"Making the Civil Litigation System more efficient"

A speech delivered by Justice Judith Prakash of the Supreme Court of Singapore to delegates at the Asia Pacific Judicial Reform Forum Round Table Meeting in Singapore on 21 January 2009

Mr Chairman, panelists, ladies and gentlemen,

This morning, both District Judge Hoo Sheau Peng, Registrar of the Subordinate Courts and I have the privilege of sharing with you Singapore's experience in case management reform and delay reduction. In particular, I will be providing a broad overview of Singapore's experience in dealing with backlog from the early 1990s to now. Thereafter, Judge Hoo will present – in greater detail – the Subordinate Courts' efforts in modernising the reform and benchmarking process to ensure judicial excellence in the lower judiciary.

Introduction – Then and now

1. The goal of access to justice forms the cornerstone of judiciaries around the world. In 2006, the Singapore Judiciary meaning the Supreme Court and the Subordinate Courts, was able to clear 375,000 existing matters out of a volume of 377,000, i.e., a clearance rate of 99%. In 2007, 8,046 civil and criminal actions (including appeals) were filed in the Supreme Court. In the same year, the number of matters which were disposed of was 8,319. This meant that the Supreme Court's clearance rate in 2007 was 103.4% or, in other words, there was no backlog of cases because the number of cases disposed of was greater than the number of new matters filed. In the Supreme Court, at least 85% of writ actions are disposed of within 18 months of filing. As at 30 September 2008, there was a total of 1,060 pending writs before the High Court. Just slightly less than half of these cases had been pending for less than 6 months. Only 18% of the pending writs had been pending for 18 months or more.

2. The current situation is a far cry from the state of affairs in the past. By the early 1990s, the Courts had a massive backlog of cases waiting to be disposed of. In the Supreme Court, there were more than 2,000 pending cases which had been set down for trial but for which trial dates were only available 3 years or more later. There were more than 10,000 inactive cases, some of them more than 10 years old. About 44% of cases took between 5 and 10 years from commencement to disposal. Appeals took a further 2 to 3 years to be heard. Added to these delays were delays in the handing down of judgments.

3. Fortunately, the problem was tackled decisively and resolved within 2 to 3 years by the introduction of the following measures: (1) appointing more judges; (2) changing the rules of procedure to empower the courts to be proactive in the management of cases; (3) denying adjournments; (4) giving hearing dates to moribund cases; and (5) expanding the jurisdiction of the subordinate courts in terms of subject matter and the size of monetary claims, and transferring pending cases to them. As a result of the combined effect of these measures, the backlog of cases awaiting trial dates in the High Court was reduced from 2,059 in 1991 to 175 cases in 1993. The backlog of cases in the Court of Appeal was similarly reduced from 275 to 71 appeals. Since then, we have introduced many other measures to continue to ensure the efficient disposal of civil cases.

4. Courts around the word are increasingly formulating benchmarks and performance indicators to measure their performance. In the United States, the National Centre for State Courts, in conjunction with the Department of Justice, has devised a Trial Court Performance Standards and Measurement System to articulate specific goals for court performance. The Vera Institute in New York has designed a Global Guide to the Design of Performance Indicators Across the Justice Sector. In Australia, key time goals are measured for the time taken

between the filing of a matter to its completion and the time taken for reserved judgments to be delivered.

5. Singapore is no exception. We recognize not only the importance of maintaining target timelines and benchmarks, but also the importance of having timelines and benchmarks which are in line with international norms. There are three key performance indicators by which we monitor our cases. These three indicators may be summarized as "clearance", "disposal" and "trial date availability".

6. Firstly, we monitor our clearance rates closely. By clearance rate, we mean the number of pending matters disposed of during a period of time as a percentage of the number of new matters filed during the same period. This measures the number of cases entering and exiting the system. The ideal clearance rate is 100% annually. In the Supreme Court, we were able to obtain a clearance rate of 97% in 2005 and over the last two years, we improved it to 104% in 2007. This means that the number of cases disposed of in 2007 was greater than the number of new cases filed.

7. We also monitor the clearance rates of the individual categories of cases, for example, writs of summons, bankruptcy applications and civil appeals to the Court of Appeal. This allows us to ascertain if there are trends toward a rising number of cases in each of these categories and provides us with early warning signs so that we can take remedial action.

8. Secondly, we measure the lifespan of cases. While clearance rates give a quick snapshot view of the overall efficiency of the courts, they do not indicate how long each case takes to clear the system. Therefore, we monitor the development of each case from inception to ensure that the cases which have entered the courts do not remain there for too long before they are disposed of.

