

- Statutory salary-related claims by all employees covered under the Employment Act (EA), Retirement & Re-employment Act (RRA) and Child Development Co-Savings Act (CDCA);

[193] The ECT was established under the Employment Claims Act 2016 (Act 21 of 2016). For further details, see the State Courts' website at <https://www.statecourts.gov.sg/cws/ECT/Pages/An-Overview-of-the-Employment-Claims-Tribunals-(ECT).aspx>.

- Contractual salary-related claims by all employees, except domestic workers, public servants (i.e., all employees of the Government), and seafarers;
- Claims for wrongful dismissal by employees covered under the EA and CDCA;
- Claims for salary in lieu of notice of termination by all employers.

To bring a claim before the ECT, parties must first submit a request for mediation at the Tripartite Alliance for Dispute Management (TADM) for mediation. Mediation at TADM is compulsory. Only disputes which remain unresolved after mediation at TADM may be referred to be filed in the ECT. Cases which are successfully mediated at TADM may result in a signed settlement agreement between the parties which may be registered in the District Court within four weeks after the settlement date is signed, and the registered settlement agreement is enforceable as a Court Order.

The cost for filing a Claim / Response / Counterclaim at the ECT are as follows:

Claim amount	*Claimant's & Respondent's filing fees*
S$10,000* and below	S$30
More than S$10,000*	S$60

* For list of fees payable for ECT claims, see First Schedule of the Employment Claims Rules 2017.

The following poster illustrates the process at the ECT:[194]

[194] Media release by the State Courts and Tripartite Alliance for Dispute Management, "New Dispute Resolution Platform for Wrongful Dismissal Claims," 1 April 2019: <https://www.statecourts.gov.sg/cws/Resources/Documents/MediaRelease_New_Dispute_Resolution_Platform_for_Wrongful_Dismissal_Claims.pdf>.

FILING A CLAIM AT THE EMPLOYMENT CLAIMS TRIBUNALS

STEP 1:

Submit a mediation request at the Tripartite Alliance for Dispute Management (TADM)

STEP 2:

Go through mediation at TADM

MEDIATION SUCCESSFUL

Both parties sign a **settlement agreement**

Register the **settlement agreement** on the CJTS

MEDIATION NOT SUCCESSFUL

A **Claim Referral Certificate (CRC)** is issued by TADM

Complete a **pre-filing assessment** on the Community Justice and Tribunals System (CJTS)

File a claim on the CJTS **within 4 weeks** of the CRC issue date

CASE MANAGEMENT CONFERENCE

HEARING

COURT ORDER

1 Havelock Square, Singapore 059724
6 JUSTICE (65) 65878423 / 1800 JUSTICE (1800 5878423)
www.statecourts.gov.sg
State Courts Singapore
STATE COURTS SINGAPORE

- ***Community Disputes Resolution Tribunals (CDRT)***[195]

The Community Disputes Resolution Act (CDRA) creates a statutory tort of interfering with the enjoyment or use of places of residence. The underlying principle is that no person should cause unreasonable interference with his neighbour's enjoyment or use of that neighbour's place of residence. The CDRA also establishes the CDRT to hear cases under the CDRA. In particular, the CDRT were established to resolve intractable disputes between neighbours, after all efforts including community mediation have failed. From 5 February 2018, the CDRT have been employing the CJTS to allow parties involved in disputes to file claims and access Court e-services from the comfort of their homes or any place with an internet connection. Lawyers are not allowed to represent any of the parties in the CDRT, except with all parties' agreement and the CDRT's permission.

- ***Protection from Harassment Court*** **(PHC)**

The Protection from Harassment (Amendment) Act was passed in Parliament on 7 May 2019, which provided for, among other things, the creation of a specialised PHC with oversight over harassment matters, whether online or offline, criminal and civil, under POHA.[196] The PHC was established on 1 June 2021.[197] The aim is to provide a one-stop solution for victims to receive holistic and effective relief. This can facilitate the cost and process of obtaining remedies pertaining to harassment and falsehoods to be cheaper and faster.

A key feature of the PHC is that it provides for simplified procedures with expedited timelines for certain types of applications, including claims for damages up to $20,000 as well as applications for Protection Orders ("POs") Expedited Protection Orders ("EPOs"), False Statement Orders ("FSOs") and Interim False Statement Orders ("IFSOs"). Simplified court processes are available for certain types of applications - including those for protection orders and orders relating to falsehoods - if the claims meet certain criteria, such as involving only one claimant and no more than five respondents. Applicants who are eligible for the simplified track can file their claims through the CJTS, the State Courts' online filing and case management system, which is accessible round the clock.

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[195] Act 7 of 2015. On the CDRT, see <https://www.statecourts.gov.sg/cws/CDRT/Pages/CDRT-Process.aspx>.

[196] Protection from Harassment Act (Cap. 256A, 2015 Rev Ed).

[197] See also the Ministry of Law media release of 31 May 2021 on the PHC's establishment at <https://www.mlaw.gov.sg/news/press-releases/2021-05-31-quicker-more-effective-remedies-against-harassment-with-new-protection-from-harassment-court-from-1-june-2021>.

The PHC's simplified procedures allow claims and applications for POs, EPOs, FSOs and IFSOs to be filed using a straightforward claim form (instead of requiring an Originating Summons with a supporting affidavit as was the case before the amendments). Additionally, the PHC is not bound by the rules of evidence in the conduct of civil proceedings. The PHC aims to hear applications for EPOs and IFSOs within 48 to 72 hours of the application. Where there is a risk of violence or actual violence, the PHC aims to hear the application within 24 hours. The PHC will also work towards disposing the PO or FSO applications within 4 weeks of filing the application.

Criminal Cases

- **Magistrate's Complaint**[198]

The Magistrate's Complaint is filed by a person who wishes to commence private prosecution to seek redress for a minor offence that he/she believes has been committed against him/her. The filing fee for a Magistrate's Complaint is SGD20.00. Once the Magistrate determines that there is sufficient ground for proceeding with the complaint, parties may be required to attend mediation at the Community Mediation Centre. If the matter proceeds to trial by way of private summons, a fee of SGD20.00 is payable for each summons. The case will then proceed for hearing once the summons has been served on the Respondent.

The process for filing a Magistrate's Complaint had long been a manual one, with complainants being required to bring a hard copy of their complaint to the courthouse for filing, and attending in person before the Magistrate to be examined on the complaint. In 2018, the State Courts began working with the Community Justice Centre (an independent charity that aims to ensure that litigants-in-person have access to justice) to develop a self-help online tool that would allow complainants to prepare and put together their documents for a Magistrate's Complaint. This online tool, the Automated Court Documents Assembly (ACDA) system for preparing documents for Magistrate's Complaints, was launched in April 2019. In April 2020, the submission and filing of Magistrate's Complaints was also moved online, with the examination of most complainants by the Magistrate taking place by video-conferencing, in appointed time-slots. This allowed complainants to prepare and file their Magistrate's

198 On the filing of a magistrate's complaint, see further <https://www.statecourts.gov.sg/cws/FilingMagistrateComplaint/Pages/Filing-a-Magistrate-Complaint.aspx>.

Complaints at their convenience from the comfort of home, and saved them the waiting time in the courthouse.

Family Cases

- **Orders Relating to Family Violence and Maintenance Orders**[199]

Such orders can be made online using the Integrated Family Application Management System (iFAMS) to allow parties involved in disputes to file applications and access Court e-services from the comfort of their homes or any place with an internet connection. The filing fees of such applications are fixed at SGD1.00: see Part 6 of Fifth Schedule of Family Justice Rules 2014.

An applicant will generally not need a lawyer to make the initial application for orders relating to Family Violence and/or Maintenance Orders before the Family Court. It is, however, open to the applicant to engage a lawyer to represent him/her in court.

Dealing with Disinformation

To protect the Singaporean public from online harm and manipulation and to counter the proliferation of online falsehoods, Singapore's Parliament enacted the Protection from Online Falsehoods and Manipulation Act (POFMA).[200] The POFMA's primary tool to correct online falsehoods is the use of correction directions which require recipients to insert a notice against the original post, with a link to the Government's clarification. The clarification sets out the falsehoods and facts for the public to examine. The original post is not removed even though it is subjected to a correction direction. Interested readers can read both the original post and the facts provided by the authorities. Readers decide for themselves which account they would like to believe in. The POFMA, the Protection from Online Falsehoods and Manipulation Regulations 2019 ("POFMA Regulations"), and the Supreme Court of Judicature (Protection

[199] Section 64 of the Women's Charter provides for the following acts as "family violence":
- Wilfully or knowingly placing, or attempting to place, a family member in fear of hurt;
- Causing hurt to a family member by an act which is known or ought to have been known will result in hurt;
- Wrongfully confining or restraining a family member against his/her will; and/or
- Continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member.

See further <https://www.familyjusticecourts.gov.sg/what-we-do/family-courts/family-protection>.

[200] Act 18 of 2019.

from Online Falsehoods and Manipulation) Rules 2019 ("the POFMA Rules") came into operation on 2 October 2019.

A person/entity who has been issued with a POFMA direction/declaration may make an application to vary or cancel a direction or order. An appeal may be filed in the General Division of the High Court only after an application has been made to the relevant Minister to vary or cancel the direction/order (as the case may be). If the application to vary or cancel the Direction or Declaration was refused in whole or in part by the Minister, and the person wishes to appeal to the General Division of the High Court against the Minister's decision, he must file the appeal within 14 days after the Minister's decision not to vary or cancel the direction or declaration.

Prior to POFMA being passed, the government gave its commitment for the appeal process against the Minister's direction or declaration to be "fast", "simple" and "relatively inexpensive". The relevant court fees and costs payable by an appellant who is an individual are relatively affordable. For example, the court fees for filing the originating summons is SGD200. Filing an affidavit (including exhibits) is SGD1 per page with the minimum fee of SGD10.[201]

If the appellant is financially or for any other appropriate reason unable to pay the court fees or hearing fees, the appellant may apply to the Court hearing the appeal for a waiver or refund of the fees. The Court hearing the appeal may, after hearing the parties or upon the appellant's written request, waive or refund all or any part of the fees. This applies whether or not the appellant is an individual. The Court may also direct that all or any part of the court fees be paid by any party, or be apportioned among all or any of the parties.[202]

Summary

In this section, various methods are deployed to have the appropriate dispute resolution modalities even within the formal court system. Whether it is compulsory diversion, simpler and less costly procedures, restriction regarding legal counsel for parties, the imperative for efficiency and fairness and accessibility are important drivers.

. . . . .

[201] For non-individuals, the usual provisions and fees in the Rules of Court will continue to apply. For the first three days of hearing, no hearing fees are payable.

[202] See, generally, and in particular, Rule 14 of the Supreme Court of Judicature (Protection from Online Falsehoods and Manipulation) Rules 2019 (S 665 of 2019), which came into operation on 2 October 2019. See also information note prepared by the Supreme Court on the POFMA appeal process at <https://www.supremecourt.gov.sg/rules/court-processes/appeals-to-high-court-under-pofma>.

7. THE PROTECTION OF DIFFUSE AND COLLECTIVE RIGHTS

The fundamental rights framework, as provided for in Part IV of Singapore's Constitution, is premised on the individual as the bearer of rights.[203] This is critical for Singapore's multi-racial, multi-religious, and multi-lingual society. The state of diffuse rights and collective rights remain in a nascent state of development due to a lack of cases raising these relatively novel points of law in Singapore.[204]

Collective Rights[205]

In the civil justice realm, the law provides for representative action in Singapore. Order 15, Rule 12 of the Rules of Court governs representative action in Singapore. The rule provides that where numerous persons have the same interest in proceedings, such proceedings may be brought by one of them (the representative claimant), unless the Court orders otherwise. The rule also enables the court to grant an injunction to restrain a number of unidentified persons who are causing injury and damage by unlawful acts and there is an arguable case that they belong to a single organisation or class which encourages action of the type complained of and this action can be linked to that organisation, such as an unincorporated association of persons campaigning against cruelty to animals.[206]

Two requirements must be satisfied. The first is a jurisdictional question – the representative claimant must demonstrate that the persons he is representing have the "same interest" in the proceedings. Where the representative does not have any direct interest in the action but claims or defends on behalf of others who have such interest, then Order 15, Rule 12 does not apply.

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[203] *Quaere*: Whether the rights of a religious group provided for in Article 15(3) of the Constitution is an exception to this statement.

