



22nd AIJA ANNUAL CONFERENCE

‘Proportionality – cost-effective justice?’

17-19 September 2004

The Westin Sydney, 1 Martin Place, Sydney

SESSION ONE

***The practice of procedural proportionality
in the civil justice system of Singapore***

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“The practice of procedural proportionality in the civil justice system of Singapore”

Introduction

In his speech at the Supreme and Federal Court Judges’ Conference on 28 January 1998 in Perth, Western Australia, The Honourable the Chief Justice Yong Pung How observed in respect of the Singapore Courts’ efforts at meeting and initiating change in the area of civil justice that “Our principal concern in this area has been to ensure that the civil justice system is not merely operated in an efficient and cost-effective manner but that it is capable of providing litigants with workable solutions to their disputes and problems.”

2. To a considerable extent, the principle of proportionality in Singapore’s justice system is evident from the tiered system of courts in our judicial hierarchy.¹ Beyond having the more highly remunerated judges at the different levels hearing the higher value claims, a proportionate, tiered approach to Court filing fees is adopted throughout our civil justice system. Taking as an example the cost of filing a writ of summons for the commencement of an action, the court fees for a Supreme Court claim with a value of up to \$1 million and above \$1 million are \$500 and \$1,000 respectively. The District Court and Magistrates’ Courts rate is \$150 and \$100 respectively. The cost of filing an individual claim in the Small Claims Tribunals starts at a mere \$10.

3. This proportionate approach is also evident in Order (O) 90A of the Rules of Court (‘ROC’) in relation to hearing fees before the Supreme Court and Subordinate Courts. Hearing fees are payable in certain categories² of civil cases to better allocate the use of scarce judicial resources and ensure that court time is maximised. In the Subordinate Courts and the Court of Appeal, hearing fees are payable for each day or part thereof subsequent to the first day. As for the High Court, hearing fees are payable from the fourth day onwards. The quantum of hearing fees is graduated depending on the level of the court hearing the matter as well as the quantum of the claim for High Court matters, with claims in excess of \$1 million attracting a higher hearing fee compared to claims below \$1 million.

Defining the doctrine of proportionality: the substantive concept

4. Having established the local context, we turn to the historical perspective. The doctrine of proportionality originated as a substantive principle of justice in German Law³ in the late nineteenth century to check administrative processes and to protect the individual rights of its citizens. It was given formalised status in European civil law when it was introduced into Article 5 of the European Community Treaty (EC).⁴ For our purposes, it would be sufficient to define the doctrine of proportionality, as it is understood in European civil law, as a substantive principle of justice requiring a reasonable relationship between the objective that is to be achieved and the means by which this was

¹ Singapore is a republic with a parliamentary system of government. A written constitution provides for the executive, the legislature and the judiciary. Judicial power in Singapore is vested in the Supreme Court and the Subordinate Courts. The Supreme Court comprises the High Court and the Court of Appeal. With regard to civil matters, which is the subject of this paper, the High Court has unlimited original jurisdiction although it generally only deals with matters where the value of the claim exceeds \$250,000. It also hears appeals from the District Courts, Magistrates’ Courts and Small Claims Tribunals. The decision of the High Court when hearing appeals from the Small Claims Tribunals is final. The Court of Appeal hears appeals from any judgment or order of the High Court in civil matters and it is the highest court in the land. For civil matters, a District Court hears and tries actions where the claim does not exceed \$250,000. Magistrates’ Courts exercising civil jurisdiction hear cases where the claim does not exceed \$60,000. The Small Claims Tribunals hear disputes arising from the sale of goods or the provision of services where the amount in dispute does not exceed \$10,000. Parties to a dispute exceeding \$10,000 but not exceeding \$20,000 may agree in writing to have their cases dealt with by the Tribunals.

² Hearing fees do not apply, *inter alia*, to actions for damages for death or personal injuries, or causes or matters under the Women’s Charter (Cap 353, 1997 Revised Edition) and other family matters, applications for writs of *habeas corpus ad subjiciendum*, and appeals or applications by regulatory bodies in disciplinary proceedings under certain specified Acts including the Legal Profession Act (Cap 161, 2001 Revised Edition) and Medical Registration Act (Cap 174, 2004 Revised Edition).

³ In German Law, the doctrine of proportionality is known as “Verhältnismässigkeit”, which when literally translated, is the principle of relativity. See paper “*The Modern Development of Public Law in Britain; and The Special Impact of European Law*” delivered by Lord Irvine of Lairg, the then Lord High Chancellor of Great Britain at the Singapore Academy of Law Sixth Annual Lecture at 11 S.Ac.L.J. 265.

