

# REPORT OF THE CIVIL JUSTICE REVIEW COMMITTEE

## Table of Contents

<b>I.</b>	<b>Introduction.....</b>	<b>2</b>
<b>II.</b>	<b>Summary of Key Proposals.....</b>	<b>6</b>
	A. Two key principles .....	6
	B. Specific recommendations .....	7
<b>III.</b>	<b>The Anchoring Ideas .....</b>	<b>10</b>
	A. Enhancing judicial control over civil litigation.....	10
	B. Default case management track with options .....	14
<b>IV.</b>	<b>Reforms to Pre-trial Procedure .....</b>	<b>17</b>
	A. Pleadings.....	17
	B. Case Management Conferences (“CMCs”) .....	18
	C. List of Issues (“LOI”) .....	20
	D. Filing of AEICs .....	21
	E. Single Interlocutory Application .....	24
	F. Disclosure of Documents .....	24
	G. Case Note.....	26
	H. Alternative Dispute Resolution (“ADR”) .....	27
	I. Factual Witness Evidence.....	29
	J. Expert Witness Evidence .....	30
<b>V.</b>	<b>Reforms to Trial and Appeals Procedure .....</b>	<b>33</b>
	A. Trial .....	33
	B. Appeals.....	34
<b>VI.</b>	<b>Reforms to Post-trial Procedure: Enforcement of Monetary &amp; Non-Monetary Judgments.....</b>	<b>36</b>
<b>VII.</b>	<b>Professional Training and Public Education Measures .....</b>	<b>37</b>
<b>VIII.</b>	<b>Review Mechanism to Assess Implementation of Recommendations.....</b>	<b>38</b>
<b>IX.</b>	<b>Conclusion .....</b>	<b>39</b>

## I. Introduction

1. Singapore's civil justice system is highly regarded, both domestically and internationally.
  - (a) Domestically, a perception survey conducted by the Ministry of Law in December 2015 found that 92% of Singaporeans had trust and confidence in our legal system, and agreed that our legal system was fair and efficient.<sup>1</sup>
  - (b) Internationally, Singapore's civil justice system was ranked 5<sup>th</sup> out of 113 countries in the 2017 World Justice Project Rule of Law Index. Singapore also enjoys an excellent reputation as a centre for dispute resolution.<sup>2</sup>
2. 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.
3. The current civil justice system works very well for the large majority of users and stakeholders. However, there is a need to continue reviewing and improving the system for users who may face difficulty in navigating the system. Their difficulties may arise from:

---

<sup>1</sup> "What Singaporeans think of the Legal System", online: <https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Annex%20-%20Survey%20of%20legal%20system%20infographics.pdf>.

<sup>2</sup> An independent study commissioned by the Singapore Academy of Law's International Promotion of Singapore Law Committee indicated an awareness of choosing Singapore law as governing law for cross-border transactions. Respondents cited Singapore's established legal system and the certainty of law as important considerations. See "Study on Governing Law & Jurisdictional Choices in Cross-Border Transactions", online: [http://www.sal.org.sg/Documents/SAL\\_Singapore\\_Law\\_Survey.pdf](http://www.sal.org.sg/Documents/SAL_Singapore_Law_Survey.pdf). See also para 15 of the speech by Chief Justice Sundaresh Menon at the Opening of Legal Year 2016.

- (a) The cost of civil litigation,<sup>3</sup> 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.

4. Against this backdrop, the Ministry of Law announced the establishment of the CJRC on 18 May 2016 to recommend reforms to Singapore's civil justice system.

5. The CJRC was chaired by Senior Minister of State for Law and Finance, Ms Indranee Rajah S.C., and comprised the following representatives from the judiciary, senior members of the Bar and the Government:<sup>4</sup>

- (a) Mr Ang Cheng Hock, S.C., Partner, Allen & Gledhill LLP (until 13 May 2018), Judicial Commissioner (from 14 May 2018);
- (b) The Honourable Justice Chua Lee Ming, Judge, Supreme Court of Singapore;

---

<sup>3</sup> The perception survey referred to in para 1(a) above found that only 62% of Singaporeans agreed that our legal system is affordable. In the 2016 World Justice Project Rule of Law Index, Singapore scored 0.63 out of 1 for "accessibility and affordability" of civil justice. In comparison, the Netherlands, whose civil justice system was ranked 1<sup>st</sup> out of 113 countries, scored 0.78 out of 1.