[204] In this section, diffuse rights are understood as those of an indivisible nature which belong to an indeterminate group of people. Collective rights are those which belong to a group of individuals which could be determined.

[205] Collective rights are those which belong to a group of individuals which could be determined (but may or may not need to be determined for proceeding to be brought, depending on the jurisdiction), for example claims by all the patients given a particular medicine which had harmful effects, or claims that there has been discrimination against a whole class of individuals.

[206] See Justice Chua Lee Ming (editor-in-chief) & Paul Quan (general editor), *Singapore Civil Procedure 2020*, volume 1 (Singapore: Sweet & Maxwell/Thomson Reuters, 2019, at para 15/12/2.

The words "have the same interest" have been given a broad and flexible interpretation by the Court of Appeal in its landmark judgment of *Koh Chong Chiah & Ors. v. Treasure Resort Pte. Ltd.*, which summarised the applicable principles of law as follows:

- the class of represented persons must be capable of clear definition, and members of the class of represented persons must be identified by an objective criterion which bears a rational relationship to the common issues being asserted;
- the proposed representative plaintiffs must adequately represent the interests of the class of represented persons, and must vigorously and capably prosecute the interests of the entire class;
- there must be significant issues of fact or law common to all the represented persons in the representative action. The courts must compare the significance of the common issues with the significance of the differing issues; and
- all the represented persons must benefit from the relief granted by the court, i.e., they must have the same interest in the relief granted by the court.[207]

The second requirement relates to a discretionary question: The Court must consider whether the circumstances of the case justify the court in exercising its discretion to discontinue the proceedings. For example, where the representative action procedure will not provide an efficient or effective means of dealing with the claims in question.[208] Generally, legal aid agencies/providers will not be able to initiate such proceedings unless they have the same interest in the proceedings.

While the general rule is that any person represented in, but not a party to, the action is bound by any judgment in the action, the Court will not leave the ultimate selection of representative defendants to the mere will or choice of the plaintiff or defendants, and will only make a representation order as against proper persons to defend on behalf of others.[209] Before authorizing a person to represent himself and others as defendants, the court must be satisfied that he is authorized to represent them and may require a meeting to be called for the purpose. The Court will consider (1) what is the cause of action, and (2) what is the precise class of

[207] [2013] 4 SLR 1204 at [78].
[208] *Ibid.*, at [86].
[209] See Justice Chua Lee Ming (editor-in-chief) & Paul Quan (general editor), *Singapore Civil Procedure 2020*, volume 1 (Singapore: Sweet & Maxwell/Thomson Reuters, 2019), at para 15/12/24.

potential defendants who are to be represented by the defendants on the record for the purpose of imposing liability on them if judgment is given for the plaintiff.[210]

Order 15, Rule 12(3) provides that any judgment or order given in such representative proceedings shall be binding on all the persons as representing whom the plaintiffs sue or the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the court.

As can be seen from the above description, the scope of representative actions is relatively limited in Singapore. Whether Singapore should allow class actions and, if so, the suitable model of class actions to be adopted in Singapore, are issues worth closer consideration.

A suitable representative action regime can help enhance access to justice. In general, the advantages of class actions are well known. They include economies of scale that make it financially viable for a claimant to take legal action against a well-resourced defendant, such as a government agency or large corporation, to recover a small loss. By grouping individual claims from the same, similar or related circumstances, the cost of bringing proceedings can be spread across many claimants. In this way, class actions can provide access to justice to claimants who otherwise would not have pursued a legal remedy because of the cost. For claimants who could have taken separate legal action, class actions have offered cost savings.

Class actions also reduce costs to defendants and the courts. Defendants are able to respond to multiple claims in one proceeding, saving the cost of separate proceedings. The burden on court resources is reduced by having fewer proceedings filed, although the intensive case management often required, and the court's role in supervising settlement approval, can be onerous. Regardless of the regime Singapore might move towards, the three concerns of efficiency improvements, strengthening accountability, and cost control must be borne in mind and designed into the regime.

Diffuse Rights[211]

Singapore's jurisprudence recognises different types of fundamental rights – see Part IV of the Singapore Constitution. However, there is no constitutional recognition of diffuse rights yet. Thus far, there has also been no attempt at seeking curial recognition and/or

[210] *Id.*

[211] This country report adopts the following understanding of "diffuse rights": Diffuse rights are those of an indivisible nature which belong to an indeterminate group of people (typical examples might be environmental rights and the right to proper conduct by administrative authorities).

enforcement of diffuse rights. Perhaps the basic challenge is more procedural in nature. In order to weed out frivolous cases and vexatious litigants, Singapore's civil procedure rules require a claimant to have a sufficient interest in the subject-matter. This can potentially arise in two ways:

- Personal standing – The claimant is directly affected by a decision of a public body (standing as of right) or has some other personal interest in it that the court deems adequate.
- Public interest standing – The claimant is not directly affected by a decision of a public body, but purports to represent persons who do.

The concern is this: Who should be allowed to apply for judicial review? Does it depend, for example, on that person's motives? What kind of stake must the person have in the application?

The putative debate in Singapore may be framed as such: Whether a person should have "public interest standing"; that is, standing to apply for judicial review despite not being directly affected by the action complained of. In the UK, the test for standing is known as the "sufficient interest" test. This phrase is also used in Singapore. But the law in Singapore is more complex, and the courts have interpreted sufficient interest more narrowly, with the effect that it is harder to be found to have such a standing in Singapore. There has not yet been a Singapore case in which the claimant sought public interest standing.

In the civil justice realm, and while not strictly falling within the conventional understanding of diffuse rights, Order 15, Rule 13 governs the representation of interested persons in court proceedings who cannot be ascertained. This is however limited to proceedings concerning:

- The administration of the estate of a deceased person;
- Property subject to a trust; or
- The construction of a written instrument, including a statute.

In such circumstances, the court, if satisfied that it is expedient to do so, and that one or more of the conditions specified in Order 15 Rule 13(2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

The conditions set out in Order 15 Rule 13(2) are as follows:

- that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;

- that the person, the class or some member of the class, though ascertained, cannot be found;
- that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

Save for certain circumstances, it is unclear at this juncture under Singapore law who may be appointed as a representative for the purposes of Order 15 Rule 13 (including whether legal aid agencies/providers may initiate such proceedings).[212]

Order 15 Rule 13A provides that the Court may, on the application of any party or of its own motion, direct that notice of the action be served on any person who is not a party thereto but who will or may be affected by any judgment given therein. This is to address occasions where persons who are not involved in proceedings, particularly where they relate to the estate of a deceased person or property subject to trust, will or may be affected by the judgment of the court.

Order 15 Rule 13(3) provides that any judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or the class represented by the person or persons so appointed. Order 15 Rule 13(4) also provides for specific provisions where a compromise is proposed in the proceedings.[213]

Alternative Fee Agreements as a means of broadening access to justice

[212] Such circumstances include in the context of a construction of a will: see *Re Peppitt*'s *Estate* (1876) 4 C.D. 230; in the context of proceedings relating to a proposed issue of preference shares in the company: see *Morgan's Brewery Co v Crosskill* [1902] 1 Ch. 898).

[213] Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons) but — (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise; or (b) the absent persons are represented by a person appointed under [Order 15 Rule 13(1)] who so assents, the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts

Indigent persons often find difficulty in getting lawyers to represent them even if they have an arguably good case. Solicitors and clients are currently prohibited under Singapore law from entering into conditional fee agreements and contingency fee agreements.[214] Concerns stem from the common law, originally derived from England and Wales, to protect vulnerable litigants and to guard against potential misconduct and conflict of interest for lawyers.

The legal profession plays a crucial role in ensuring that the average person has access to justice. A key and perennial concern in this regard is the cost of justice that can be prohibitive for individual litigants. Other jurisdictions have tried to resolve this tension through the use of two mechanisms, contingency fee arrangements and class actions.

Singapore has being considering, for more than a decade at least, whether contingency fees, conditional fee arrangements, and other similar arrangements ought to be permitted to facilitate greater access to justice. As the Committee to Develop the Singapore Legal Sector noted in 2007, "Indigent litigants, especially those among the sandwich class who do not qualify for legal aid, are finding it increasingly difficult to obtain legal services in order to press civil claims or defend them".[215] The Committee mentioned four benefits that would accrue if conditional fee arrangements were permitted:[216]

> (a) Increased access to justice: The option of a conditional fee arrangement means that a plaintiff of moderate means who has a strong case but who does not qualify for legal aid will have a chance to have his day in court. The lawyer who would normally be unwilling to risk non-payment might reason that the higher potential returns justify his taking the risk for not asking for payment to account.
>
> (b) Benefits for the legal profession: Parties in cross-border disputes may be more inclined to choose Singapore courts and Singapore lawyers if the option of contingency fee arrangements is available.
>
> (c) Allowing legal aid to be refocused on priority areas: Allowing contingency fee arrangements will mean that a good number of motor or industrial injury claims can be self-funded rather than through legal

[214] Namely, s 5A(2) of the Civil Law Act and s 107(1) of the Legal Profession Act.
[215] Report of the Committee to Develop the Singapore Legal Sector (September 2007), para 3.16; available online at <https://www.mlaw.gov.sg/files/news/press-releases/2007/12/linkclicke1d7.pdf>.
[216] *Ibid*., para 3.17 of the report. The Committee, in its report, used "contingency fee" and "conditional fee" interchangeably.

> aid. Legal aid in Singapore can then be focused on other priority areas, such as family proceedings, as has been the case in the UK.
>
> (d) Supporting a pro-business environment: Contingency fee arrangements may benefit small and medium enterprises, which might otherwise forgo enforcement of their legal rights because of cost restraints. Greater flexibility in arranging fee structures may allow the businesses to better manage risks of litigation in business disputes, translating into lower business costs.

Singapore continues to tread cautiously on conditional fee arrangements (CFAs) even as the pace can be expected to increase, albeit incrementally. However, deep reservations continue to apply to contingency fee arrangements. The Ministry of Law differentiates both arrangements as follows:

> CFAs are agreements where a lawyer representing a client in pursuing a claim, receives payment of his legal fees only if the claim is successful. Such payment may include an "uplift" or "success" fee, in addition to the lawyer's standard legal fees. *CFAs are different from contingency fee arrangements*, where the lawyer shares in an agreed percentage of the sum successfully recovered by the client, with no direct correlation to the work done.[217]

In 2017, the Civil Law (Amendment) Act 2017 made changes to the extant legislation to introduce third-party funding in Singapore in international arbitration proceedings, to meet this need for alternative funding arrangements. On 8 August 2019, the Minister for Law announced that the third-party funding framework would be extended to domestic arbitration proceedings and certain prescribed proceedings in the Singapore International Commercial Court (SICC), including mediation proceedings arising out of or in any way connected with such proceedings.[218] This will align the prospective CFA framework with the third-party funding framework (once expanded), to better serve the needs of commercial parties and their counsel. It was also indicated that a separate study will be conducted on whether CFAs will promote

[217] See para 2 (emphasis added) of invitation of 27 August 2019 to Public Consultation on Conditional Fee Agreements in Singapore, available online at <https://www.mlaw.gov.sg/news/public-consultations/public-consultation-on-conditional-fee-agreements-in-singapore>.
[218] *Id*.

access to justice for categories of proceedings that are presently not being considered under the CFA framework.[219]

It may well be that with more experience and confidence with CFAs in the commercial setting, the Singapore legal system will be better placed to provide for CFAs as a means of broadening access to justice in other prescribed categories of dispute resolution proceedings. It may also be a matter of time before CFAs are regarded as being not contrary to public policy or otherwise illegal by reason only that they are contracts for maintenance or champerty. In a tightly-structured CFA regime, the likelihood of frivolous and vexatious litigation will not be higher than it is presently. Complemented by a robust disciplinary process, the long-standing concern that lawyers working under a CFA will have a direct financial stake in the outcome of the case and so may be tempted to breach their primary duty as officers of the court, or exploit their clients by securing the most profitable deal for themselves at the clients' expense, can be properly mitigated.

. . . . .

[219] See para 9 of invitation of 27 August 2019 to Public Consultation on Conditional Fee Agreements in Singapore.