⁴ Part of Article 5 EC states, “Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty”.

to be done. So defined, proportionality is a doctrine founded in European administrative law, which allowed the European courts to strike down subsidiary legislation and executive directions if the burdens resulting therefrom were excessive or disproportionate when weighed against their objectives.

5. The position in Singapore mirrors the pre-European Union English position.⁵ The European doctrine of substantive proportionality is not recognised or applied as a ground of judicial review in Singapore. In *Chng Suan Tze v Minister of Home Affairs* [1989] 1 MLJ 69, the Singapore Court of Appeal held that the doctrine of proportionality was not a separate ground of judicial review but was one subsumed under *Wednesbury* irrationality (*Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223). In other words, an administrative decision would be struck down only when its consequences were so disproportionate as to be irrational. A later Court of Appeal decision in *Dow Jones Publishing Co (Asia) Inc v Attorney General* [1989] SLR 70 reaffirmed this decision. Justice Chan Sek Keong (as he then was) made an oblique reference to the limits of judicial review when he said that a court was not in a position to substitute its judgement for that of the minister in determining whether the restriction order which was made against the Asian Wall Street Journal (the applicant in that case) was out of proportion to its infractions.

Defining the doctrine of proportionality: the procedural concept

6. It is in the area of procedural justice that the doctrine of proportionality manifests itself most strongly in the Singapore civil justice system. Proportionality in civil procedure and the civil justice system means that there should be a balance between ‘inputs’ and ‘outputs’. From a ‘distributive justice’ perspective, there is proportionality when reasonable amounts of finite resources are invested into the justice system relative to the other public facilities that the community needs to provide. From the perspective of the courts and the litigants, proportionality is measured by comparing procedures and their costs to the complexity of the issues, the value of the subject matter and the nature of the claim involved. It is widely believed that proportionality in civil procedures and rules can only be achieved by an active judiciary and a court system which practices case management, simplifies civil processes and provides sufficient avenues for alternative dispute resolution.⁶

The Singapore Approach

7. The framework of the Singapore ROC is substantially similar to the pre-English Civil Procedure Rules position where proportionality is not expressly stated as an overriding objective. It is nonetheless clear that the principle of proportionality underlines the civil justice process and civil justice system in Singapore.

8. There are three main reasons for this. Firstly, recent amendments to O 59 of the ROC governing costs show very clearly the determination of the Rules Committee⁷ to keep the costs of litigation in Singapore at a reasonable amount commensurate with the value and nature of the subject matter. Secondly, judicial pronouncements have consistently warned litigants against a too liberal use of interlocutory processes and the unreasonable conduct of proceedings to obtain an undue advantage and to escalate costs.

9. Thirdly and most importantly, there is historically a strong culture of judicial case management in Singapore that has been further developed and refined over the last few years. The Court’s power to manage cases and to develop new ways of doing so stems from O 25 and O 34A⁸ of

⁵ Prior to Britain’s membership of the European Union, the European doctrine of proportionality was not recognised as being part of the common law. Even after Britain’s admission to the European Community, the doctrine of proportionality is applied as part of the Community law. Only in the area of human rights is the doctrine of proportionality applied as part of the domestic law. An English Court will traditionally only move to strike down an administrative decision or policy as being *ultra vires* when it satisfies one of the three heads of illegality, irrationality and procedural impropriety as defined in the *locus classicus* of *Council Civil Service Union v Minister for the Civil Service (‘GCHQ case’)* [1985] AC 374.

⁶ See Adrian A S Zuckerman (ed.) “*Civil Justice in Crisis: Comparative Perspectives of Civil Procedure*” Oxford University Press, UK for a discussion of the new philosophy of distributive justice in procedure.

⁷ The mandate of the Rules Committee was stated by Chief Justice Yong Pung How in his Welcome Reference on 8 October 1990 as “(to) review and progressively update and improve the 1970 rules...The overall objective will be to review the continuing use of procedures and practices which once were valid but now, with the passage of time, are not only non-productive but are often counter-productive. Among other aspects, attention will be given to the possibility of simplifying procedures; the better use of written materials and submissions; the discouragement of prolixity and late filing of affidavits; and the amendments which can be made to enforce strict discipline to overcome the present problems of adjournments and delays...”