<sup>4</sup> The members are named in alphabetical order based on their last names. The Secretariat to the CJRC comprises Ms Sarala Subramaniam (Director, Legal Policy Division, Ministry of Law)(from 1 March 2018), Ms Constance Tay (District Judge, State Courts), Mr Paul Quan (Assistant Registrar, Supreme Court), Mr Senthil Dayalan (Senior Assistant Director, Legal Policy Division, Ministry of Law), Ms Wong Shiau Yin (Senior Executive, Legal Policy Division, Ministry of Law), Ms Yap Cai Ping (Senior Assistant Director, Legal Policy Division, Ministry of Law).

- (c) Mr Hui Choon Kuen, Deputy Chief Counsel (Advisory), Civil Division, Attorney-General's Chambers;
- (d) Mr Philip Jeyaretnam, S.C., Global Vice-Chair & Regional Chief Executive Officer, Dentons Rodyk & Davidson LLP;
- (e) Mr Hri Kumar Nair, S.C., Director (Dispute Resolution), Drew & Napier LLC (until 28 February 2017), Deputy Attorney-General (from 1 March 2017);
- (f) Ms Thian Yee Sze, Director-General (Legal Group), Ministry of Law (until 14 February 2018);
- (g) Ms Tammy Low, Director (Legal Group), Ministry of Law (from 1 March 2018); and
- (h) Mr Alvin Yeo, S.C., Chairman and Senior Partner, WongPartnership LLP.

6. 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.
- (c) A review mechanism to assess the implementation of the CJRC's recommendations two years post-implementation.

7. The CJRC adopted the following guiding objectives in the course of its work:

- (a) Advancing access to justice for all persons, including litigants-in-person and SMEs; and
- (b) Ensuring fairness, affordability, timeliness, simplicity, and effectiveness for all litigants, these being the core values of the Singapore civil justice system.

8. In making the recommendations found in this Report, the CJRC drew on the experience of its members, a wide range of academic and practice-oriented material, as well as comparative studies on international best practices and reports of study visits<sup>5</sup> prepared by the Secretariat.

9. The CJRC also considered the recommendations of the Civil Justice Commission (“CJC”) which was constituted by the Honourable Chief Justice Sundaresh Menon at the Opening of the Legal Year on 5 January 2015.

10. The overall objective of the CJC is to transform the litigation process by modernising it, enhancing efficiency and speed of adjudication and maintaining costs at reasonable levels.

11. The key areas which the CJC addressed are the simplification of rules, avoiding outdated language without discarding established legal concepts, eliminating time-consuming or cost-wasting procedural steps, ensuring fairness to all litigants, making good use of advancements in information technology and allowing greater judicial control of the entire litigation process.

---

<sup>5</sup> Study trips were conducted to civil and common law jurisdictions including France, Germany, the Netherlands, and the United Kingdom.

## **II. Summary of Key Proposals**

### **A. Two key principles**

12. The CJRC recommends that the civil justice system in Singapore be reformed in accordance with the following two key principles.

#### *Enhanced judicial control over civil litigation*

13. Judges should have enhanced control over the litigation process with a view to ensuring more effective and efficient disposal of cases. Judges should be “active” judges, involved from the outset and, as cases progress, working with parties to find the best way to resolve each case, and eliminating extraneous issues.
14. Court procedure should be simplified to ensure that applications filed in relation to each case are proportionate to claim value and the means of parties, without unduly compromising justice.

#### *Default case management track with options*

15. Procedures for cases leading up to trial should be streamlined. Unnecessary interlocutory applications which take up the time and resources of parties and the courts should be avoided. The majority of cases should therefore follow a default track, this being a single streamlined procedure with options available for time- or cost-intensive procedures.
16. Recognising that cases may differ substantially in terms of the time and costs required for their fair and timely disposal, parties will be given the autonomy and flexibility to select options where those are available by mutual consent.

## **B. Specific recommendations**

17. The CJRC's specific recommendations are as follows:

### *Reforms to pre-trial procedure*

18. The CJRC's overarching policy goal is to facilitate the crystallisation of key issues in dispute at an early stage of proceedings which will in turn enable the case to progress more efficiently. For example, the proper identification of issues means a more focused scope of discovery and witness evidence, thus minimising wasted time and costs.