8. PROFESSIONAL LEGAL ETHICS

Regulation of Lawyers & Legal Ethics

Professional conduct for lawyers in Singapore is governed by the Legal Profession (Professional Conduct) Rules 2015 under the Legal Profession Act.[220] These rules are overseen by the Professional Conduct Council, constituted under section 71 of the Legal Profession Act, which is chaired by the Chief Justice. All lawyers registered in Singapore, whether local or foreign, are subject to the regulatory regime. Self-regulation is vital; where that fails, there are rules in place to enable a lawyer to be appropriately sanctioned after due process has been conducted on a complaint of professional misconduct (including unethical conduct).

Legal ethics modules are available, either as mandatory or elective courses, at Singapore's three university law schools for the undergraduate (Bachelor of Laws (LLB)) and graduate (Juris Doctor (JD)) law curriculum. All Singapore universities have their own codes of academic integrity, code of honour which promotes ethical conduct as law students. Similarly, there is a student discipline process for law students who commit ethical transgressions. Depending on the breach, it could also negatively impact upon their seeking admission as an advocate and solicitor of the Supreme Court of Singapore.

After earning their law degrees and as part of their professional training, professional ethics are taught and examined in the "Ethics and Professional Responsibility" module in the Preparatory Course leading to Part B of the Singapore Bar Examinations ("Part B Course"). This module is conducted by the Singapore Institute of Legal Education for qualified persons under the Legal Profession Act seeking admission as advocates and solicitors of the Supreme Court of Singapore.[221]

The topic of professional ethics and professional responsibility are regularly featured in the mandatory Continuing Professional Development (CPD) for all advocates and solicitors

[220] Cap. 161, 2009 Revised Edition.

[221] The Part B Course comprises mainly 7 compulsory subjects and 2 elective subjects. It also broadly covers other areas of competency, knowledge or skills that are relevant to the practice of law. The 7 compulsory subjects are:-

i. Civil Litigation Practice
ii. Criminal Litigation Practice
iii. Insolvency Law and Practice
iv. Real Estate Practice
v. Family Law Practice
vi. Ethics & Professional Responsibility
vii. Professional Skills

admitted to the Singapore Bar and holding Singapore Practising Certificates, and foreign lawyers registered under section 36B of the Legal Profession Act.[222] The Singapore Academy of Law has the Professional Values Chapter, currently chaired by a High Court judge, which is concerned with the promotion of professional values and ethics of its members. The Law Society also organises regular talks and events for practising lawyers to update their knowledge on professional ethics and professional responsibility.

Values & Principles Emphasised at Entry to Legal Profession

The admission ceremony ("call to the Bar") would have the usual congratulations by the Chief Justice (and other senior judges in a mass call), exhortations to take advantage of opportunities and to make the best of them, as well as encouragement to the new lawyers to contribute to the profession, the community and, the nation. There would also normally be the advice on what it takes to be a good lawyer, which provides the platform to remind and reiterate the importance of ethics particularly as the nature of legal practice is evolving rapidly. In essence, the values of trust, honour and service are affirmed in this rite of passage. A good example is the following extract from then Chief Justice Chan Sek Keong's remarks to the newly-minted lawyers in 2007[223]:

> Firstly, every one of you should keep in mind that your overriding duty is to uphold the integrity of the legal system, protect its interests and promote its objectives. Never forget that you are now a member of and part of the legal system, and as such, you have an obligation to maintain its integrity.
>
> Secondly, you must all strive to be honest, competent and diligent, and give your undivided loyalty to your clients.
>
> Thirdly, in your dealings with your professional colleagues, you must always accord each of them the proper respect and courtesy due to them as fellow members of the Bar.
>
> Fourthly, you must be honest, fair and courteous towards every person you come across in the course of your work, whether the person is a party to a case or a member of the public. Remember that your actions, large or small, will be a direct reflection of the standing of the Bar.

[222] On the CPD requirements, see the Legal Profession (Continuing Professional Development) Rules 2012 and the Guidelines made thereunder.

[223] Chan Sek Keong CJ at 2007 Mass Call on 26 May 2007; speech available online at <https://www.sal.org.sg/Newsroom/Speeches/Speech-Details/id/465>.

> Fifth, you must exercise every effort to keep abreast of the latest legal developments in your chosen area of practice.
>
> Finally, as officers of the Court, each of you must ensure that your conduct in the course of litigation meets the aims of justice and upholds the integrity of the judicial system.
>
> It will not always be easy to follow these hallowed principles amidst the day-to-day pressures that you will face as a practising lawyer. But you must put in the extra effort to live by these principles, for the consequences of not doing so can be very serious. When members of the Bar breach the ethical rules of the profession, they tarnish not only their own reputations, but the integrity of the profession as a whole.

All applicants who intend to seek admission as an Advocate and Solicitor of the Supreme Court of Singapore will have to make the following affirmation or oath at the admission event:

> I, A.B., do solemnly and sincerely declare (and swear) that I will truly and honestly conduct myself in the practice of an advocate and solicitor according to the best of my knowledge and ability and according to law. (So help me God.) [224]

Law Reform and the Legal Profession

Under section 38(1)(c) of the Legal Profession Act, one of the key purposes of the Law Society is "to assist the Government and the courts in all matters affecting legislation submitted to it, and the administration and practice of the law in Singapore". While there has been debate on whether the legal profession can unilaterally comment and critique on legislation not submitted to it, the larger point that cannot be missed is that lawyers in Singapore are actively involved in legal reform activities either in their personal capacities (for example, through consultations with the authorities) or through the professional bodies such as the Law Society or the Singapore Academy of Law.

For example, what has been inspiring and evident is the action-oriented leadership taken by the legal fraternity to benefit the poor when it comes to access to justice. The example of the establishment of the Criminal Legal Aid Scheme (CLAS) is a powerful one of action. Deeply troubled by the chronic lack of representation among those who could not afford it, the Law Society took it upon itself to provide free legal assistance in criminal cases to the poor and needy. Led by several notable lawyers, the Law Society established CLAS in 1985 with the support of 168 volunteer lawyers and SGD30,000 in private funding. CLAS has grown

[224] Declaration to be made by qualified persons seeking admission to the Bar under Rule 29(2), Legal Profession (Admission) Rules 2011, First Schedule.

significantly since its fledgling days and now has the support of the Government through direct and indirect funding of criminal legal aid.

In matters concerning the pro bono work, access to justice, the legal profession actively engages with and is engaged by the authorities. This collaboration is necessary since the legal profession plays a critical and necessary role in such matters. Increasingly, more lawyers view their involvement in pro bono work as a core part of their professional ethical duty.

The Law Reform Committee of the Singapore Academy of Law is also concerned with the law reform process. The Committee looks into the reform of discrete areas of law not confined to any particular field or doctrinal area. The breadth of reform initiatives since the Committee's inception in 1989 has been significant, drawing on the input of a small but dedicated team of members, who come from practice and academia. The Law Reform Committee consults widely and recommends to the relevant law-making bodies areas of law that need reform.[225]

Individually, lawyers participate actively and widely in both government-hosted public consultations and in closed-door consultations on matters relating to their expertise. In 2016, in only the second Constitutional Commission convened in independent Singapore, many lawyers from practice and academia (including law students) submitted their inputs and made representations to the Commission, which was tasked to review specific aspects of the elected presidency. This was also the case with the parliamentary Select Committee on Deliberate Online Falsehoods - Causes, Consequences and Countermeasures in 2018. Both these public consultations resulted in significant law-making, including amendments to the Singapore Constitution and a new legislation, the Protection from Online Falsehoods and Manipulation Act.[226]

Professional Legal Ethics and Pro Bono

The relationship between professional legal ethics and pro bono is an intimate one. One cannot speak of legal ethics without pro bono work and vice versa. Similarly, pro bono is only sustainable if it founded on an ethical commitment and duty of the legal profession. Singapore's Chief Justice Sundaresh Menon recently noted, "It is vital for us to remember that pro bono

[225] Some of the more significant recommendations that have played a part in the law reform process can be found at <https://www.sal.org.sg/Resources-Tools/Law-Reform>.

[226] Act 18 of 2019. The Act was passed by Parliament on 8 May 2019 and assented to by the President on 3 June 2019.

work is generally applied for the benefit of those who could not otherwise afford a lawyer and in truth, it is one of the greatest achievements of the practising profession. This is our privilege and our responsibility".[227] In same vein, Mr Philip Jeyaretnam SC, then president of the Law Society said:

> Pro bono work is a way of keeping faith with the public; honouring the public's trust in agreeing that lawyers' work should not be open to all, but subject to strict entry requirements. In return for a collective monopoly on a type of work, the profession given that monopoly must ensure, together with [the] government, that the public can afford its services. This is particularly critical for the legal profession because access to justice is so important to the rule of law.[228]

The Government, the law schools, and the Law Society have been cultivating a strong pro bono culture among the legal profession to provide a rich pool of volunteers for the various legal aid programmes. Building a pro bono culture starts with law students, who must complete a mandatory number of pro bono work hours before they graduate with a law degree.

Earlier in 2007, the Committee to Develop the Singapore Legal Sector[229] recommended that measures be taken to foster idealism and community bonding among lawyers, in particular, through the promotion of pro bono work.[230] The Committee had recommended that:

> [M]easures should be taken to foster idealism and community bonding amongst lawyers, in particular, through the promotion of *pro bono* work. While many young lawyers join the profession to pursue a career that challenges them intellectually through exposure to complex litigation and corporate deals, they also see the legal profession as a positive component of society that is integral to the maintenance of a fair and just legal system. Many young lawyers have a desire to help society through the practice of law. This idealism should not be

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[227] Chief Justice Sundaresh Menon, "The Singapore Academy of Law: An Essential Dedication to Honour and Service," Singapore Academy of Law Annual Lecture 2018, 11 October 2018.

[228] Brenda Chua and Anita Parkash, "Checks and Balance: Philip Jeyaretnam SC on Raising Professional Standards", *Inter Se* (July–December 2007), p. 25.

[229] On 17 August 2006, the Deputy Prime Minister and Minister for Law appointed then Justice V K Rajah, Judge of Appeal, Supreme Court of Singapore, to chair the Committee to Develop the Singapore Legal Sector. The Committee was tasked to undertake a comprehensive review of the entire legal services sector, particularly in relation to exportable legal services, to ensure that Singapore remained at the cutting edge as an international provider of legal services both in the short-term as well as in the long-run. The Committee's report of September 2007 is available online at <https://www.mlaw.gov.sg/files/news/press-releases/2007/12/linkclicke1d7.pdf>.

[230] Para 2.16 of the report. The Committee had also recommended that "[a]cademics should also consider volunteering for *pro bono* work in conjunction with existing organisations (*e.g.* Criminal Legal Aid Scheme or Legal Aid Bureau)".

> depleted through intense and stressful work hours with little or no time to contribute to society.
>
> *Pro bono* work consistently raises the morale of young lawyers as it fulfils their idealism and helps them to view their contribution to society as a lawyer in a meaningful and tangible way. It also helps to collaterally improve the standing of the profession, thus encouraging others to join the profession.[231]

Building on the committee's recommendation, the Singapore Institute of Legal Education (SILE) initiated a pro bono programme for law students ("Pro Bono Programme") in 2013.[232] The aims of the Pro Bono Programme are to develop students' conception of the practice of law as a service vocation, and to allow students to experience how the law works in real life through interaction with the host organisations. All law students from the National University of Singapore (NUS) Faculty of Law, the Singapore Management University (SMU) School of Law and the Singapore University of Social Sciences (SUSS) School of Law perform 20 hours of pro bono work as part of their graduating requirements. This may be done at any time after their first year of study.[233]

Since March 2015, it is mandatory for lawyers, when applying for a practising certificate, to make a declaration on the total estimated amount of time (in hours) spent providing specified pro bono services in the immediately preceding practice year.[234] While pro bono hours for law practitioners are not mandated, they are asked to report annually on the number of pro bono hours they put in. There is also public recognition from the profession itself, which holds up those who make particularly strong contributions in pro bono as examples and an inspiration to others. It is estimated that about a third of Singapore lawyers do some form of pro bono work.

The Committee for the Professional Training of Lawyers, chaired by Justice Quentin Loh, was established by Chief Justice Sundaresh Menon in August 2016 to undertake a holistic review of the professional training regime for trainee lawyers in Singapore with a view to

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[231] Paras 3.56 and 3.57 of the report.

[232] The Singapore Institute of Legal Education (SILE) is a statutory body established under the Legal Profession Act (Cap. 161). The SILE is entrusted with maintaining and improving the standards of legal education in Singapore, and has powers to review the implementation of initiatives, programmes and curricula relating to legal education in Singapore, including diploma, undergraduate and postgraduate programmes, and continuing professional development. The SILE website is at <www.sile.edu.sg>.