⁸ O 25 of the ROC relates to Summonses for Directions while O 34A relates to Pre-Trial Conferences.

the ROC that empowers the Court to make any such order or direction as it thinks fit, for the just, expeditious and economic disposal of the cause or matter. The Singapore Courts have proactively interpreted O 25 and O 34A as a basis for active judicial management at various stages of the litigation process, not limited to the summons for direction or the pre-trial conference and through a variety of means as diverse as specialist case management regimes, the use of technology and alternative dispute resolution methods. Procedural proportionality then becomes one of the main considerations underlying the exercise of the judicial discretion in case management.

10. Approaching each point in turn, we now look at the Singapore position with particular emphasis on the Subordinate Courts experience.

I. Amendments to the ROC

11. The ROC have undergone various amendments over the last few years. Some of the more relevant are amendments that were made to the Rules from 2000 to 2004 that have a direct impact on costs and procedural proportionality.

12. A new provision O 59 r 6A came into effect on 15 December 2001 by way of the Rules of Court (Amendment No. 2) Rules 2001. O 59 r 6A states that where a party has failed to establish a claim or an issue and has thereby unnecessarily or unreasonably protracted, or added to the costs or complexity of the proceedings, the Court may order that the costs of that party be disallowed in whole or in part, or that any costs occasioned by his claim or issue be paid by him to the other party. O 59 r 6A is a powerful exception to the general rule that “costs follow the event” as it applies regardless of what may be the ultimate outcome of the trial.

13. The power of the Court to use costs as a means of regulating parties’ conduct was further strengthened by Rules of Court (Amendment No. 4) Rules 2002 which came into operation on 1 December 2002. O 59 r 5 was amended to explicitly state that the Court would take into account, when exercising its discretion as to costs, the conduct of parties *before* and *during* proceedings and the extent to which the parties have complied with any relevant pre-action protocols and practice directions.

14. Part IV and Part V of O 59 Appendix 2⁹ were also introduced by the Rules of Court (Amendment No. 4) Rules 2002 to cap legal costs in Magistrates’ Courts (MC) cases and MC Non-Injury Motor Accident (NIMA) actions. From 1 December 2002, successful litigants in MC suits have had their costs (excluding disbursements) for the entire proceedings fixed at the end of trial in accordance with a fixed scale of costs which varies with the sum settled, awarded or claimed to ensure that they are not disproportionate to the amount of the claim.¹⁰

15. By linking reasonableness in the conduct of proceedings with costs, parties are encouraged to act expeditiously, efficiently and in ways that are most proportionate to the nature and value of their claim. Obviously, the smaller and simpler the value and the nature of their claim, the less reasonable and more disproportionate will a plethora of interlocutory applications be. In addition, even if the applications are not deemed to be unreasonable, limiting the amount of party-and-party costs recoverable at the end of a trial for MC suits will also discourage litigants from investing unnecessary time and resources in the matter or from litigating for tactical advantages since they can no longer expect to look towards the opposing party to recoup a substantial proportion of their costs.

II. Judicial control over too liberal use of the interlocutory and the trial processes

16. As a common law country, Singapore practices an adversarial system in which it is the parties who ultimately have the right to determine the way in which they wish to conduct their cases, through the submissions of pleadings and the filing of interlocutory applications. Therefore, the courts traditionally do not voice their displeasure with the type of applications filed or the way issues are dealt with at trial. With the change in judicial philosophy and litigation landscape, this has changed.

⁹ Parts V and IV of O 59 Appendix 2 of the ROC govern the costs to be awarded for Non-Injury Motor Accident (NIMA) actions and for all other Magistrates’ Courts cases respectively. As an example, for non-NIMA cases where the sum awarded, settled or claimed is up to \$20,000, costs awarded excluding disbursements should be from \$3,000 - \$6,000.

¹⁰ The Magistrate’s Court will however, still retain the overriding discretion to depart from these costs scales in appropriate circumstances under O 59 r 31(2) of the ROC.

17. The courts now exercise greater control over the interlocutory process and the conduct of the trial. This is usually done through the strict enforcement of the costs provisions in the ROC, in particular O 59 r 6A and the fixing of costs at the end of each application rather than to order “costs in the cause”. The former ensures that solicitors and their clients’ act reasonably in the conduct of litigation while the latter prevents the snowballing of costs by the parties in an attempt to “win” the case “at all costs”.