19. The CJRC also proposes:

- (a) Forms of pleadings for common types of claims, to reduce the occurrence of inadequate or prolix pleadings.
- (b) Enhanced involvement of the court at the pre-trial stage, through Case Management Conferences.
- (c) The introduction of the List of Issues for the purposes of case management. This encourages parties and their counsel to actively identify and crystallise the issues early.
- (d) That the court *may* order the filing and exchange of AEICs of all or some factual and expert witnesses before disclosure of documents. This will avoid the possibility that witnesses may adjust their evidence to match disclosed documents, and reduce the volume of disclosure.
- (e) By default, an arbitration-style disclosure regime. This will reduce time and money spent on the discovery process as well as the potential for dispute

over discovery-related matters. The court will retain a residual discretion to allow general discovery on application by either party if the court is satisfied that this is in the interests of justice.

- (f) A single interlocutory application, to streamline all interlocutory proceedings.
- (g) The introduction of a Case Note that briefly sets out each party's position and arguments on disputed issues. This will assist the court in understanding parties' cases, and require parties to think about their arguments at an early stage.
- (h) Empowering the court to direct parties to attend Alternative Dispute Resolution.
- (i) Requiring parties to submit a list of proposed factual witnesses, and giving judges the power to call factual witnesses not called by either party and to question such witnesses.
- (j) Appointment of a single court expert by default where expert evidence is necessary. In general, parties will not be permitted to appoint their own expert witnesses. This is to reinforce the expert's objectivity and better enable them to carry out their duty to assist the court.

#### *Reforms to trial and appeals procedure*

20. In relation to the trial and appeals process, the CJRC proposes:



- (a) Enhanced judicial involvement during trial. For example, judges will be empowered to directly question witnesses, or restrict the issues on which a witness may be examined.
- (b) Reduce the number of applications for leave to appeal to the Court of Appeal, a High Court Judge and Judge of Appeal can jointly decide whether to grant leave on the basis of written submissions without oral hearing. The decision on whether to grant leave will be final and non-appealable.

*Reforms to post-trial procedure*

- 21. The CJRC recommends moving away from the current court-centric enforcement system towards the private enforcement of judgments.

*Professional training and public education measures*

- 22. In light of the substantial changes to the landscape of civil justice:
  - (a) Judges and lawyers should undergo the necessary training to ensure effective implementation of the recommendations; and
  - (b) There should be public education to inform members of public of the key features which affect them.

*Review mechanism to assess implementation of recommendations*

- 23. The Ministry of Law should work with the courts to assess the implementation of the recommendations two years post-implementation.
- 24. The CJRC's proposals are set out in more detail below.

### **III. The Anchoring Ideas**

25. The proposed reforms are undergirded by two anchoring principles:

- (a) Enhancing judicial control over civil litigation; and
- (b) Default case management track with options.

#### **A. Enhancing judicial control over civil litigation**

26. Enhanced judicial control will reduce the length and cost of proceedings by enabling judges to:

- (a) Focus parties on key issues;
- (b) Provide case management directions to fit individual cases (i.e. adopt a judge-led, not rule-led, approach);
- (c) Where appropriate, encourage parties to settle the dispute or consider alternative dispute resolution; and
- (d) Conclude proceedings through summary judgment, striking out or dismissal of the case, when judges are of the opinion that continuation is not useful.

27. 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.

28. Enhancing judicial control requires us to rethink the role of the judge in an adversarial system, and the purpose of procedural rules.

*Role of the judge in an adversarial system*

29. The CJRC recommends a move from the current system where the judge focuses largely on adjudication to a role where the judge works more actively with parties to find the best way to resolve a case.
30. In established common law jurisdictions,<sup>6</sup> judges are playing an increasingly active role throughout court proceedings, while maintaining the adversarial nature of the system.
31. In civil law jurisdictions with inquisitorial systems, such as Germany, judges play a highly active role. For example, German judges work to facilitate and promote settlement between parties and provide preliminary, non-binding evaluation of the merits of the case.
32. In Singapore, judges have played an increasingly active role in civil proceedings over the years. In 2013, the Chief Justice spoke about the docketing system, and the notion of judges participating in active case management.<sup>7</sup> In late 2014, a simplified civil process under Order 108 of the Rules of Court was introduced. This simplified process involves active and robust case management.