9. We seek to dispose of 85% of all writs filed within 18 months. This ensures that the lifespan of the majority of cases is not too long, while enabling more complex cases to have more time to come on for hearing.

10. Thirdly, we set a target of providing trial dates within 8 weeks from set down. One of the causes of our backlogs in the past was the inability of the courts to provide early trial dates for cases. Long trial dates have adverse consequences for everyone. The target of providing trial dates within 8 weeks ensures that cases which are ready for trial have trial dates which are not too far in the future. We have targets too for the hearing of interlocutory applications and appeals from the Registrars' and Subordinate Court decisions.

Measures for improving efficiency

11. Against this backdrop, I now move on to detail some of the measures taken by Singapore courts to make civil claims more efficient and affordable. Broadly, I can divide them into four categories, namely:

(a) Diversionary measures;

(b) Facilitative measures;

(c) Measures to monitor and control; and

(d) Dispositive measures.

Diversionary measures

12. The first measure that courts can take to improve the handling of civil claims is to facilitate the resolution of disputes before they reach the courts. Tapping into alternative dispute resolution resources and extra-judicial resources and establishing pre-action protocols will go some way to reduce the number of cases that have to be commenced in the courts and will save costs.

Alternative Dispute Resolution Measures – Arbitration and Mediation

13. In Singapore, we use both arbitration and mediation to divert disputes from the courts. This takes place at various stages of the formalization of a dispute and its disposal at a court hearing. For arbitration, diversion is normally done by the courts during pre-trial hearings when the Registrar or the Judge may suggest to the parties that the dispute should be arbitrated rather than litigated and it is then up to the parties to decide which route they want to take. The Singapore Institute of Arbitrators promotes domestic arbitration while the Singapore International Arbitration Centre is an arbitration centre for both domestic and international arbitration.

14. For mediation, in 1997, we established the Singapore Mediation Centre (SMC) to provide mediation services in respect of suitable High Court cases. We drew up guidelines on the types of disputes that are suitable for mediation, and the diversion exercise is done actively at pre-trial hearings. As mediation saves time and money, it is quite popular with litigants, and also, surprisingly, with the lawyers. Since 1997, more than 1,300[1] matters have been mediated at the SMC. The success rate of settlement through mediation stood at about 75% of all concluded matters. The total quantum of disputed sums in the cases that were mediated is estimated to be around S$1.573 billion. This number may seem small, but for a small jurisdiction like Singapore, it is quite substantial in comparison with the actual number of cases that were tried in the High Court.

15. In the Subordinate Courts, we are more aggressive in using mediation as a diversionary measure. We have pre-action protocols for non-injury motor accident (or NIMA) cases which form about 26% of the more than 35,000 civil writs filed in the Subordinate Courts each year. Out of these 9,347 cases, 13% (or 1,176 cases) involved claims of less than S$1,000. NIMA cases are simple cases but they consume a disproportionate amount of time and resources of the courts as well as of the parties. The NIMA protocol, which is a case

[1] A total of 1,312 matters had been mediated at the Singapore Mediation Centre as at 31 December 2007.

management regime allowing parties to obtain material information even before the writ is filed, was able to reduce the number of litigated claims from 13,406 in 2001 to 1,176 in 2006.

16. The success of the NIMA protocol resulted in the introduction of a similar protocol for medical negligence cases in January 2007. Although the volume of medical negligence cases is not high, they also consume a lot of time and resources.

17. In the Subordinate Courts, we have three key mediation avenues. Two of these are for family and other interpersonal disputes. The third, the Primary Dispute Resolution Centre (established in 1995), allows parties to settle their civil disputes before a dedicated judge. During these mediation sessions, the judge provides early neutral evaluation of the facts and applies facilitative mediation to assist the parties. Mediation is mandatory for all NIMA cases. In that way, the PDRC complements the pre-action protocol and the diversionary programme mentioned earlier for NIMA cases. For all other cases, the process is only initiated at the party's request, but a party may initiate it any stage in the proceedings prior to set-down for trial.

Resolution through extra-judicial resources

18. In August 2005, we launched a programme for disputes between consumers and financial institutions like banks and insurance companies to be resolved by the Financial Industry Disputes Resolution Centre which was set up by the Monetary Authority of Singapore (MAS). FIDREC mediates claims of up to $100,000 between insureds and insurance companies and claims of up to $50,000 between banks and other financiers and consumers. Since its launch, FIDREC has resolved a total of 1,387 complaints. This measure is diverting a large number of potential disputes away from the courts since the costs will be minimal and the disputes can be resolved quickly.