[233] The SILE conducted a survey in 2017, among law students who participated in the Pro Bono Programme. Results of the survey been encouraging. The results of the survey are available at <https://www.sile.edu.sg/pdf/Probono_Infographic.pdf>.

[234] Legal Profession (Mandatory Reporting of Specified Pro Bono Services) Rules 2015 (S 96 of 2015).

ensuring its continued relevance.[235] In its report of March 2018, the Committee reiterated the importance of pro bono work:

> … [The Committee] encourages junior lawyers to involve themselves in pro bono work from as early on in their careers as possible. This is so that pro bono work can be cultivated as a core part of their practice and professional identity, and not engaged in merely as an afterthought. In this regard, it is heartening to note that most of the junior lawyers who participated in the focus group sessions expressed strong interest in engaging in pro bono work for the purposes of personal development and to improve the image of the profession.[236]

Noting the benefits of pro bono work for young lawyers, the Committee observed that, "However, junior lawyers can only truly seize the opportunities to do pro bono work if the law practices support them in this endeavour, for example, by distributing work in a way which accounts for the fact that they have taken on a pro bono assignment. There are, of course, law practices which choose not to do so but that will likely cause the lawyer to feel that he or she has been penalised or disadvantaged by taking on pro bono work".[237] The Committee urged the leadership in law practices "to adopt a more enlightened view towards pro bono work".[238] It added that if junior lawyers conclude that their employers value pro bono work, the junior lawyers "will naturally be less hesitant to take up such assignments and that is surely a sign that the profession as a whole is moving in the right direction".[239]

The development within the legal profession of a mindset that embraces pro bono work as being integral to the profession and society is one that will take time to come fruition. In

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[235] The Committee was tasked to study, among other things:

(i) The desirability of maintaining or modifying the present professional training regime, or re-imagining an entirely different regime.
(ii) The nature, form and content of professional training and education of practice trainees.
(iii) The duties and responsibilities owed by Singapore law practices and supervising solicitors towards practice trainees.
(iv) The practice and process by which law students secure training with and retention by Singapore law practices.
(v) The feasibility of requiring practice trainees to undertake pro bono obligations as part of their professional training and education.
(vi) The possibility of new and alternative career opportunities for law students in the practice of law.

[236] Para 172 of the report; available online at <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/report-of-the-committee-for-the-professional-training-of-lawyers.pdf>.

[237] *Ibid.*, para 174 of the report.

[238] *Ibid.*, para 175 of the report.

[239] *Id*.

Singapore, this effort has been decades in the making. Beyond the initial spur in 1985 when the Law Society established CLAS, the focus has been on law students and young lawyers. Perhaps the promotion of pro bono must go further upstream to senior lawyers. This can help ensure that the seeds of pro bono planted in the mind of an aspiring lawyer are nurtured throughout their association with the legal profession.

Pro Bono in a post-COVID world

Very recently, Singapore Chief Justice Sundaresh Menon has suggested that conditions for the legal profession will likely be vastly different after the pandemic: Clients are likely to be cash-strapped and far more inclined to renegotiate contracts than to be entangled in costly and protracted court proceedings. Consequently, "this could place downward pressure on legal fees, and in turn, affect the sustainability of law firms and their willingness and ability to engage in *pro bono* work".[240] The Chief Justice's observations are pertinent and provide much food for thought on access to justice in a post-COVID world:

> While society's demand for legal *services* might decrease during this period, the same may not be true of the volume of its legal *needs*. In particular, we may see growing legal needs in the segments of society that are least able to pay for legal services, such as families in distress who need relief from the courts, small businesses that need help to raise finance or restructure their loans, and individuals in dire financial straits who turn to crime and must then face the consequences.
>
> The gulf between society's legal *needs*, on the one hand, and its ability to pay for the required services, on the other, coupled with law firms' reduced ability to help bridge that gap through *pro bono* work is a real concern.[241]

The Chief Justice opined that "it is incumbent on courts to lead the discussions on how we can secure and promote the administration of justice in these conditions, and that this must begin with courts re-examining their role and function in a society altered by the pandemic". More specifically, he suggested that:

> … it will not be enough for us to maintain our traditionally *reactive* role in engaging with court users and those with legal needs; rather, we must

[240] See remarks by Chief Justice Sundaresh Menon at the Judicial Integrity Network in ASEAN Webinar: "Justice in Times of Covid-19," 28 May 2020, para 18; available online at <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/undp-webinar703e7e87220c43348bacbed546e2c70a.pdf>.

[241] *Ibid.*, para 19.

be far more *proactive* in providing information and assistive tools to help court users understand their options, guide them through the court process, and promote amicable settlement. In the post-pandemic world, this could prove to be an important way for us to help nurse our ailing societies back to health.[242]

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

Annual pro bono hours between 2009 and 2014[243]

Support for a Legal Hippocratic Oath?

There will likely be tacit support in Singapore for a global (or regional) code governing lawyers' conduct and/or some kind of legal Hippocratic oath. It will help emphasise specified universal norms for lawyers vis-à-vis access to justice and should embrace pro bono work. The quest for enhanced access to justice is and has to be universal one. More importantly, it can provide the signalling effect and influence on what it means to be a member of a noble profession. However, such a code of conduct will not be the silver bullet vis-à-vis access to justice.

[242] *Id*.

[243] Since 1 March 2015, practice rules require 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. With mandatory reporting, the data collected will also enable a more holistic appraisal of the pro bono landscape.

In the Singaporean context, the Chief Justice has indicated that honour and service are integral to the legal profession:

> Nothing demands honour more than the cause of justice. And if we embrace justice as our mission and calling, we must acknowledge ourselves as her servants. These are the values that have brought us to where we are, and they must continue to anchor us in our next chapter as a profession. …
> But honour is not only the motto of the Academy; it is the lodestar of the profession itself. The law is an honourable profession because her members are allied in an honourable cause, which is to seek the common good through the administration of justice and the rule of law.[244]

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 the indigent, in accessing legal services.[245] Pro bono clients may also present ethical issues for lawyers that are often different from those of fee-paying clients.[246] 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. . . . . .

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[244] Chief Justice Sundaresh Menon, "The Singapore Academy of Law: An Essential Dedication to Honour and Service," Singapore Academy of Law Annual Lecture 2018, 11 October 2018; available online at <https://www.sal.org.sg/sites/default/files/PDF%20Files/Speeches/SAL%20Annual%20Lecture%2018%20-%20Essential%20Dedication%20to%20Service%20and%20Honour%20(Fo....pdf?ver=2018-10-15-115617-400>.

[245] 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.

[246] 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.

9. TECHNOLOGICAL INNOVATIONS TO ENHANCE ACCESS TO JUSTICE

Technology is very much at the forefront in any discussion, plans, and vision for the legal sector in Singapore. In this regard, many facets of life in Singapore are driven by technology. Singaporeans are also well-connected in terms of mobile phone penetration rate: 154.1 per cent as at May 2019.[247] In terms of internet use in 2018, 87 per cent of Singapore residents of all age groups have used the Internet in the last 3 months.[248]

Digitalisation is a key pillar of Singapore's legal system and the transformation efforts are in tandem with the Digital Government Blueprint in support of the Smart Nation initiative.[249] Singapore's Smart Nation initiative, officially launched in November 2014, further articulates and recognises Singapore's vision for technology adoption.

Technology is seen as being inevitable and necessary in building courts and law firms of the future. The focus is to increase the state of technology adoption in Singapore's law firms, amid a domestic climate where the law firms could be more enthusiastic in embracing technological solutions. Chief Justice Sundaresh Menon opined that, "In particular, technology can be deployed to mitigate persistent inefficiencies, delays, expense and inaccessibilities within existing court processes".[250] But there is also the abiding concern that the legal fraternity is not moving fast enough in the technological space. The Chief Justice recently lamented:

> As Chief Justice Yong said at the launch of the EFS [Electronic Filing System] some 21 years ago, information technology has come to influence every aspect of our lives, and "[i]ndifference will not hasten its departure but rather, our own obsolescence". In short, to stand still is to move backwards. Worryingly, however, it appears that this is just what is happening. Artificial intelligence assisted transcription, two-way translations facilitated by technology, and virtual courts feature prominently in some Chinese courts. However, we are some way from implementing these in our courts were once world leaders in legal technology, but that is no longer so.[251]

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[247] Data obtained from https://data.gov.sg/dataset/mobile-penetration-rate?view_id=3f352003-35f9-44ce-be61-2b3a98ddea28&resource_id=26e9766b-a42d-468c-9c25-88d89b850823.

[248] Data obtained from https://data.gov.sg/dataset/individual-internet-usage?view_id=622445b8-0f8c-40c0-9bab-fcbea7f66d58&resource_id=32222f4f-f450-4404-83c9-1f162437d2f1.

[249] The Digital Government Blueprint can be accessed at https://www.tech.gov.sg/digital-government-blueprint/.

[250] Response by Chief Justice Sundaresh Menon at the Opening of the Legal Year 2020; available online at <https://www.supremecourt.gov.sg/docs/default-source/module-document/speech/oly-2020---speech-by-cj-(checked-against-delivery).pdf>.

[251] Chief Justice Sundaresh Menon, "The Singapore Academy of Law: An Essential Dedication to Honour and Service," Singapore Academy of Law Annual Lecture 2018, 11 October 2018; available

The Singapore legal eco-system is blessed with multiple stakeholders which are committed to and contribute to the development of technology to enhance access to justice. These include government bodies and agencies, legal institutions, law firms, and technology companies. Various stakeholders have undertaken numerous initiatives to develop, apply, and drive the adoption of technology within the legal eco-system in the past few years. This is grounded in the steadfast belief that technology will continue to be a driver and enabler for efficiency and effectiveness of the legal system, with benefits for enhancing access to justice. This belief of the "vital intersection between legal practice and technology" and how the use of cutting-edge digital and data solutions for legal practice can also be harnessed to enhance access to justice through technology.[252]

As Prime Minister Lee Hsien Loong observed in 2014 on e-filing in Singapore courts:

> I just met in Australia, the Governor of the State of Queensland, I was there for a meeting in Brisbane, and he used to be the Chief Justice of Queensland. He came to Singapore two years ago for a conference of Chief Justices and saw our system. He was very impressed. He said the most impressive thing was not that you have a computer system, but we have provided ways and booths where people who cannot afford the access and do not know how to do the access, they can go there and bring their papers there and they can be helped and have their papers filed electronically. *You may be rich, you may be poor, if you have to go to the courts, if you need to have access to justice, you get access to justice.* This was one issue that they in Queensland have thought about automating and computerising their filing, and how to make sure everybody has it. *We have that and we must continue to have that*.[253]

The Courts have been a frontrunner, with the establishment of the judiciary-level "Courts of the Future" (COTF) taskforce and the development of the IT roadmap for Court systems.[254] The Judiciary-wide Office of Transformation and Innovation is tasked with leading the charge with harnessing technology judiciously. The courts are also cognisant of the need to ensure that there is no digital gap between the digital "haves" and the digital "have nots". Then Presiding Judge of the State Courts Justice See Kee Oon regarded big data and machine learning as being

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online at <https://www.sal.org.sg/sites/default/files/PDF%20Files/Speeches/SAL%20Annual%20Lecture%2018%20-%20Essential%20Dedication%20to%20Service%20and%20Honour%20(Fo....pdf?ver=2018-10-15-115617-400>.

[252] Response by Chief Justice Sundaresh Menon at the Opening of the Legal Year 2020, para 38.

[253] Speech by Prime Minister Lee Hsien Loong at Smart Nation launch, 24 November 2014 (emphasis added); available online at <https://www.smartnation.gov.sg/whats-new/speeches/smart-nation-launch#sthash.ZhQXPj15.dpuf>.