---

<sup>6</sup> In the UK, Judges of the UK Commercial Court and the UK Technology and Construction Court play an active role in formulating the list of issues in dispute, deciding the scope of disclosure, and fixing the pre-trial timetable. In the United States, the federal courts switched to the individual case assignment model in the late 1960s. See Steven S. Gensler, "Judicial Case Management: Caught in the Crossfire". In Australia, a similar initiative based on the US docket system was introduced in the 1990s, where each Judge is responsible for the matters in her/her docket. See Chief Justice James Allsop's speech "*Judicial Case Management and the Problem of Costs*" delivered on 9 September 2014 [2014] FedJSchol 16.

<sup>7</sup> At OLY 2013, CJ said "Judges will also ensure by active management that cases are disposed of efficiently, and that adjournments and the disruption of having matters part-heard are minimised, if not avoided."

33. Likewise, there is active judicial case management for cases under the Community Disputes Resolution Act<sup>8</sup> and the Family Justice Act.<sup>9</sup>
34. The desired outcome is a judge who strikes an optimal balance between adjudicating a case and resorting to judicial activism. The CJRC proposals are calibrated to empower a judge to actively shepherd a case towards a timely, cost-effective conclusion without impinging on the rigour which the adversarial system brings to bear in the adjudication of disputed issues.

*Purpose of procedural rules*

35. The CJRC recommends a move towards a procedure that is proportionate to claim value and the means of parties, without unduly compromising justice.
36. In this enhanced judge-led system, procedural rules should be drafted in a manner which gives judges sufficient flexibility to respond to the particular facts of each case, and manage individual cases in the most efficient manner possible.

*Critical success factors for a judge-led system*

37. For the judge-led approach to succeed, there are certain critical factors which must be in place:
- (a) Firstly, there must be a sufficient number of judges, each with adequate capacity and time to understand, prepare and be actively involved in every case he handles.

---

<sup>8</sup> See Kee Oon, Welcome Remarks at the “Resolving Community Disputes Seminar” (23 September 2016), at para 10.

<sup>9</sup> Sundaresh Menon, Keynote Speech at the Opening of the Family Justice Courts (1 October 2014), at para 22.

- (b) Secondly, judges must be empowered to manage the case and intervene at any time during the proceedings to give directions on important issues and identify areas where evidence is lacking. This ensures that the issues are fully ventilated at first instance, minimising the potential for costly, time-consuming appeals or further arguments. This will also level the playing field between parties, as the judge will be able to intervene in situations where the unrepresented party fails to identify critical issues.
- (c) Finally, judges must be consistently involved in the progress of the case so that the judge will be familiar with the facts and evidence regarding the case. Without this, judicial intervention is unlikely to be effective.

38. Judicial intervention may take the following forms:

- (a) Directing parties to address a relevant issue which has not been raised by either party;
- (b) Directing parties not to address an irrelevant issue which has been raised by either party;
- (c) Encouraging parties, through questions, to consider material claims or defences;
- (d) Directing parties to clarify any ambiguity in the pleadings or evidence;
- (e) Directing parties or witnesses to adduce evidence in support of any relevant issue, subject to the law of evidence; and

- (f) Directing parties to remedy any technical deficiencies in their cases (such as lack of standing or jurisdiction, incorrect parties and material clerical errors).
- 39. This list should not be taken as an exhaustive or closed list of directions which a judge may make.
- 40. Notwithstanding his active role, a judge must continue to maintain his impartiality, and also be seen to be impartial. It is important for judges, lawyers and the general public to understand the rationale for the changes, and to approach the new procedures with the appropriate mind-set. This can be achieved through professional training and public education.
- 41. The proposals in relation to professional training for judges and lawyers are described below (at **Section VII**).