19. Moving on, FIDREC is poised for a significant expansion of its operations in the coming years. In May 2008, FIDREC lauched the Non-Injury Motor Accident Claims Scheme ("FIREC-NIMA Scheme") in collaboration with the Subordinate Courts, the Monetary Authority of Singapore, the General Insurance Association of Singapore and the Law Society of Singapore. This Scheme will require non-injury motor accident claims of up to S$1,000 and below to be first heard by FIDREC before court proceedings can be commenced. It is expected that the launch of the FIDREC-NIMA Scheme will add about 1,200 additional cases annually to FIDREC's current case load.

Facilitative Measures

20. The courts need to have a supporting infrastructure that facilitates the efficient disposal of cases. Such facilitative measures may be divided into 3 categories, namely, manpower, court processes and technology.

Manpower

21. The efficiency of the judiciary and the quality of its judgments can only be as good as the Judges, and of course, counsel. In Singapore, we appoint more judges whenever we see a rise in the backlog of cases. One of the causes of the backlog before the 1990s was the shortage of judicial manpower. In 1992, we had 19 judges in the higher judiciary. Now, with the backlog overcome, we have 15 judges in the higher judiciary including myself. In the early 1990s, we decided to appoint our brightest law graduates to serve as law clerks to the Judiciary. This has speeded up judicial decision making as well as the number of cases disposed of. We have also adopted a system akin to the English QC system to recognize exceptional counsel and encourage the development of specialist litigators.

Court processes

22. The Rules of Court must be designed to reduce the existing backlog and to prevent the building up of a backlog. In the early 1990s, we introduced a series of radical changes to the Rules of Court for civil cases to achieve both objectives. This is a continuing exercise. Between 1991 and 1996, we have amended the Rules 7 times. I will highlight a few of the more potent and effective measures.

Affidavits of evidence-in-chief

23. The Rules require the parties to file their evidence-in-chief in civil trials in the form of affidavits. This procedure has considerably cut down the time required for trials. Although Singapore was one of the early proponents of affidavits of evidence-in-chief, or what is more commonly known as witness statements in the common law world, this technique is no longer unique to Singapore.

Opening statement

24. The Rules of Court require an opening statement to be filed together with a bundle of documents and bundle of authorities a few days before a trial commences. This enables the trial judge to focus on key evidence and arguments during the trial. To prevent long legal oral arguments at the beginning of a case, the opening statements are usually taken as read and the case proceeds straight to the taking of the evidence.

Appellate advocacy – filing of cases and skeletal arguments

25. In the Court of Appeal, the times allotted for appellants' and respondents' speeches are tightly regulated: from 30 minutes each to up to 120 minutes each depending on the complexity of the issues of fact and law. The full arguments of the appellants and the respondents are contained in their respective written cases, filed within strict timelines after the issue of the judgment appealed

against together with bundles of authorities and core bundles of documents. Just before the hearing date, skeleton submissions must be filed.

Selective docket system and Specially Managed Civil List

26. We also use a docket system to manage selected high profile or complex cases. A dedicated registrar or a judge hears all applications in connection with the case.

Differential Case Management

27. We are presently exploring the use of different management procedures for different types of cases. Different internal case tracks are assigned to cater for different case types. All cases within that case type would then start on a default track, which could be changed according to the circumstances and progress of the case. For example, a simple personal injury case could be initially placed on a fast-track while more complex construction or intellectual property matters may be placed on a complex track, though either might switch tracks as the litigation develops. Differentiated case management already forms a key plank of benchmarks in other jurisdictions such as New York and the United Kingdom.

Technology

28. The third facilitative measure that courts can adopt is technology. Our courts have harnessed technology to assist with case management.

Electronic Filing System (EFS) and integrated Electronic Litigation System (iELS)

29. In 2000, Singapore introduced the Electronic Filing System (EFS) to provide end-to-end electronic filing and processing of documents from the law firms to the courts. More than 2.5 million court documents have been electronically filed and processed to date. On the average, about 2,000

documents are processed electronically on a daily basis. The EFS eliminates the need for manual delivery of documents as files can now be electronically routed and accessed by different users at the same time. EFS also automates certain checks on documents and automates the calculation of court fees and automatically deducts fees from the law firms' accounts. This makes the process fast, convenient and efficient.