[254] Supreme Court Annual Report 2017, *A Future-ready Judiciary*.

able to transform dispute resolution: "Technology, for one, facilitates the digitisation of data and integration of various data repositories, some physical and some digital, which in the aggregate may constitute a treasure trove of information. The key is in making sense of all that data and gleaning actionable insights, in a way which translates meaningfully into improved processes and better services for our court users".[255] Justice See was also careful to remind that technology is not an end in itself but, more importantly, a means to a vital objective:

> Ultimately, our main focus must be on the court users' needs and how technology can enhance their experience of the justice process. Even as we recognise the tremendous potential of artificial intelligence or "AI", we should ensure that "AI" applications which we implement are both "accessible" and "inclusive". Less tech-savvy or tech-enabled court users in particular should continue to be assisted as they navigate the justice system. We remain cognisant of the fact that while technology can lead to greater efficiency and enhance the delivery of justice, the human touch remains essential. In the delivery of justice, human experience, empathy and common sense reasoning play a critical role. And even as technology is harnessed, our investment in developing human capabilities cannot be neglected. Our revised Strategy Map will therefore place emphasis on cultivating an adaptive and future-ready workforce to deliver excellent court services to our court users.[256]

The State Courts' refreshed Strategy Map emphasises affordability and efficiency as two key enduring aspects of an effective and accessible justice system. Technology is valued and leveraged on as a "pivotal driver and enabler for enhancing access to justice". The State Courts handle over 90 per cent of Singapore's judicial caseload. The courts are also expecting the future profile of court users to change. As it is, there are more self-represented litigants who choose to navigate court processes on their own. Any consideration of access to justice must not discriminate against those who have legal representation and those who are self-represented.

Appended below are some examples of technology adoption by the Courts which can enhance access to justice:

a. The Integrated Criminal Case Filing and Management System (ICMS), launched in 2013, is a multi-agency, paperless e-filing and

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[255] Para 9 of keynote address by Justice See Kee Oon, Presiding Judge of the State Courts, "State Courts: 2020 and Beyond," 8 March 2019; available online at <https://www.statecourts.gov.sg/cws/Resources/Documents/State_Courts_Workplan2019_KeynoteAddress(FINAL).pdf>.

[256] *Ibid.,* paras 10 and 11 of keynote address by Justice See Kee Oon, Presiding Judge of the State Courts, "State Courts: 2020 and Beyond," 8 March 2019.

e-workflow case management system for the administration of criminal cases. Whether represented by counsel or acting in person, accused persons can access their case information on ICMS with their SingPass[257] account. Apart from being able to view their case information on ICMS, accused persons who are acting in person will be able to file certain applications online, such as an application to leave the jurisdiction. They will also be able to upload documents onto their case file, for example, their mitigation plea and other supporting documents.

b. The Community Justice and Tribunals System (CJTS), launched in July 2017, offers parties the convenience of filing and managing claims online. The parties can take an online pre-filing assessment to see if their claims fall within the jurisdiction of the tribunal, submit documents online, select their court date and make payments online. They can also e-negotiate, e-mediate, and apply for an e-order. Members of the public can use a case search feature to check online if there is a pending claim or order against them in the tribunals.

c. Litigants-in-person may also use Online Dispute Resolution (ODR) to conduct negotiations and mediation for claims online. The Courts have pioneered the use of ODR in the Small Claims Tribunals and will progressively expand its use to other cases.[258] An online dispute resolution platform for motor accident claims has been launched by the State Courts beginning with an outcome predictor or simulator, and a negotiating platform for settlement. The platform will also, in a later phase, allow for "asynchronous hearings" so that certain pre-trial case management conferences

[257] Launched in March 2003, Singapore Personal Access (or SingPass) allows users to access hundreds of government services easily and securely online.

[258] Letter to the editor, "Tech solutions in place to ensure access to justice for all litigants," *The Straits* Times, 19 Sep 2019, available online at <https://straitstimes.com/forum/letters-in-print/tech-solutions-in-place-to-ensure-access-to-justice-for-all-litigants>.

can be conducted by judges online and "asynchronously" without the need for the judges and parties to find a common slot to deal with the matters that need to be addressed at such hearings. The Courts have also collaborated with the Singapore Academy of Law to provide an online outcome simulator which will assist parties to assess the possible attribution of responsibility and damages in motor accident cases. This will be formally launched in 2021. The eLitigation platform, which is an online case management platform, will also be enhanced to allow for CDR hearings in respect of liability and quantum issues to be conducted by judges online without the need for counsel and the parties to attend personally in court.[259]

d. The Family Justice Courts similarly harnessed technology by developing the integrated Family Application Management System, or 'iFAMS', to streamline and simplify processes for all family violence and maintenance applications. With iFAMS, lawyers and court users can access simplified user-friendly template application forms from convenient locations in the community.

e. An Authentic Court Orders system was launched in 2020 to allow litigants (whether represented or not) and persons that have to act in reliance of Court orders to verify the authenticity of court orders by obtaining a digitally signed copy of the court order from an authoritative Singapore Government computer server. This obviated the need for physical "certified true copies" and the costs and inconvenience associated with having to apply for and to obtain and to physically convey such physical documents.

[259] State Courts Workplan 2019, "State Courts: 2020 and Beyond", 8 March 2019, Keynote Address by Justice See Kee Oon, Presiding Judge of the State Courts.

f. A combined Judiciary website is progressively being launched, to re-write information currently found in three different websites, to be more accessible to lay-persons, and to be de-duplicated.

Elsewhere in the legal fraternity, the Singapore Academy of Law (SAL), with the Ministry of Law's support, launched the Future Law Innovation Programme or "FLIP" in January 2018 with the aim of redesigning the delivery of legal services for the future economy. It represents a community of lawyers, technopreneurs, investors, academics and regulators, all working to reimagine and refresh the delivery of legal services.[260] In the near future, there are plans for a co-working space at the State Courts known as 'CLICKS@State Courts' which stands for 'Collaborative Law, Innovative Co-creation and Knowledge Sharing'. The space will make it easier for firms to adopt technology by providing them with shared amenities and facilities, thereby reducing operational costs and inefficiencies. This will enable firms to adopt legal technology to uplift their practice, and in turn continue to provide accessible and affordable legal services to the man-in-the-street. Preference will be given to lawyers with a strong record in pro bono work to rent workspaces in CLICKS@State Courts.[261]

The Ministry of Law (MinLaw) has undergone digital transformation for service delivery, including the LAB becoming the first "law firm" in Singapore to go "paperless" on a big scale in 2016 through the launch of GENIE, a paperless process for managing cases. GENIE has functions for the drafting, storing and retrieval of documents and information. This has enabled LAB to deliver legal aid more efficiently to applicants. LAB is also upgrading its online portal for both AS (to match cases much faster to suitable AS) and applicants (allowing them to register online and submit electronic documents, as well as having new features such as an online means testing function).[262]

The Law Society has been actively encouraging law firms to adopt technology to enhance productivity. For example, the Law Society, MinLaw and Enterprise Singapore (ESG) introduced the Tech Start for Law in 2017. With the additional support by the Infocomm Media Development Authority (IMDA), this scheme was expanded into the Tech-celerate for Law in

[260] For more information on FLIP, see its website at <https://www.flip.org.sg>.
[261] For more details, see <https://www.sal.org.sg/Resources-Tools/CLICKS-at-State-Courts/About-CLICKS>.
[262] "Legal Aid Bureau revamps website to offer quicker help to poor," *The Straits Times*, 14 November 2018; available online at <https://www.straitstimes.com/singapore/legal-aid-bureau-revamps-website-to-offer-quicker-help-to-poor>.

2019. The schemes provided up to 80 percent subsidy for pre-scoped technology solutions to allow law firms (small and large) to improve their productivity.[263]

Key providers of pro bono services such as LSPBS and CJC have also adopted legal technology. Some examples are:

- LSPBS' use of video-links with the prisons to interview accused persons in remand for criminal legal aid cases;
- CJC's development of chat bots to improve access to legal information for the man-in-the street;[264] and
- CJC's Automated Court Documents Assembly (ACDA), a free online tool to assist litigants-in-person to prepare documents for selected cases.[265]

The above examples demonstrate the centrality of the deployment and use of technology in the legal sector in Singapore. While most of the effort is driven towards making sure the legal sector is not left behind in the use of technology, technological innovations are used and should increasingly be used to help promote access to justice as well. The lesson to be taken away is this: *How* is technology used? Does it facilitate or hinder access to justice? In this context, it is crucial that the pervasive use of technology of the legal system does not result in the creation of tech haves" and the tech have nots", which can pose obstacles to the adequate access to justice. Otherwise, the divide in the analogue world would be deepened by technology. Hence, it is apt for system designers concerned with access to justice to ensure that technology will improve access to justice.

Access to Justice and Technology in a Post-COVID World

Even as we consider how technology can have a multiplier effect in promoting access to justice, the intervention of the COVID-19 pandemic provides a powerful reality check on how robust an access to justice regime is. The pandemic has thrown into sharp relief the gaps in many facets of society, including the justice system. Singapore Chief Justice Sundaresh Menon

[263] Law Society of Singapore, 'Tech-celerate for Law', <https://lpi.lawsociety.org.sg/tech-celerate-for-law/>. Maximum funding support for baseline and advanced categories of solutions under Tech-celerate were raised from 70% to 80% from 1 April 2020 to 31 Dec 2020.

[264] "NGO rolls out online centre to guide people who represent themselves in court," *The Straits Times*, 13 April 2018, <https://www.straitstimes.com/singapore/ngo-rolls-out-online-centre-to-guide-people-who-represent-themselves-in-court>.

[265] Community Justice Centre, Automated Courts Document Assembly, available online at <https://cjc.org.sg/automated-court-documents-assembly/>.

opined that "COVID-19 must become the occasion to re-forge and refine our processes for administering justice".[266]

Singapore was one of the first countries to detect COVID-19 infections. In order to break the chain of infections, the Singapore Government announced a series of stringent measures in a "circuit breaker" on 3 April 2020. This involved the closure of most workplaces, leaving only essential services and key economic sectors operational. Originally planned for a month, the "circuit breaker" was later extended to 1 June 2020.[267] In tandem with the circuit breaker measures, the Judiciary announced that it would hear only essential and urgent matters during the circuit breaker period. All other matters were adjourned. During the course of the circuit breaker, the courts' use of video conferencing technology and e-filing of court documents enabled it to continue to hear and manage cases without the need for any physical attendance in court. This enabled the courts to be kept open for litigants with the most critical and time-sensitive justice needs. The sustained investments in technology over the last three decades helped to enable "business continuity" in the Singapore courts through the quick pivot to remote proceedings.

The Chief Justice has indicated the Judiciary's immediate response to the anticipated backlog and new work as a consequence of the legal turmoil generated by the pandemic which has upended the status quo. Such a response will likely involve "a three-pronged approach:

- First, optimising court hearing days and judicial resources;
- Second, developing processes to expedite the disposal of cases and adopting a more active approach to case management; and
- Third, encouraging mediation and settlement".[268]

The second prong will likely leverage, not solely, on technology and be reshaped by technology. Singapore has commenced the use of asynchronous hearings and the provision of remote assistive services to court users.[269] Even as the Singapore courts press on with

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[266] See remarks by Chief Justice Sundaresh Menon at the Judicial Integrity Network in ASEAN Webinar: "Justice in Times of Covid-19," 28 May 2020, para 18; available online at <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/undp-webinar703e7e87220c43348bacbed546e2c70a.pdf>.

[267] Prime Minister's Office, Singapore, "PM Lee Hsien Loong on the COVID-19 situation in Singapore on 3 April 2020" (3 April 2020), available online at <https://www.pmo.gov.sg/Newsroom/PM-Lee-Hsien-Loong-on-the-COVID19-situation-in-Singapore-on-3-April-2020>.

[268] Para 11 of the remarks by Chief Justice Sundaresh Menon at the Judicial Integrity Network in ASEAN Webinar: "Justice in Times of Covid-19," 28 May 2020.

[269] The State Courts' protocol on asynchronous court dispute resolution hearings by email (aCDR) for case management lists at the State Courts Centre for Dispute Resolution (now known as the Court

integrating technology into court processes, the Judiciary is aware of the special needs of litigants-in-person, or "LIPs".

The Chief Justice emphasised that "… while the courts pursue digital transformation, they must also support these LIPs to ensure their effective access to justice".[270] He noted the approach of the Family Justice Courts ("FJC") during the circuit breaker period where many of their users are LIPs and might be unable to use video conferencing technology without assistance. The FJC undertook to train users in the use of Zoom, and issued a technical guide on how to use it. The FJC also established 14 "Zoom rooms" in two locations, each with a Zoom connection to the relevant family judge, so that LIPs unable to set up a call on their own could visit these rooms to attend hearings. About 30-40% of the FJC's users attended hearings from Zoom rooms during the circuit breaker period. This enabled the FJC to hear about 33% of their caseload – or more than 2,400 cases – during the circuit breaker period in spite of the movement restrictions.