## **B. Default case management track with options**

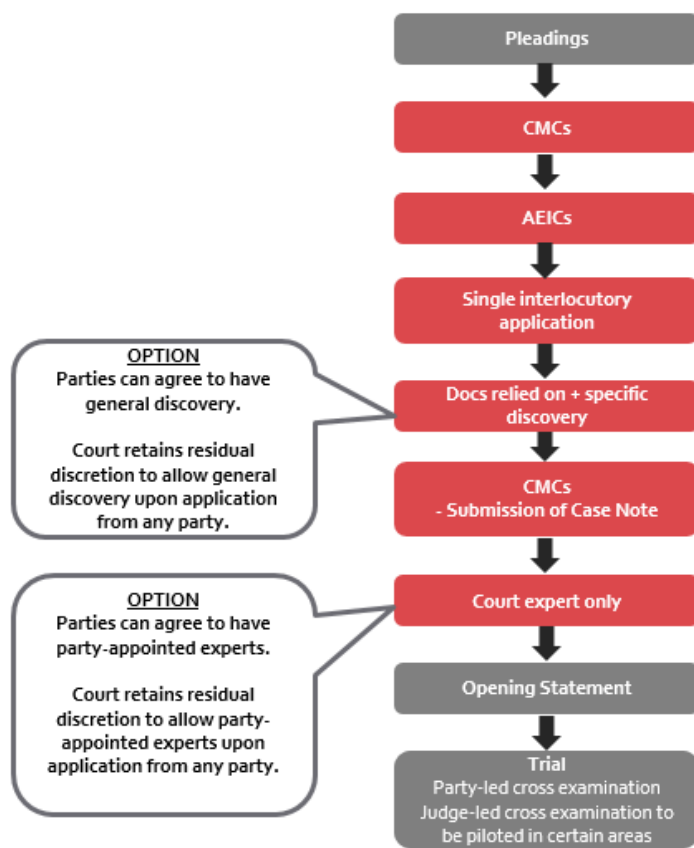
- 42. The CJRC recommends that the majority of cases proceed along a default procedural track, with the option for parties to select more time or cost-intensive options by mutual consent.
- 43. The aim of this default track is to (i) ensure that the amount of time and costs needed to resolve a dispute are proportionate to the value of the claim; and (ii) level the playing field between litigants of varying resources.
- 44. In cases where the parties are equally well-resourced and matched, they can opt for procedural options that give them greater autonomy over the conduct

of their respective cases. The key features of these options are time- and cost-intensive procedures such as general discovery and party-appointed expert witnesses.

45. Providing parties with such options will help to maintain Singapore's reputation as an international dispute resolution hub, which is capable of handling all types of disputes. In particular, Singapore will still be able to attract high-value commercial cases, where costs are less of a concern.

*Features of the proposed default track system*

46. The proposed default track will consist of one streamlined procedure, with options available for time- or cost-intensive procedures. Parties will be given the flexibility and autonomy to select options, such as options for general discovery or the use of party-appointed experts, by mutual consent. Even if parties are unable to agree, the court will retain the discretion to allow the option on an application by any party.
47. There will be cost consequences to parties should they depart from the default track.
48. Proposed enhancements to pre-trial, trial and post-trial procedures in the default track as well as the options available will be described in **Sections IV, V and VI** in greater detail.
49. The default track is graphically illustrated as follows:





#### **IV. Reforms to Pre-trial Procedure**

50. The following sections discuss the proposed reforms to pre-trial, trial and appeals, as well as post-trial procedures.

##### **A. Pleadings**

51. Pleadings forms for common types of claims such as personal injury and supply of goods) should be introduced and their use encouraged, but not made mandatory. These forms will be akin to the forms found in Appendix A to the Rules of Court.
52. Today, pleadings are often either inadequate or prolix, creating problems both for parties and the courts, as:
- (a) Inadequate pleadings prevent the parties and the court from establishing the key issues until a much later stage.
  - (b) Prolix pleadings result in wasted time and costs. Parties have to respond to the immaterial facts pleaded and subsequently deal with an overly-broad scope of discovery and witness evidence.
53. These problems are exacerbated in cases involving litigants-in-person, who do not know which facts are relevant, and which facts should or should not be adduced in the pleadings.
54. The object of the forms is to provide more guidance, particularly for litigants-in-person, to facilitate the preparation of adequate pleadings.