18. In *L&M Airconditioning & Refrigeration (Pte) Ltd v SA Shee & Co (Pte Ltd)* [1993] SGHC 147, the High Court disallowed the successful plaintiffs their costs for the action and in defending the counterclaim because they had acted unreasonably in their conduct of the trial and irresponsibly in their preparation of the trial bundles. The High Court also disapproved of the excessive amount of getting up which was done for a relatively simple and straightforward claim. In *Rajabali Jumabhoy & Ors v Ameerli R Jumabhoy & Ors (No. 2)* [1998] SGCA 39, the successful appellants were similarly disallowed part of their costs for mounting multiple defences, many of which had no merit and unreasonably protracted the proceedings. In *Ho Kon Kim v Lim Gek Kim Betsy* [2001] SGCA 67, the Court of Appeal disallowed the successful appellant his costs in the appeal and in the trial below because litigation had been conducted unreasonably. Similarly in *Tan Tiang Hin Jerry v Singapore Medical Council* [2000] SGCA 17, the appellant was found to have raised numerous issues which have no substance or merit and for which unnecessary time and expenses have been incurred. There was also a significant increase in the length of the proceedings. The Court hence disallowed him one-third of his costs on appeal and below. These are just some of the cases where the Courts have registered their disapprobation of the litigants’ unreasonable and disproportionate conduct when considered in relation to their claims.

III. Judicial Case Management in Singapore

19. Proactive judicial case management in Singapore was first introduced in the 1990s when Chief Justice Yong Pung How instituted numerous reforms to clear the then backlog of outstanding cases. These included the introduction of pre-trial conferences in civil cases, enforcing a strict policy against adjournments once hearing dates have been fixed and the over-fixing of cases with the creation of a standby list to manage last minute adjournments and settlement of cases. Today, these features remain as cornerstones of our judicial case management system in the Supreme Court and the Subordinate Courts, supplemented by newer case management initiatives added over the years.

Overview of Judicial Case Management in the Subordinate Courts

20. In 2003, the Civil Justice Division of the Subordinate Courts received a total of 49,547 writs of summons, 774 originating summonses and 2,955 probate applications. These originating processes in turn generated 20,594 summonses in chambers, 5,879 summonses for directions, 1,196 summary judgment applications, 497 taxation and 1,216 assessment of damages applications.

21. In order to maximise the use of finite resources and to ensure that cases are dealt with fairly, expeditiously and economically, the Subordinate Courts have adopted a four-prong approach in the handling of civil cases. Firstly, once cases enter into our system, they will be distilled and managed separately using a system of differentiated case management. Secondly, as the cases move through the interlocutory processes, parties have the opportunity to consider settling their cases through the large variety of court-annexed Alternative Dispute Resolution (ADR) avenues that are provided free-of-charge by the Subordinate Courts. Thirdly, the Subordinate Courts have moved beyond the traditional confines of judicial case management and have partnered external stakeholders in the civil justice process to set up best practices for the management of disputes and evidence even before these cases are filed with the Subordinate Courts. Finally, to provide a framework for the proper tracking and management of its caseload, the Subordinate Courts harness technology to increase productivity and aid in the efficient administration of justice.

A. The Case Management System

22. Two categories of cases that the Subordinate Courts manage in a specialised manner as part of our differentiated case management regime are elaborated upon in this paper.¹¹ The first category is the NIMA¹² cases and the second are the complex civil commercial cases.

23. NIMA cases were earmarked for specialised judicial management by way of a NIMA pre-action protocol and a NIMA special mentions system as a large number of such simple writs of relatively low value are routinely filed in the Subordinate Courts. In contrast, complex civil commercial cases are specially selected and managed (and taken out of the general interlocutory process) by way of a docket system helmed by a team of experienced district judges and deputy registrars. We also have in place a system that allows parties to apply to the court for an expert pre-trial conference (EPTC) to help in the management of expert evidence.

i. The NIMA pre-action protocol and the NIMA Special Mentions System

24. The NIMA pre-action protocol¹³ was implemented in the Subordinate Courts by way of a practice direction in 2001. Its object was to prescribe a code of reasonable conduct for NIMA claims from the time a claimant decides to file a claim in the courts. Under the NIMA pre-action protocol, the claimant is required to send a letter of claim setting out the full particulars of his claims as well as any supporting documents¹⁴ to the potential defendant and his insurers. Thereafter, the potential defendant must reply within a limited time by either requesting for an opportunity to inspect the vehicle or stating his position on both liability and quantum together with reasons and supporting documents, if any. Where the potential defendant wishes to bring additional parties or to raise a counterclaim, early notice must also be given to the claimant.