Summary

Technology is used pervasively in the legal sector. With mobile phone and internet usage ubiquitous in the city-state of Singapore, stakeholders in the field of access of justice are cognisant of the power and potential of technology to deliver legal services. The COVID-19 pandemic has dramatically catalysed digital transformation. The Government in May 2020, in a supplementary budget in response to COVID-19, allocated more than SGD500 million to support the digital transformation of businesses, including support for e-payments, adopting digital solutions and deepening digital capabilities.

Technology is used in a variety of settings such as:

- Assisting in the referral of people to appropriate provision or to identify their eligibility for services;
- Empowering and helping self-represented litigants to take their own cases (mainly through government-led online initiatives);

Dispute Resolution Cluster) was introduced on 5 March 2020: <statecourts.gov.sg/cws/Resources/Documents/RC%202%20of%202020.pdf>.

[270] See remarks by Chief Justice Sundaresh Menon at the Judicial Integrity Network in ASEAN Webinar: "Justice in Times of Covid-19," 28 May 2020, para 15. See also Sundaresh Menon CJ, Negotiation and Conflict Management Group (NCMG) ADR Conference 2019, "Technology and the Changing Face of Justice" (14 November 2019) ("NCMG Lecture") at para 32: <supremecourt.gov.sg/docs/default-source/default-document-library/ncmg---keynote-lecture.pdf>.

- Assisting in the delivery of pro bono services by private legal practitioners;
- Publicising pro bono services and various help schemes through social media; and,
- Communicating among stakeholders, including beneficiaries, primarily through electronic means such as email, phone messages (SMS, WhatsApp, etc), the internet (websites and social media platforms).

To facilitate affordable, swift, and reliable dispute resolution, online dispute resolution systems are being developed for synchronous and asynchronous modes. Where the use of technology is concerned in the justice system, the courts, in particular, are thorough in making provisions to ensure that litigants—especially the self-represented--who may lack the necessary education, language, technical skills, or access to the equipment are not at a disadvantage.

The foremost challenge remains that of ensuring that the use of technology is affordable, inclusive, and facilitates the attainment of fair and just resolution of disputes. Given the abiding commitment to using technology, it is imperative to be always sensitive to the downsides of technology vis-à-vis access of justice. In other words, the approach should be of maximising the upsides in the use of technology while also scrupulously minimising the downsides of its use. This will ensure the optimal use of technology. Afterall, justice is a humanistic endeavour with outcomes that are meant to be of benefit to society as well.

Recently, Chief Justice Sundaresh Menon noted that "COVID-19 has transformed, perhaps irreversibly, the ways in which we live, work, and interact. In courts around the world, it has accelerated the pace of the technology revolution, particularly in the use of remote communication technology to facilitate the conduct of hearings. Our experience during the pandemic has yielded many valuable lessons that we must now build on to improve our justice system and further enhance access to justice for all who require it".[271] He also urged the legal profession to "restore and provide relief to a society in recovery. Our response to this challenge will represent the legacy of our profession in the post-pandemic era".[272]

[271] Chief Justice's message, "The Judiciary's response to the exit of the 'Circuit Breaker' period," 29 May 2020; available online at <https://www.statecourts.gov.sg/cws/Resources/Documents/CJ_Message_Judiciary%27s%20ResponseToExitoftheCircuitBreakerPeriod.pdf>.

[272] *Id*.

Technology will play a pivotal role in improving access to justice. In turn, access to justice must leverage on technological solutions while ensuring that no one is disadvantaged by virtue of being not savvy with technology and/or not having the technology. Only then will technology promote, rather than be a barrier to, even greater access to justice.

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10. UNMET LEGAL NEEDS

"Access to justice" reminds us that justice is not attained if those who need it are not able to access justice. It is a poignant reminder of how the "journey" is as important as the "destination". We all aspire to live in a fair and just society, including people attaining justice whether it is a civil or criminal matter. If a person is unable to avail himself to the adjudication provided by the courts or secure legal advice, then the question of whether justice would be done is a live one. Access to justice enables a justice system to properly do its job of dispensing justice.

In Singapore, help in accessing justice is available to all eligible people who need it. This is where the tight bond of legal aid and pro bono work enable a person to meaningfully access the justice system to secure justice. Legal aid services are available throughout Singapore, making it convenient for people. Although Singapore is a small, compact city-state, many of such services are located near or in the public housing estates.

Where unmet legal needs are concerned, the stakeholders of access to justice are cognisant that such needs evolve, should be anticipated, and attended to. As alluded earlier, the Chief Justice has highlighted that to meet the justice needs of Singapore's changing society, stakeholders must embrace the idea of a court that (a) seeks to address unmet justice needs in society; (b) promotes lasting peace by repairing and reinforcing relationships; (c) empowers users through an extensive suite of assistive services; and (d) offers the public insight into the role and function of the courts and how they decide cases.

For the Chief Justice, he sees the imperative for the justice system to break away from "the legacy of a justice process that was conceived in a different era and which was founded on a philosophical preference for argument and adjudication as *primary* methods of dispute resolution. That model of justice is increasingly straining to meet the needs of modern society – one which is evolving faster than ever before; inhabits both the online and offline worlds;

faces increasing socio-economic stratification; and confronts a polarised world more prone to conflict and division than peace and multilateralism".[273]

It is also important for access to justice systems to reach out to people who may not show up at the legal clinics or in the courts. There will be the need to move "upstream" and provide the legal assistance should they require it. In this regard, the "sandwiched class" is worth keeping an eye on. The sandwiched class refers to a group who do not qualify for the support schemes meant for low-income households. Yet, they often experience middle-class anxiety: Worried about present needs and what the future holds for the next generation. They may find themselves ineligible for legal aid and so may not access the justice system due to the financial costs involved. Their rights and interests may well be compromised as a consequence.

There also the litigants in persons, or LIPs, who are often legally untrained and therefore unfamiliar with the legal system and its processes. They may also lack the equipment or know-how to use the courts' electronic processes.[274]

The Singapore Government maintains 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 perhaps 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".

The current means test for civil legal aid was recently updated and simplified the means criteria by aligning them with the means criteria more commonly used in current social support schemes, will simplify and shorten the application process for legal aid. These changes provide greater flexibility for the Legal Aid Bureau to help those who fail the means test but have extenuating circumstances, and improve the administration of legal aid. Together, these

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[273] Para 42 of the Response by Chief Justice Sundaresh Menon at the opening of the Legal Year 2020, 6 January 2020; available online at <https://www.supremecourt.gov.sg/docs/default-source/module-document/speech/oly-2020---speech-by-cj-(checked-against-delivery).pdf>. The Chief Justice believes that technology offers tremendous promise: "Fortunately, the current era also offers a new set of tools – namely, the potential of technology. Much work is already being done to realise the next evolutionary phase of our courts. The model of an online court – which advances each dispute through the stages of evaluation, facilitation and adjudication – is perhaps one of the most important of this new generation of possible solutions": see para 43 of his Response.

[274] For a study of LIPs in Singapore and their self-representation vis-à-vis judges, lawyers, and LIPs themselves, see Jaclyn L Neo and Helena Whalen-Bridge, *Litigants in Person: Principles and Practice in Civil and Family Matters in Singapore* (Singapore: Academy Publishing, 2021).

amendments strengthen access to justice not only for the indigent but also for those who with limited means.[275]

Legal Aid for Foreign Migrant Workers

One group of people who are potentially vulnerable and who may have unmet legal needs are the foreign migrant workers. Of the 1.644 million non-residents (non-citizens and non-permanent residents) in Singapore in June 2018, 56 per cent of them are either foreign domestic workers (15%) or work-permit holders (41%).[276] 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.[277] Through mediation by MOM and adjudication by the "Labour Court"[278], more than 95 per cent of salary claims have been resolved successfully.[279] 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 per cent 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

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[275] "'Sandwiched class' too may need pro bono legal help,' *The Straits Times*, 15 October 2017.

[276] *Population in Brief 2018*, p. 5.

[277] 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; available online at <https://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>.

[278] "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).

[279] 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.

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.[280]

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..

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.[281] 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.[282] As for workers with 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.

[280] 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.

[281] 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/wps/portal/mwc/home>..

[282] 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 TADM's website at <http://www.tadm.sg>.

Unmet Needs in the Transition to a Post-COVID World

Addressing known vulnerabilities is relatively easy. The challenge is to go beyond the evident—the needs that are being met—to reach and address the unmet needs. In an affluent society, it is all too easy to forget that there are those who remain vulnerable. During a crisis, the most vulnerable – those without the ability to help themselves – are, unfortunately, the worst hit. When normality disappears, inequalities are not levelled, they often worsen, creating new and often unexpected hardship. This is very likely to be the case with COVID-19. While the crisis has laid and will lay bare existing inequalities and risks exacerbating them, it also provides the opportunity to "stress test" access to justice and to address the inequalities and risks. In this way, society can lay the foundations for a strong and inclusive recovery as well as dealing with the immediate crisis.

In this regard, the COVID-19 pandemic, which is still unfolding at this writing, can be a bellwether of how robust and resilient access to justice is in Singapore. What the stakeholders do will be crucial in addressing known needs, yet-unknown needs, and the unmet needs. The harsh reality is that in a crisis inequalities are more often deepened rather than mitigated. Those who barely manage in 'normal' times are pushed beyond capability and opportunity thresholds. By pushing previously less-vulnerable groups across capability and opportunity thresholds, unexpected and new vulnerabilities are presented. Scarce resources will have to be appropriately (re-)allocated – before, during and after a crisis.

One group of the new vulnerable are small businesses and entrepreneurs, who may need legal advice and help more than ever before. The pandemic has introduced new challenges for such businesses as small business owners often face limited resources and legal fees can be prohibitive for them. Furthermore, under-resourced and underrepresented businesses and entrepreneurs need help to navigate complex legal questions, COVID-19-related and beyond.

During and after a crisis, providers of pro bono services may become less resourced and insecure than they had ever thought possible. Further, if hitherto unknown vulnerable groups are not properly identified during the pandemic, an opportunity to help is likely foregone. Being alive to and redefining meanings of unmet legal needs, especially those often surprisingly made vulnerable during crises, can help societies allocate limited resources more equitably. This can help ensure access to justice remains real and purposeful. The rule of law is promoted consequently.

Therefore, governments urgently need to understand that assessing vulnerability is critical before, during, and after a crisis. This enables those on the edge of potential hardship to be identified and cared for if it they are known in advance of destabilizing events. In this regard, prevention is better than cure.

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11. PUBLIC LEGAL EDUCATION

"Access to justice begins with
knowledge of one's legal rights and remedies."[283]

There is a plethora of activities and programmes in Singapore to educate the public on the law, the legal system, and legal aid. In many respects, they speak to the commitment to the rule of law by the various stakeholders. Public legal education is very much aligned with a core principle of the rule of law: The law should be accessible and predictable. In this regard, public legal education must be responsive to the realities of society – the context, developments, and the needs. All stakeholders of access to justice recognise that providing legal aid and legal services to those in need must be complemented by recognising how the legal system functions and basic knowledge of the law so as to enable a person to make the appropriate choices when he is brought into the justice system.

Examples of public legal education

In 2018, two initiatives were launched to enable the public to navigate the legal system. The first was a series of public talks titled, "About Family Justice: Divorce in Singapore – What you need to know". Developed by the Family Justice Courts in collaboration with the Law Society Pro Bono Services, Community Justice Centre and the Singapore University of Social Sciences, these talks aimed to provide practical guidance to persons facing the stressful prospect of divorce. Collaterals on the divorce process were produced as resource material for attendees at the talks and for court users in general, to help them better appreciate what is involved in a divorce.