## **B. Case Management Conferences (“CMCs”)**

55. The objective of CMCs is to provide a “command centre” for all matters relating to case management, and therefore facilitate active judicial management of a case.
56. Currently, trial judges are only involved in a case at a fairly advanced stage of the proceedings. A judge is typically assigned to a case only after parties have finalised their bundles of documents, and filed their respective AEICs. The judge’s involvement at that stage is largely limited to issuing directions regarding opening statements and the duration of cross-examination of witnesses. As a result, inadequacies in the pleadings, documents, or witness evidence are only unearthed during the trial.
57. In order to minimise the problems above, the court should ideally meet the parties more regularly. This will enable the judge to provide directions on case management, and work closely with the parties as the case progresses.
58. The CJRC proposes that once a claim is filed, it should be managed by a judge and/or relevant judicial officer, who will manage the case throughout its life-cycle. This will allow the court to:
- (a) Conduct “milestone CMCs” (whether provided for in the Rules or convened by the judge) at key points in the progress of a case. The CJRC suggests that there could be four milestone CMCs fixed at the following points of the litigation process:
    - (i) After the close of pleadings;
    - (ii) At the stage of interlocutory applications;

- (iii) Exchange of evidence; and
  - (iv) In the lead up to trial.
- (b) Work with parties to formulate the List of Issues (“LOI”) with a view to refining it and identifying the important sub-issues as the case progresses.
- (c) Give case management directions, after taking into account the LOI and considerations of cost-proportionality. Such directions must be strictly adhered to and can include directions on:
  - (i) disclosure of documents (if the option is exercised);
  - (ii) filing of interlocutory applications;
  - (iii) number of factual witnesses;
  - (iv) number of expert witnesses, if necessary (if the option is exercised);
  - (v) necessity and scope of evidence to be adduced from factual and/or expert witnesses;
  - (vi) exchange of AEICs;
  - (vii) submission of the Case Note; and
  - (viii) trial dates and length of trial.

59. Aside from the four milestone CMCs described above, CMCs can be convened as and when necessary, bearing in mind the fact that multiple and lengthy CMCs may be counter-productive and escalate costs. Parties can communicate with the court via correspondence as well, reducing the need for CMCs to be scheduled.

60. CMCs should be attended by the lead counsel, or a counsel who is familiar with the case and has sufficient authority to make decisions. Otherwise, the court may stand down or adjourn the CMC until a counsel who has sufficient knowledge or authority is present.

### **C. List of Issues (“LOI”)**

61. The CJRC proposes that parties be forced to narrow and crystallise the issues in dispute by filing a LOI at an early stage of proceedings. The LOI is to be a neutral case management tool which identifies the principle issues in dispute in a structured manner, and enables the court and parties to determine matters such as the scope of disclosure of documents, as well as the scope of factual and expert evidence which should be adduced.
62. Under the current system, the issues in any particular case are not crystallised until at a fairly late stage in the proceedings. The list of issues for trial, including any agreed issues, is submitted as part of the Lead Counsel’s Statement, usually one week after objections to AEICs are taken.<sup>10</sup>
63. Lack of clarity on the issues in dispute inevitably results in unsatisfactory case management, and manifests itself in a poorly defined scope of discovery of documents and witness evidence, which in turn leads to wasted time and costs. It is also difficult for judges and registrars to issue meaningful case management directions if the relevant issues in dispute are unclear.

---

<sup>10</sup> Paragraph 63A of the Supreme Court Practice Directions.

64. That said, parties may not be able to agree on an LOI at the outset as both parties may view the relevant issues from the perspective of their respective cases. Thus, the court should be actively involved and work with parties in formulating the LOI during CMCs. Parties should submit a working draft of the LOI prior to the first milestone CMC. By crystallising and narrowing the issues at this stage, parties can minimise the amount of discovery and preparation work to be done. The court will then work with parties to review and refine the LOI at CMCs. This process of review and refinement is an ongoing process: the LOI may change as the case progresses to trial, as facts and evidence become clearer.
65. Where both parties are unrepresented, and thus unable to prepare the working draft LOI, the court may work with parties to draft the LOI during the CMC itself.

#### **D. Filing of AEICs**

66. The CJC proposes that the court *may* order that the AEICs of all or some of the witnesses be filed and exchanged before disclosure of documents. The CJRC supports this proposal. This is similar to the approach taken by the Supreme Court of New South Wales.<sup>11</sup> Parties may amend their filed AEICs following disclosure of documents, but only with leave of Court.
67. In the current civil procedure, parties will file and exchange their own and their witnesses' AEICs to support their case after the disclosure of documents but

---

<sup>11</sup> NSW Supreme Court Practice Note SC Eq 11: 'Disclosure in the Equity Division'

before trial. There may be a risk of parties or witnesses adjusting their AEICs to fit the evidence produced during discovery. In addition, AEICs are currently filed too late in the proceedings to assist in narrowing the issues in dispute and the scope of discovery.