25. One unique feature of the pre-action protocol is that it places a positive obligation on parties to engage in negotiations in good faith with a view to settling the matter at the earliest opportunity. Paragraph 6.1 of the protocol states that litigation should not be commenced prematurely if there are reasonable prospects for a settlement. The claimant must also give clear notice to the potential defendants of his intention to proceed with the writ as well as the names of the parties he is suing before an action is commenced. As parties are aware very early on that the Court will take cognisance of parties' non-compliance in exercising its discretion as to costs and the period of interests to be awarded if the matter goes to trial, there is generally prompt and due compliance with the pre-action protocol.

26. We have found that the early and specific discovery of documents by the claimant, potential defendant and any other parties involved in the accident forces parties to state their positions as well as to crystallise disputed issues early and within specific time limits. While there exists a certain amount of front-loading, the general consensus is that early incidence of such costs are inevitable and necessary to enable parties to proceed with negotiations or trials efficiently. The pre-action protocol itself also goes some way in ameliorating this by providing for pre-writ costs and disbursements to be paid to the

¹¹ Many jurisdictions also take different approaches in their case management techniques for "straightforward" and "complex" cases. For example, in the Australian Law Reform Commission (ALRC) Report No. 89 at paragraph 6.10, this technique is referred to as "case streaming".

¹² Part V paragraph 1(1) Appendix 2 of O 59 of the ROC defines "non-injury motor accident action" as an action arising out of an accident on land due to a collision or an apprehended collision involving one or more motor vehicles, but not involving any claim for personal injuries.

¹³ See paragraph 153 of the Subordinate Courts ePractice Directions (2004 Revised Edition) available at http://www.subcourts.gov.sg/practice_directions.htm.

¹⁴ Paragraph 2.1 of the NIMA pre-action protocol provides a non-exhaustive list of documents that should be sent by the claimant to the potential defendant in his letter of claim. These are:

- a) General Insurance Association (GIA) reports and type-written transcripts of all persons involved in the accident, including a sketch plan
- b) Repairer's bill and evidence of payment
- c) Surveyor's report
- d) Excess bill/receipt
- e) Vehicle Registration Card
- f) Certificate of Entitlement/Preferential Additional Registration Fee certificates
- g) Names and addresses of witnesses
- h) Original or coloured copies of scanned photographs of damage to all vehicles
- i) Original or coloured copies of scanned photographs of accident scene
- j) Rental agreement, invoice and receipt for rental of an alternative vehicle
- k) Supporting documents for all other expenses (if claimed)

successful claimant.¹⁵ Anecdotal evidence from the Bar and insurance representatives also show that the pre-action protocol has helped foster a culture of “out-of-court” settlements and that a very significant proportion of NIMA claims are resolved at this early stage.

27. The emphasis on procedural proportionality is also evident from the requirement in the NIMA pre-action protocol that all NIMA writs filed in the Subordinate Courts undergo ADR in the form of Court Dispute Resolution (CDR).¹⁶ The Subordinate Courts will routinely fix NIMA cases for generally, three CDR sessions where experienced district judges will aid parties in the settlement of cases. When the matter cannot be reasonably resolved, directions will be given for the conduct of the trial.

28. Currently, more than 95% of NIMA cases that undergo CDR sessions are amicably settled. The remaining 5% of NIMA cases will then be managed by the civil trial courts by way of an innovative trial management system called the “NIMA mentions”. The NIMA mentions system is helmed by a District Judge who holds pre-trial conferences for all NIMA cases and filters them out to other specially designated civil trial courts on the day of trial. As a good proportion of cases are settled even at this stage, the NIMA mentions judge will generally ‘over fix’ cases to ensure that valuable court time is not wasted. The fixed costs regime governing NIMA trials in Part V of O 59 Appendix 2 also discourage parties from litigating for the sake of costs. Obviously if costs have already been fixed, solicitors should reasonably engage in “cost budgeting” and plan the amount of legal work required. The incentive for solicitors to settle rather than to litigate on these cases is also very much higher.

ii. The Specially Managed Commercial List

29. Complex cases¹⁷ in banking, corporate finance, intellectual property, securities and trust are identified and selected for separate judicial case management under the “specially managed commercial list”. This is to ensure that sufficient (and a proportionate amount of) attention, judicial expertise and resources are devoted to these comparatively more difficult and novel cases.

30. The Subordinate Courts practice a docket system under which a team of deputy registrars and trial judges deal with all the interlocutory applications and the trial respectively. This system allows the deputy registrar who is fully conversant with the facts of the case to adopt a more interventionist approach throughout the management of the case, including exploring avenues for settlement, without being concerned with problems of partiality or potential conflict of interests if the matter does go on for trial.

iii. Expert Pre-Trial Conference

31. With regard to the use of expert evidence in civil cases in the Subordinate Courts, our experience has been that cases were being adjourned at the summons for directions stage (and some even on the eve of trial) to allow parties to engage expert witnesses. The issue arose because parties have not been able to appreciate the need for expert witnesses, or if they did, were reluctant to appoint experts to save costs.