30. We have recently embarked on the next phase of EFS. We call it the integrated Electronic Litigation System or iELS. The current EFS is paper-based. This has some inherent inefficiencies. First, the lawyers draft the court documents (say, in Microsoft Word format). Then, they convert the documents into a different format for uploading. Finally, in order to electronically file the document, they need to key in certain information into the system about the documents they are filing. There is a lot of unnecessary data entry for the lawyers or their filing clerks. With the new iELS, the focus will be on capturing structured, machine-processible information rather than documents. Once data is keyed in by lawyers when they prepare court documents, they will not have to re-key it again when they file the documents through the system. The data can then be seamlessly used by the courts for its workflow systems. This will reduce the effort required by both the law firms and the courts to process court documents.

Digital Transcription System (DTS)

31. In the past, in civil cases judges used to take down notes of the evidence. Shorthand reporters were available only in criminal cases. Then tape recording became available. Today, we have progressed to the Digital Transcription System (DTS) in the Supreme Court which facilitates the digital audio recording of all open court hearings. The digital audio record, which forms the official court record, also forms the foundation for the preparation of transcripts which is outsourced to an external vendor. It is an expensive service, paid for partly by

the courts and partly by the parties. Parties still have the option of asking the judge to record the evidence manually but this is not often resorted to as the saving in transcription costs is often exceeded by the costs of an extended trial.

Monitoring and control

32. The courts need to monitor the progress of the cases in the system to identify trends of delay early and to take the appropriate measures to address them.

33. An important measure of monitoring is active and aggressive case management. When the Singapore courts left the progress of litigation to the parties or their lawyers, it led to a huge backlog. In early 1990s, the courts decided to manage the cases instead of letting the lawyers do it. A rigorous case management system was adopted.

Pre-Trial Conferences

34. The most important feature of the system is the Pre-Trial Conference (PTCs) which may be called by the registrars (junior court of officers) at any time. At PTCs, parties are brought together to consider settlement, to narrow areas of dispute and to assess the parties' readiness to go for trial. Where they are not ready, directions would be given by the registrars, including "unless orders". Dates of trial are fixed even before the case is ready to be set down for trial. As a result of PTCs, more cases are being disposed of prior to set down. Last year, between January and September 2008, 80% of writ actions filed in the High Court were disposed of before set down.

Peremptory orders (or "unless orders")

35. In order to arm the registrars' directions with more "bite", the concept of peremptory orders (or more usually called "unless orders") was introduced. "Unless orders" are made only when a fresh set of directions are given after

default in complying with an earlier set. These orders are made to ensure compliance with the new set of directions.

36. "Unless orders" are not always made on the initiative of the court. In fact, the success of "unless orders" can be gleaned from the fact that parties now routinely ask the court to make "unless orders" against their opponents. Singapore is not alone in the use of "unless orders". Lord Woolf, sitting in the House of Lords in the case of *Grovit & others v Doctor & others* recommended that courts should more readily make "unless orders".

Trial dates certainty & hearing fees

37. PTCs and "unless orders" only assist to ensure efficiency before trial. Courts also need to ensure that trial dates are used efficiently, in order to save costs and time. Once a matter has been set down for trial, a strict adjournment/ vacation policy is adopted to ensure trial date certainty. The principle that trial dates are inviolable unless there are compelling reasons to vacate them has been endorsed in a Court of Appeal judgment in Singapore.

38. Further, the hearing fees scheme was introduced in 1993. This was aimed at controlling the use of court time as a noticeable trend towards longer trials had been observed. By imposing a substantial daily fee for the use of court time, we compelled parties to economise on the use of court time. In the High Court, payment starts on the fourth trial date, at $9,000 for the first 4 days if the value of the claim exceeds $1 million and thereafter on increasing scale up to $7,000 per day from the 11th day onwards. A somewhat lower rate applies to cases involving less money. This practice ensures that most trials are disposed of within 3 days.

39. Another related measure is to order the lawyer to pay the costs of any delay caused by his default or omission.

40. Hearing fees are imposed only for commercial cases, however. For personal injury claims or family matters involving divorce, custody and inheritance for example, no hearing fees are payable. In any event, the registrar has a general power to waive hearing fees in appropriate cases.

Dispositive measures

Auto-discontinuance

41. In addition to measures to monitor and control, the Singapore Courts also use a range of dispositive measures to assist with the clearance of cases.

42. In 2001, we introduced the rule of automatic discontinuance to ensure that inactive cases do not show up and add to the backlog. In essence, all cases in which no step in the proceedings has been taken in the past 12 months will be deemed to have been discontinued. This rule is effective in compelling lawyers to move the cases along. Parties may apply for leave to restore their cases to the list, but only for good reasons.

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