68. The purpose of filing and exchanging AEICs before disclosure is to shift the focus of witness evidence to the case put forward through pleadings.<sup>12</sup>

Requiring parties to exchange witness evidence earlier in the proceedings will:

- (a) Enhance the authenticity of evidence in the AEICs.
- (b) Assist in narrowing the issues in dispute from an earlier stage in the proceedings, hence narrowing the scope of discovery.
- (c) Reduce the volume of and amount of time spent on the disclosure of documents since early production of witness evidence may facilitate the identification of crucial issues in court proceedings.<sup>13</sup>
- (d) Encourage parties to settle if they are required to have regard to their own evidence without examining their opponent's documents.<sup>14</sup>

69. There are potential concerns with the filing and exchange of AEICs before disclosure of documents, namely:<sup>15</sup>

- (a) Parties will have to interview witnesses before disclosure to prepare the AEICs and repeat the process after disclosure, resulting in additional costs.

---

<sup>12</sup> S Wang and J Virgo, 'A lesson from the Bench: More detail on disclosure in Equity Division', *Clayton Utz*, 10 May 2012

<sup>13</sup> Australian Law Reform Commission, 'Access to Discovery and General Discovery', *Managing Discovery: Discovery of Documents in Federal Courts*, ALRC Report 115, 24 March 2011, at [6.85].

<sup>14</sup> S Wang, 'A rocket in Equity? NSW Supreme Court to require evidence before discovery', *Clayton Utz*, 21 March 2012

<sup>15</sup> Australian Law Reform Commission, *Discovery in Federal Courts (ALRC CP 2)* (2010)

- (b) Parties may face difficulties identifying witnesses in the early stages of the proceedings.
- (c) In simpler claims where the disclosure process is straightforward, additional costs may be incurred in filing AEICs before disclosure which are not proportionate to the costs saved from a reduced scope of disclosure.
- (d) Parties may try to game the system by filing a bare AEIC at the outset, only to file a more substantive supplemental AEIC closer to trial (after discovery has taken place). Parties may also make more applications for leave to file supplemental AEICs.

70. These concerns however, are premised on the assumption that counsel and parties will continue to prepare for cases as they have done to-date. Under the CJRC's proposals, parties and their counsel will have to engage in a much more thorough preparation of witness evidence at an early stage of proceedings. While this may frontload the costs incurred to prepare witness evidence, it will result in greater time and costs savings for parties in the long run.

71. In addition, the court will not exercise its powers to order AEICs to be filed and exchanged before disclosure of documents if parties are unable to prepare their AEICs without the documentary evidence uncovered during the disclosure of documents. This is especially so for cases where there is asymmetry of information as the party without the necessary information may have difficulties preparing his AEICs without the disclosure of documents.

## **E. Single Interlocutory Application**

72. Interlocutory proceedings should be streamlined. Before the first CMC, each party should indicate which interlocutory applications it intends to file. The CJC proposes that the court will generally order all those applications to be made in one single interlocutory application. While applications indicated before the first CMC can be filed as of right, the court's permission must be obtained to file any further interlocutory applications which were not previously indicated. The CJRC supports this proposal.

## **F. Disclosure of Documents**

73. By default, arbitration-style disclosure of documents should be adopted. Each party will provide disclosure of documents relied upon, and may apply for specific discovery thereafter. The objective of the proposal is to reduce time and money spent on the discovery process as well as the potential for dispute over discovery-related matters.
74. The current process of general discovery followed by specific discovery has led to situations where the time and costs spent on discovery are disproportionate to the complexity and value of the claim.<sup>16</sup> In particular:

---

<sup>16</sup> For egregious cases in the UK, see *Seven Network Limited v News Limited* [2007] FCA 1062 (in Supreme Court Consultation Paper, "Review of Discovery in Civil Litigation" (2011)) and *Digicel (St Lucia) Ltd v Cable & Wireless* [2008] EWHC 2522 (Ch) (in UK Ministry of Justice, "Review of Civil Litigation Costs: Preliminary Report, Vol 2", p 379-380 (2009)). In the United States, there are estimates that the cost of discovery comprises almost 50% to 90% of the total cost of litigation. (See: John H. Beisner "Discovering a better way: The need for effective civil litigation reform" (2010) Duke Law Journal 547 at 549)



- (a) Technological advancements have made it possible to store large volumes of documents and metadata electronically, and the use of imaging software to retrieve deleted documents.
- (b) This means that parties potentially go through voluminous documents without uncovering any useful information.
- (c) In some cases, the discovery process may even be abused to delay proceedings, or to harass and wear out the opposing party.