32. The Expert Pre-Trial Conference (EPTC) was hence introduced by way of a Practice Direction in 2004. Under the EPTC regime, parties can write in to the court requesting for an early pre-trial conference on expert evidence at any time after the defendant has entered a memorandum of appearance. At the EPTC, parties would have the opportunity of addressing the court as to the necessity or otherwise of expert witnesses, to agree on the appointment of a joint expert to save costs or to agree on the scope of the expert evidence and joint inspections, if so necessary. Appropriate directions can

¹⁵ Paragraph 7 of the pre-action protocol at Appendix F to paragraph 153 of the Subordinate Courts ePractice Directions (2004 Revised Edition) provides that:

“Where parties have settled both liability and quantum before any action is commenced, a claimant who has sought legal assistance to put forward his claim would have incurred legal costs. A guide to the costs to be paid is as follows:	
Sum settled (excluding interest if any)	Costs Allowed (excluding disbursements)
Less than \$1,000	\$300
\$1,000 - \$9,999	\$300 - \$700
\$10,000 and above	\$500 - \$900”

¹⁶ See paragraph 153(2) of the Subordinate Courts ePractice Directions (2004 Revised Edition).

¹⁷ Cases in the “specially managed commercial list” generally have values exceeding \$100,000.

then be given by the court to regulate parties' use of expert evidence at trial and the preparation of expert reports to reduce delay and save time and costs.

B. Court Annexed ADR Services

33. Another feature of the civil justice process in the Subordinate Courts which has largely modified the adversarial nature of litigation is the provision of a large variety of court annexed ADR services which have allowed claims, large and small to be resolved cheaply, quickly and amicably. In some cases, ADR has also proved to be a more appropriate method of dispute resolution than court adjudication. In fact, resort to ADR services is now the norm rather than the exception for the large proportion of cases in the Subordinate Courts.

34. Parties may avail themselves of these ADR options after an action has been commenced by the various originating processes in the Subordinate Courts. There are two main stages when parties can apply for ADR. The first is at any time after the close of pleadings and the second, after interlocutory judgments have been entered and before the assessment of damages. The most prominent of these ADR services in the Subordinate Courts are those provided by the Primary Dispute Resolution Centre (PDRC) and, after interlocutory judgment has been entered, by the Civil Registry.

i. The Primary Dispute Resolution Centre

35. The PDRC is a familiar fixture in the court annexed ADR regime. It has dealt with a large proportion of our civil cases since its inception in January 1995. These cases span the whole gamut of civil actions including medical negligence, construction law, intellectual property cases as well as NIMA matters. There are different ways in which a case can be referred to CDR, although most commonly, referrals are made upon request by counsel for a settlement conference to be held to explore the possibility of settlement. Referrals can also be made by the deputy registrars conducting the summons for directions hearing and the district judges overseeing the pre-trial managements of cases that have been set down for trial.

36. CDR is unique and invaluable in that it combines both evaluative and mediatory processes. Conducted by experienced settlement judges who provide parties with preliminary assessments or 'indications' regarding the nature of the evidence, a neutral perspective of the legal issues in each case and suggest viable options upon which compromises can be made, CDR sessions are generally very productive and largely successful. In addition, because these sessions are conducted free of charge by the courts, very cost effective as well! Our *sui generis* model of judge-led mediation using the neutral evaluation method provides an attractive alternative to litigation for parties and their counsel.

37. The PDRC also offers Court Dispute Resolution International (CDRI). This is co-mediation of cases by a Singapore judge and a foreign judge using live video link. The foreign judges generously provide their services on an honorary basis in the spirit of judicial co-operation. Currently we have foreign judges from Australia, New Zealand, Norway, the United Kingdom and the United States of America. We find that CDRI is most useful in substantial claims involving complex factual disputes. The local judge is responsible for the legal issues and defines the legal framework for the mediation. Types of cases successfully mediated include construction cases, misrepresentation in the sale of real property and breach of director duties matters. Most of the cases that undergo CDRI are successfully settled and feedback from the parties and their lawyers is positive.

ii. The Civil Registry: Assessment of Damages Court Dispute Resolution and Pre-Assessment of Damages Conferences

38. Assessment of Damages Court Dispute Resolution (AD CDR) refers to the process whereby deputy registrars mediate as a precursor to the assessment of damages (AD) hearing for cases involving personal injuries. Cases would be identified in either one of two ways, upon request by parties or by the Registry that would automatically channel parties to attend the AD CDR after the filing of the notice of appointment for AD.