The other initiative was the Witness Orientation Toolkit, which comprises printed books as well as online material. This resource provides witnesses with a route map for navigating the criminal justice process. *Sara Goes to Court*, and *Who Will Be in Court*, are two children's books produced as part of the Witness Orientation Toolkit. The toolkit, a collaborative effort between the State Courts, Hagar Singapore, Community Justice Centre and

[283] Para 111 of the Report of the Civil Justice Review Committee; available online at <https://www.supremecourt.gov.sg/Data/Editor/Documents/Annex%20B_CJRC%20Report.pdf>.

the National University of Singapore, covers different categories of witnesses, including vulnerable witnesses.[284]

The State Courts, as the primary dispensers of justice handling about 90 per cent of the judicial cases in Singapore, are committed to enriching the community's knowledge in law by sharing their knowledge and expertise with the legal fraternity, including law students, and the public through their wide spectrum of programmes ranging from publications to classroom training.[285]

The Law Society is also very active in organising activities targeted at members of the public to raise legal literacy. Examples include:

> (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.[286] 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, instil 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".[287]

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[284] The resource material is available online at <https://www.statecourts.gov.sg/cws/Witness/Pages/Resources.aspx>. See press release of 3 October 2018, available online at <https://www.familyjusticecourts.gov.sg/docs/default-source/news-and-events/2018_mr_jvad.pdf>

[285] See further State Courts media release of 4 November 2019, "Beyond Adjudication – State Courts Impart Legal Knowledge to Enrich the Community," available online at <https://www.statecourts.gov.sg/cws/Resources/Documents/Media%20Release-Beyond%20Adjudication_State%20Courts%20Impart%20Legal%20Knowledge(forWeb).pdf>.

[286] 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 connect 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".

[287] See further at <https://www.lawsocprobono.org/Pages/LawAwareness.aspx>.

(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. They cover various aspects of the labour law. The first pamphlet, 'I want to be a Freelance Professional', was launched concurrently with the broader campaign.[288] 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 assist 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.

Making Laws Accessible

Singapore's laws are freely available via the internet through the *Singapore Statutes Online* (SSO) website.[289] It is important for a country's laws to be readable and easily understandable by the public. Laws are not good if people find it hard to understand them or

[288] See further on Law Works and the booklets produced as part of the initiative at <https://www.lawsocprobono.org/Pages/Law-Works.aspx>.

[289] Singapore Statutes Online (SSO), available online at <https://sso.agc.gov.sg>, is a Singapore Government website managed by the Legislation Division of the Attorney-General's Chambers. SSO contains the following: (a) Current legislation; (b) Historical versions of legislation; (c) Revised editions of legislation; (d) Legislation and Bills as published in the Acts, Subsidiary Legislation and Bills Supplements of the Singapore Government *Gazette*; and (e) Repealed/revoked/spent legislation.

they are not easily accessible. The primary audience is not so much the lawyer but the average person who needs to know the law, including the authorities who have to enforce the law, the ordinary citizens whose rights and responsibilities are affected by the law.

In terms of ease of understanding: The law must "work" for the varied users of Singapore laws, not people "work" for the law. Laws which are clear also help to reduce the need for litigation to resolve what is the meaning of a term, a clause, a provision in any piece of legislation. It boils down to the rule of law. Then there is the pragmatic consideration: economic necessity. Poorly drafted or hard to understand laws create uncertainty, confusion, misunderstanding - in sum, generating inefficiencies through increasing transaction costs of doing business.

In 2013, the Legislation Division of the Attorney-General's Chambers, Singapore's central law drafting office, embarked on the **P**lain **L**aws **U**nderstandable by **S**ingaporeans project (PLUS Project). The PLUS project seeks to ensure that written laws are drafted and presented in a manner that is clear, readable and more easily understood by the people to whom the laws apply. The scope of the PLUS project includes modernising the text and design of Singapore's written laws and enhancing the features of the *Singapore Statutes Online*, which gives the public free access to an unofficial version of Singapore legislation.

Law drafters are encouraged to use online readability tests such as the Flesch Reading Ease Test (FRET) to determine how readable new laws are compared with older versions. The AGC used FRET to compare the readability of the recent Public Order and Safety (Special Powers) Act 2018 against its predecessor, the Public Order (Preservation) Act, and found that the new legislation scored six times more on readability.[290]

Some of the PLUS Initiatives that have been implemented in the last few years by the Legislation Division are[291]:

- New laws are now better organised/designed in plain English as far as is possible, for example:

[290] "Simplifying the language of Singapore laws on track, as more people visit law website," *Channel NewsAsia*, 7 November 2018; available online at <https://www.channelnewsasia.com/news/singapore/simplifying-language-singapore-laws-visitors-website-agc-10904700>.

[291] Extracted from PLUS write-up on the AGC's website; see <https://sso.agc.gov.sg/PLUS>. To better understand public perception of legislation in Singapore, an on-line public survey over a period of one month from 12 November to 12 December 2013. In total, 1,058 respondents participated in the survey. The detailed report of the survey results is available at <https://www.agc.gov.sg/docs/default-source/our-roles-documents/Drafter-of-Laws/plus-report-(full).pdf>.

- Legislative sentences in new Acts and subsidiary legislation are shorter.
- Lengthy provisions and complex concepts are broken down into separate paragraphs or provisions.
- Simpler text is adopted in new legislation where possible, for example:
  - archaic words like “hereby”, “heretobefore”, etc., are discontinued altogether;
  - a period which would be described as “X days’ notice” is expressed in terms of “the Xth day after a specified event” to specify clearly the time for doing something;
  - “shall” is replaced with “must” to signify legal obligations;
  - “notwithstanding” is replaced with “despite” or “however”;
  - “without prejudice to the generality of” is replaced with “without limiting”;
  - “for the avoidance of doubt” is replaced with “to avoid doubt”;
  - “Made this 1st day of August 2018” is replaced with “Made on 1 August 2018”;
  - Abbreviations are used in legislation where possible (e.g. “facsimile” is replaced with “fax”);
  - Roman numerals are replaced with Arabic numerals.

- Bills tabled in Parliament are accompanied by a more detailed Explanatory Statement — in appropriate cases, illustrations or descriptions are given on how the proposed new laws/changes to laws would work.
- After 4 years of experimenting with the different ways of, and experiencing the challenges posed by, writing laws in plain English, the Legislation Division has produced in 2018 an internal guide (of nearly 600 pages) to help law drafters find suitable words/phrases in plain English in Singapore’s context to replace legalese, commercialises and complex phrases that have been used in the older legislation.

- Drafting directives are also regularly issued to the law drafters and editors to update/guide them on the various law drafting changes being implemented under the PLUS Project.

Public Awareness of Legal Aid

Legal aid is an integral part of access to justice. The ends of justice will not be served even in a well-resourced legal aid regime if the intended varied users do not or are not able to access legal aid. Hence, public information and public awareness are important ingredients of any legal aid regime. They can help the public to access legal aid. In Singapore, public information and awareness of legal aid is relatively high because of the near-ubiquitous nature of legal clinics.

Where legal aid services are provided, such as free legal clinics, the community service providers would advertise them through banners placed within a locale, websites, and word of mouth. The Law Society maintains a listing of legal clinics.[292] The People's Association, a statutory board established in 1960 to promote racial harmony and social cohesion in Singapore, also hosts legal clinics in community clubs.[293] Such information is also easily available at the courts where for some people this was their first interface with the law. Popular local websites such as Mothership.sg also carry articles on legal aid.[294]

The Government's Social Service Offices (SSO) in public housing estates, where 80 per cent of Singaporeans live in, provide coordinated social assistance to Singaporeans in need. The SSO officers in coordinating social service delivery within a community are aware of the different organisations and the services they provide to people in need. While data at the national level is not collected, the fact that there are many legal clinics, with their provision of legal aid and legal support services, attest to the high level of public awareness and anecdotally indicate that there is a demand for such services. The figures from the Legal Aid Bureau also show that people actively and voluntarily apply for legal aid.

The Chief Justice has shared his vision of the redesign of Singapore's justice system: one that aims to deliver "fair outcomes that are available to all, as a means of achieving real and

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[292] The legal clinic locator can found at <https://www.lawsocprobono.org/Pages/Legal-Clinic-Locator.aspx>.

[293] See listing at <https://www.pa.gov.sg/our-network/community-clubs/legal-advice-service>.

[294] For example, see "What happens if I need a lawyer but can't afford one? Free legal assistance in S'pore, explained," *Mothership.sg*, 22 March 2020; available online at <https://mothership.sg/2020/03/how-to-get-pro-bono-lawyer-singapore/>.

lasting peace in our community". Such a vision requires envisioning a different idea of a court. Such a court:

> (a) Departs from a traditionally reactive approach to proactively resolving disputes in the most appropriate manner;
>
> (b) Offers an extended suite of assistive services to empower and educate its users;
>
> (c) Recognises that adjudication is part of a wider universe of dispute resolution methods; and
>
> (d) Actively connects users with particular needs to sources of help, whether within or outside the justice system.[295]

The powerful notions of empowering and educating the users of the justice system and connecting their needs to other sources of help are potentially game-changing. As the Chief Justice proposed:

> Seeing justice as a public service also entails helping the public better understand how justice is administered. This involves offering the public greater insight into the deliberative process by which judges decide cases, the nature of the judicial function, the powers of the courts and the limits of those powers. We can seed that basic understanding through court engagement and outreach, so as to promote the reasoned scrutiny of court decisions and more meaningful public discourse about the law.[296]

Taken together, the various activities and programmes highlighted in this section speak to the role of the courts and other kindred organisations in public legal education in Singapore, broadly conceived, with an eye to those most in need of help such as the indigent or self-represented litigants, and the average citizen as well, who will benefit immensely from being able to navigate the justice system and, where needed, access legal aid. Public legal education is an integral part of the effort to enhance access to justice on efforts to refresh and enhance such an outreach must be done on a continual and sustainable basis.

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[295] Para 47 of the Response by Chief Justice Sundaresh Menon at the opening of the Legal Year 2020, 6 January 2020; available online at <https://www.supremecourt.gov.sg/docs/default-source/module-document/speech/oly-2020---speech-by-cj-(checked-against-delivery).pdf>.
[296] *Ibid*., para 49.

12. GLOBAL EFFORTS ON ACCESS TO JUSTICE

This country study has shown that access to justice is a national commitment in Singapore. Thus, Singapore is also supportive of global and regional efforts that promote access to justice, which will also promote the rule of law and good governance. At the national level, the rule of law is a core value in Singapore's governance. The Singapore Constitution, which is the supreme law of the land, provides for the separation of powers and a bill of rights. Singapore's laws are interpreted and applied by an independent judiciary.

Sustainable Development Goal (SDG) 16.3: Singapore's National Efforts[297]

SDG 16 seeks to "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". In particular, SDG 16.3 calls for: "Promote the rule of law at the national and international levels and ensure equal access to justice for all".

At the international level, Singapore actively participates in international law-making at regional and multilateral forums. Singapore has been participating actively in multilateral negotiations at the UNCITRAL, and the Hague Conference of Private International Law. Singapore is involved in ongoing negotiations on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Singapore has been and continues to be on bureaux of various UN Committees, and is also deeply involved in the development of standards at a number of UN specialised agencies, including the International Civil Aviation Organisation (ICAO), International Maritime Organisation (IMO), and World Intellectual Property Organisation (WIPO). In 2020, as part of Singapore's wider commitment to multilateral processes, a Singaporean was appointed as Director General of WIPO. Regionally, Singapore is involved in negotiations within the ASEAN in relation to international cooperation to combat transnational crime.

In addition, Singapore has also provided thought leadership on dispute resolution. In December 2018, the United Nations General Assembly adopted, by consensus, the United Nations Convention on International Settlement Agreements Resulting from Mediation, and recommended that the Convention be known as the "Singapore Convention on Mediation", and

[297] See, generally, K Shanmugam, "The Rule of Law in Singapore" [2012] Singapore Journal of Legal Studies 35.

authorised the signing ceremony of the Convention to be held in Singapore in August 2019. Singapore played a substantive role in the negotiations and the drafting of the treaty.

The Singapore Convention on Mediation (the "Singapore Convention" or "Convention") is a uniform and efficient framework for international settlement agreements resulting from mediation. It applies to international settlement agreements resulting from mediation, concluded by parties to resolve a commercial dispute. It came into force on 12 September 2020. The Convention will facilitate international trade and commerce by enabling disputing parties to easily enforce and invoke settlement agreements across borders. Businesses will benefit from mediation as an additional dispute resolution option to litigation and arbitration in settling cross-border disputes.[298] Commercial parties in a dispute can seek enforcement of international mediated settlement agreements by applying directly to the courts of countries that have ratified the treaty.

Through mediation, parties in a cross-border dispute can attempt to negotiate a new deal, facilitated by a neutral third-party mediator, to salvage a commercial relationship which would otherwise disintegrate if the litigation or arbitration routes are taken. Previously, because a settlement agreement made in one country has no legal force in another, a party seeking to enforce a mediated settlement agreement in another country or multiple countries will have to commence legal proceedings in each country. This can potentially be costly and time-consuming, especially for international settlement agreements.