39. The AD CDR is particularly useful in resolving cases where the personal injuries sustained were light as it obviates the need for an AD hearing which can involve expensive medical and other expert evidence. For those more complicated cases involving multiple or very serious injuries, the

transparency of the mediation process also allows parties to achieve a greater understanding of the issues involved, thereby increasing the chances of settling contentious matters without proceeding for an AD hearing. Even where parties are unable to settle the matter during the mediation process, the AD CDR ensures that issues are crystallised and narrowed ahead of time and parties are better prepared for the case that they have to meet so that the actual AD hearing can be conducted more quickly and effectively. Where parties are unable to settle at AD CDR, the deputy registrar conducting the session would then give further directions in respect of the conduct of the AD and also allot a date to the parties for the AD hearing before another deputy registrar.

40. Pre-Assessment of Damages Conferences (PADC) is similar in substance to AD CDR save that it applies to all other assessment of damages cases, except those involving personal injuries. These include NIMA matters, hire-purchase cases and cases involving breach of contract.

iii. Collaboration between the Subordinate Courts, the Singapore Mediation Centre and the Singapore International Arbitration Centre

41. Beyond court annexed ADR services, the Subordinate Courts also has forged links with the Singapore Mediation Centre (SMC) and Singapore International Arbitration Centre (SIAC). This is to match suitable cases, with the consent of parties, for mediation or arbitration at SMC or SIAC, as the case may be.

C. Extending Case Management Beyond the Confines of the Courts

42. Since the first quarter of this year, judges from the civil justice division have met with the various organizations and persons ('justice stakeholders') involved in the litigation of personal injuries claims to develop a set of best practices regulating the disclosure of documents and information in these claims.¹⁸ These included the Ministry of Manpower, the Traffic Police, the Law Society of Singapore and the General Insurance Association (GIA). Plans are also afoot to involve the Singapore Medical Association (SMA) which represents medical practitioners practicing privately and in public hospitals in Singapore, the two local Healthcare Groups administering public hospitals, as well as the Ministry of Health.

43. At present the best practices being developed by the Subordinate Courts are envisaged to apply both before and after a writ has been issued. Building on the success of the NIMA pre-action protocol, we expect that these best practices (once they have been accepted by the justice stakeholders and subsequently refined if necessary) will have a significant effect in expediting the resolution of personal injuries claims by placing parties in a better position to facilitate settlements earlier on in the process.

44. Having shifted from the paradigm of judge adjudicators to judge managers, we have effected a further transition to become judge educators as well. The role of education and enhancing public awareness of the justice system is a vital one that the Subordinate Courts addresses at various levels. These include operating an award winning website,¹⁹ a Multi-Door Courthouse,²⁰ and encouraging our judges to publish practitioner guides and other law books for the benefit of the community.

D. The use of technology in the civil justice process

i. The Electronic Filing System

45. The Electronic Filing System (EFS) is fundamental to the civil justice process in the Supreme Court and Subordinate Courts. Introduced in 2000, it has revolutionised the conduct of civil litigation

¹⁸ The best practices guidelines will exclude personal injuries claims that arise out of medical and dental negligence cases.

¹⁹ The Subordinate Courts Internet website was conferred the Top-10 Court Website Award 2003 by JUSTICE SERVED in recognition for being a website that provides best of class information and electronic access to members of public. JUSTICE SERVED, an alliance of court management and justice experts providing management services, consultation and training to courts, justice agencies and their partners in technology, reviewed more than 900 court-related websites in 2003 before selecting the award winners.

²⁰ The Multi-Door Courthouse (MDC) is an innovation of the Subordinate Courts and is the first of its kind in the Commonwealth and Asia-Pacific region. The MDC provides a broad range of services to the public. In particular, it assists parties in pairing disputes within the jurisdiction of the Subordinate Courts with the most appropriate dispute resolution methods. It also provides information on other services of the Subordinate Courts.

through its facilities for electronic filing, electronic extracts, electronic service of documents and the provision of electronic information services. The introduction of court hearings in an electronic environment also frees the Courts and lawyers from the logistical burden of managing physical files such as tracking, moving and removing them. With EFS, law firms can perform document submission, request for electronic copies of the documents and serve documents on other law firms from their offices, without the need to make physical trips to the Courts. Law firms can also use their system to submit documents or request for extract copies 24 hours a day, 7 days a week.

46. The Singapore Judiciary completed in 2003 an exhaustive review of the EFS²¹ prior to the extension of the final phase of EFS to probate and family matters.²² The EFS Review Committee noted that not only has EFS remained relevant to current needs, it has also enhanced the operational efficiency of the civil justice system. Besides recommending for new technology to be incorporated into the next generation EFS system and refinements to make the existing system more user-friendly, the Review Committee also recommended a slight reduction in the costs of electronic filing so as to reduce legal costs and to enhance access to justice. This recommendation has been implemented and undoubtedly goes towards further ensuring that legal costs remain within reasonable limits and are proportionate to the value of claims.

ii. JusticeOnLine

47. JusticeOnLine (JOL) is another strategic technology initiative that has been in use in the Supreme Court and Subordinate Courts since 2002. It functions as a multi-party communications platform that connects the courts users to the Courts. In the civil justice process, JOL is used primarily for contentious and non-contentious civil interlocutory applications, non-contentious taxation hearings, non-contentious probate hearings, registrar's appeals and status conferences. It is also used extensively at the PDRC for CDR sessions and at the Small Claims Tribunals for consultations.

48. A significant advantage of JOL is that it enables court users to have convenient remote access to the Court, lessening the traditional emphasis on the brick-and-mortar courthouse. The substantial reduction in travelling and waiting time of solicitors translates into better value and lower costs for the litigants. From the perspective of the Courts, JOL is an effective time-management tool that ensures that judge-hours are not wasted waiting for solicitors who are late and hearings almost always begin on time.²³

Conclusion

49. The pursuit of procedural proportionality in the civil justice process has been fuelled partly by the realisation that limited judicial resources must be more effectively managed. This is to enable us to keep up with increasingly heavier caseloads and an increasingly sophisticated public that demands higher standards and faster delivery of services.

50. As a result, judiciaries around the world, whether in civil or common law jurisdictions, are exploring and implementing various case management strategies and techniques to enhance the administration of justice. While there may be differences in the content and the operation of these case management initiatives, it is respectfully suggested that the features that underline many of these initiatives are quite universal i.e. to keep costs proportionate to the value and nature of the claims, to streamline processes, to facilitate alternative dispute resolution methods and to reduce unnecessary delays and adjournments to a minimum.

51. These factors clearly underpin the case management initiatives in the Subordinate Courts discussed above. The Subordinate Courts are constantly reviewing and improving upon its processes to ensure that they are fully able to meet the needs and the expectations of the public in Singapore. As time goes by, some of the case management initiatives mentioned above will definitely be modified,

²¹ The text of the joint report on the Review of the Electronic Filing System can be found at http://www.sal.org.sg/media_newsltr2.htm

²² EFS was extended to probate and family matters on 15 December 2003.

²³ This is because JOL is an appointment based dial-in system. The deputy registrars/judges need only enter the 'virtual chambers' and hear the application when the JOL system notifies him or her that parties have dialed in and are present. The judicial officer can continue doing his or her other work in the absence of such a notification rather than wait for parties indefinitely. By obviating the need to travel to court for their hearings, lawyers need not worry about delays caused by traffic and other transport difficulties.

further refined or even removed. What would remain unchanged is the Subordinate Courts' commitment and resolve as encapsulated by our Justice Statement,²⁴ in particular, our determination to achieve effective and fair dispute resolution, which is the model upon which our Civil Justice Division is built.

²⁴ The Subordinate Courts Justice Statement is as follows:

“One Mission: To Administer Justice; Two Objectives: To Uphold the Rule of Law, To Enhance Access to Justice; Three Goals: To Decide and Resolve Justly, To Administer Effectively, To Preserve Public Trust and Confidence; Four Justice Models: Criminal Justice – Protecting the Public, Juvenile Justice – Restorative Justice, Civil Justice – Effective and Fair Dispute Resolution, Family Justice – Protecting Family Obligations; Five Values: Accessibility, Expedition and Timeliness, Equality, Fairness and Integrity, Independence and Accountability, Public Trust and Confidence; Six Principles: The judges and magistrates subscribe to the principles in their Oath of Office and Allegiance; To Faithfully Discharge Judicial Duties, To do Right to All Manner of People, After the Laws and Usages of the Republic of Singapore, Without Fear or Favour, Affection or Ill Will, To the Best of their Ability, and To be Faithful and Bear True Allegiance to the Republic of Singapore.”