Singapore's contribution to dispute resolution efforts globally will help promote access to justice for commercial parties. In recent years, the Singapore Government has moved to establish Singapore as an international dispute resolution centre, including setting up the Singapore International Arbitration Centre, the Singapore International Mediation Centre (SIMC), and the Singapore International Commercial Court. It had also boosted the mediation scene domestically, including expanding the dispute resolution centre, Maxwell Chambers, to meet the growing demand for dispute resolution work. All these take a leaf from the positive experience from promoting the use of non-litigation modes of dispute resolution domestically, especially for relational disputes. The benefits can similarly accrue to commercial parties as well.

In the wake of the COVID-19 global pandemic, the SIMC launched its COVID-19 Protocol to provide businesses with an expedited, economical and effective route to resolve

[298] More information on the Convention can be obtained online from <https://www.singaporeconvention.org>.

any international commercial disputes during the COVID-19 pandemic period.[299] This option for Singaporean and international parties to mediate online facilitates an accessible, time- and cost-effective means to resolving disputes that have upended markets and commercial transactions in the wake of COVID-19.[300]

The Government also promotes international law scholarship, particularly in the ASEAN law context. To this end, the Government has established and supports research centres and legal academies at the various law schools. In 2014, two Memoranda of Understanding on Cooperation in Legal Education ("MOU") were entered into between the Singapore Management University (SMU) School of Law, the National University of Singapore (NUS) Faculty of Law, the University of Yangon Department of Law, and the University of Mandalay Department of Law. The MOUs aim to promote cooperation in legal education between the universities. Key areas of cooperation include faculty exchanges, study visits, curriculum planning and design, cooperation in legal education pedagogy, as well as enhancement of legal research and development resources.

On efforts and collaboration by non-governmental organizations on access to justice in Singapore, it is clear that a collaborative approach is the operating paradigm. Where efforts to enhance access to justice, the involvement of domestic civil society organisations working closely or independently of the Government is a strong feature. The International Bridges to Justice (IBJ) has developed partnerships with the Government to lead trainings and other events. In February 2011, together with the Singapore Ministry of Foreign Affairs, the IBJ regional hub in Singapore (SJTC) held the inaugural Criminal Justice Training for ASEAN countries for participants to learn about the state of criminal justice in ASEAN. The presentations highlighted laws in the respective countries that uphold the rights of the accused and early access to defence counsel.

In May 2013, SJTC conducted a Legal Aid System Training for Myanmar. During that week of training, there was also the inaugural Regional Legal Aid Forum, supported by SingTel, which saw numerous speakers share experiences, challenges and best practices to improve access to criminal legal aid.

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299 For the SIMC COVID-19 Protocol, see <https://simc.com.sg/simc-covid-19-protocol/>.

300 See also commentaries by George Lim, "Make mediation your first port of call for legal disputes," *The Straits Times*, 25 May 2020, and Kohe Hasan and Teh Joo Lin, "Firms should consider mediation to settle rows amid Covid-19 disruption," *The Straits Times*, 23 May 2020.

Regional Efforts and Collaboration

Singapore is a founding member of the Association of Southeast Asian Nations (ASEAN), a regional organisation that aimed primarily at promoting economic growth and regional stability among its members.[301] The ASEAN Political-Security Community Blueprint 2025 comprises the following element of a rules-based, people-oriented, people-centred community:

> Establish programmes for mutual support and assistance among ASEAN Member States in the development of strategies for strengthening the rule of law, judicial systems and legal infrastructure… (including) enhanc(ing) access to legal assistance in ASEAN Member States to promote social justice through more public education and outreach activities.[302]

In 2016, the Indonesian government with the support of the Open Society Foundations, the UN Development Programme, the Global legal Empowerment Network and the International Development Law Organization, held the ASEAN Regional Consultation on Sustainable Development Goals, Access to Justice and Legal Aid. The Consultation brought together representatives of the ASEAN Secretariat and the ASEAN Intergovernmental Commission on Human Rights (AICHR), and some ASEAN Member States government representatives, among others.

In 2017, the AICHR conducted a regional consultation on legal aid, bringing together national and regional researchers to share good practices and lessons learned on legal aid within the ASEAN Member States. The was followed by the publication of the AICHR-commissioned thematic study on legal aid in ASEAN.[303] Singapore actively participated in the consultation and the thematic study. The AICHR also held its first forum on access to justice in December 2018 to, among other things, launch and present key findings and recommendations of the AICHR thematic study on legal aid.

Singapore has also played a leading role in the Council of ASEAN Chief Justices (CACJ).[304] Recently, the Chief Justice urged his regional colleagues to strengthen the rule of

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[301] There are currently 10 member states of ASEAN viz Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Laos, Myanmar, Cambodia and Vietnam.

[302] The Blueprint is available online at <https://asean.org/wp-content/uploads/2012/05/ASEAN-APSC-Blueprint-2025.pdf>.

[303] The Thematic Study on Legal Aid was published by AICHR in 2019 and is available online at <https://aichr.org/wp-content/uploads/2019/09/AICHR-Thematic-Study-on-Legal-Aid-for-web.pdf>.

[304] The Council of ASEAN Chief Justices (CACJ) provides a regular forum for the Chief Justices to discuss and exchange views on common issues facing the ASEAN Judiciaries. It is a platform to

law by facilitating access to justice across ASEAN, focusing in particular on cross-border issues that require judicial cooperation such as those concerning cross-border family disputes, the service of civil processes, and the enforcement of foreign judgments.[305]

. . . . .

promote close relations and build mutual understanding among the ASEAN Judiciaries. The CACJ also facilitates judicial cooperation and collaboration to enhance economic growth and development in ASEAN. The CACJ aims to strengthen partnerships among ASEAN Judiciaries and uphold the rule of law within and across ASEAN in the spirit of institutional independence and principled partnerships. Accredited as an entity under Annex 2 of the ASEAN Charter in January 2017, the CACJ endorses and supports the purposes and principles of ASEAN and the ASEAN Community, in particular adherence to the rule of law and protection of human rights and fundamental freedoms. See the CACJ mission statement at <https://cacj-ajp.org/web/guest/mission-statement>.

[305] See Chief Justice Sundaresh Menon's address on 23 November 2019 in Bangkok at <https://cacj-ajp.org/web/guest/closing-address-gala-dinner-23-nov>.

13. CONCLUSION

> "… For the acid test of any legal system is not the greatness or the grandeur of its ideal concepts, but whether in fact it is able to produce order and justice in the relationships between man and man and between man and the State ..."
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> Prime Minister Lee Kuan Yew
> Speech at the University of Singapore Law Society Annual Dinner
> 18 January 1962

This country study has attempted to show that access to justice is a critical concern of the Singapore Government, the legal fraternity, and other stakeholders at the domestic, regional, and international levels. Access to justice is not an end in itself but a means to an end – it speaks to the rule of law, the timely and purposeful resolution of disputes, and to preserve the dignity of individuals who use the justice system. There is always room for improvement in the access to justice regime; no system is perfect and the legal needs constantly evolve. The Singapore example shows that for a viable, thriving access to justice requires a supportive eco-system of a network of stakeholders, sustainable resourcing of funds, institutions, and human capital.

Given the complex and overarching nature of access to justice, it is necessary for stakeholders to collaborate and cooperate with each other. The Singapore Government plays the crucial role of aligning the interests of the various stakeholders towards the shared purpose of ensuring access to justice undergirded by the shared values of the commitment to the rule of law and the meaningful resolution of disputes. This tight-knit ecosystem shows that it is crucial and possible for seemingly competing (or even conflicting) interests to be aligned for the common good.

The challenges the COVID-19 pandemic crisis present are unprecedented but they also open up unique opportunities for improving access to justice. The pressure to act would have been much weaker under more normal circumstances. However, the opportunity has to be recognised and seized.

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: (1) Strong will of the government in ensuring access to justice; (2) a multi-stakeholder approach and collaboration on access to justice, especially legal aid; (3) a growing pro bono culture that

is constantly promoted and nurtured; and (4) the provision and promotion of alternative dispute resolution and the use of diversionary strategies and institutions.

(1) Strong Government 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 access to justice in Singapore. Since independence, the Singapore government recognises that to have a robust system of government and a process 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) he led was elected into government in 1959.[306] 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 and other civil society organisations, in providing criminal legal aid.

In order for the legal system (and courts in particular) to fulfil 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 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 to 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 was 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

[306] 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.

access to justice, which impacts upon a person's inclusion in society in both obvious and subtle ways. 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. Even in the delivery of well-funded 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.[307] Similarly, the Judiciary is also an active supporter and promoter of pro bono work.[308] 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.[309] On the contributory factors for the current success

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[307] 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. (See Ministry of Law media statement, "Mandatory reporting for pro bono work done," 24 March 2015; available online at <https://www.mlaw.gov.sg/news/press-releases/mandatory-reporting-for-legal-pro-bono-work-done.html>).

[308] 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].

[309] 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 (see <http://www.lawsociety.org.sg/probono/pdf/probonoguide.pdf>).

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";
- "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.[310] Law students who commenced their relevant qualifying law degree programmes from 2013 are required to perform 20 hours of pro bono work as part of their graduation requirements for their degree programme.[311] 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.[312]

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[310] 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. The SUSS law school was established to nurture law students who would go on to practise community law such as criminal law and family law.

[311] 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.

[312] See paras 3.56 and 3.57 of the Report, available online at <https://www.mlaw.gov.sg/files/news/press-releases/2007/12/linkclicke1d7.pdf>.

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.

Given the progress made and the momentum generated, 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.

(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.[313]

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. To this end, 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

[313] While this study would not be able to make any conclusion on this, Singapore's legal system continues to very well-regarded.

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".[314]

The Judiciary is another invaluable stakeholder in the drive to ensure access to justice, particularly in civil matters. It is now at the forefront of remaking of justice system, one that is attuned to the needs and changes in Singapore and keenly aware of embedding fundamental values like access to justice and the rule of law. For example, as discussed above, the Judiciary has been continually revamping and overhauling civil litigation since the early 1990s. 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".[315] 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 enhancing 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.

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.

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.

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 primary concern of access to justice must not be confined to the

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

[315] See also 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 online at <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/j20-paper---judicial-reform---justice-steven-chong-(singapore).pdf>.

poor and disenfranchised but must extend 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.[316]

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, which is crucial for democracy and associational life in a society.

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.

(4) Provision and Promotion of Appropriate 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 appropriate dispute resolution. At a basic level, Singapore's ideational approach to dispute resolution is to create a system where the courts can provide expeditious resolution to 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 non-litigation modes of dispute resolution and made them accessible as the first

[316] See Chief Justice Sundaresh Menon, "Law and Medicine: Professions of Honour, Service and Excellence," 23rd Gordon Arthur Ransome Oration, 21 July 2017, para 36.

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 dispute resolution framework in Singapore and is supported by a cultural approach, by which non-litigious modes are portrayed and promoted as being in accord with the values and norms of Singaporean society. Such a pervasive institutional and cultural commitment to appropriate dispute resolution profoundly influences the behaviour of disputants resulting in disputants using non-litigation modes of dispute resolution especially for relatively small commercial claims and social disputes.[317] This helps promote access to justice in more ways than one.

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 routine and straightforward cases are, where possible, diverted out of the court system, such as some non-injury motor accidents.[318] 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. Claimants would also find such alternative forums more affordable while serving their needs.

More importantly, through an adroit use of and concerted promotion of appropriate dispute resolution, a clear benefit is improved access to justice. While appropriate dispute resolution 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 non-litigation 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. Hence, besides the courts, other dispute resolutions forums have been established and important venues for dispute resolution.

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

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[317] 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.

[318] 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.

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.

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.[319] 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.

(5) Going beyond access to justice as a public service

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.

All the above five pillars, buttressed by a firm foundation of values, enable an increasingly robust access to justice regime in Singapore that involves the public, private, and people sectors in co-creating a sustainable system. Disputes are resolved economically and in a timely manner, relations between disputing parties maintained to the fullest extent possible, and

[319] 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.

society's core values given effect to and manifested for the greater good. Access to justice is not desired as an end in itself but is a vital means to the promotion of shared values and other public goods that matter immensely for a nation-state premised on "justice and equality" and seeking to "achieve happiness, prosperity and progress".[320]

[320] Quoted phrases are from the national pledge.