75. To counter the concern that the arbitration-style of discovery may enable parties to withhold documents adverse to their own case, the availability of specific discovery will enable a party to request documents (in particular, documents which are adverse to the party holding them) from the other party.
76. Some members of the CJRC noted the merits of the arbitration-style disclosure of documents but pointed out the limitations to this. In contrast with arbitration-style disclosure where parties are not bound to disclose documents not specifically sought by the other party, general discovery requires parties to disclose documents even if these are adverse to their case. This makes general discovery especially important in cases where there is asymmetry of information between parties, and the party with less information requires the discovery process to uncover documentary evidence that will support his case.
77. To address this concern, the CJRC proposes that the court should retain a residual discretion to allow general discovery on application by any party if it is satisfied that it is in the interests of justice. It will be in the interests of justice

to allow such broader scope of discovery where such a broader scope could aid in disposing fairly of the proceedings.

78. While the arbitration-style discovery regime will be applicable by default, parties will be given the option to apply the existing disclosure regime in their proceedings (i.e., general discovery followed by specific discovery) if both parties consent to this. This will provide flexibility to well-resourced and sophisticated parties in high-value commercial disputes.

## **G. Case Note**

79. Parties will be required to submit a Case Note to the court at the pre-trial stage, preferably before directions on evidence are given. This Case Note will replace the Lead Counsel's Statement. The Case Note will briefly set out each party's position and arguments on disputed issues. Taken together with the LOI, the Case Note will assist the court in understanding each party's case, and in giving directions on evidence. The Case Note is not binding on parties in terms of their eventual positions as it is envisaged that the Case Note will change as the case evolves. Rather the Case Note will be a case management tool that is intended to assist both the court and parties to identify, crystallise and refine the factual and legal issues for adjudication, with a summary of the parties' positions. It should also establish areas that are not in dispute and which do not require adjudication.
80. Currently, parties in civil proceedings consider their case and prepare their arguments shortly before trial. As parties are not aware of the arguments the

opposing party intends to raise, they may not address the opposing arguments raised during trial.

81. The requirement to file a Case Note will require parties to think about their case and arguments at an earlier stage, and allow a party sufficient preparation time to address arguments raised by the opposing party. This will ensure that both parties are able to address arguments raised during trial, thus allowing proceedings to be conducted in a timely and efficient manner.
82. An appropriate page limit for the Case Note should be imposed, to ensure that parties do not file lengthy Case Notes.

## **H. Alternative Dispute Resolution (“ADR”)**

83. Parties should be directed to consider ADR as a first step before commencing proceedings in court. The court will have the power to direct parties to attend ADR (i.e. mediation, neutral evaluation, amongst others).
84. At present, although their case may be more suitably resolved through ADR, parties may not be adequately apprised of their ADR options, and may not be aware of the advantages of resolving their disputes through ADR.
85. The objective of the proposal is to encourage “*appropriate* dispute resolution”.<sup>17</sup> While the court-based approach to dispute resolution has its strengths, it may not always be the most appropriate mode in every case.<sup>18</sup>

---

<sup>17</sup> Chief Justice Sundaresh Menon speaking extra-judicially at the Global Pound Conference Series 2016, “Shaping the Future of Dispute Resolution & Improving Access to Justice” at para 25, citing Jeffrey Scott Wolfie, “Across the Ripple of Time: The Future of Alternative (Or, Is It Appropriate) Dispute Resolution” (2001) 36(4) Tulsa Law Review 785.

<sup>18</sup> Chief Justice Sundaresh Menon speaking extra-judicially at the Global Pound Conference Series 2016, “Shaping the Future of Dispute Resolution & Improving Access to Justice” at para 24.

While ADR may not necessarily lead to settlement in every case, it will provide a forum for parties to ventilate key issues. Even if this only results in a narrow scope of agreement, it may aid in moving the case forward by reducing the issues in contention.

86. Parties who are not willing must demonstrate compelling reasons why ADR is inappropriate. Notwithstanding the power to direct parties to attend ADR, the court will, as far as possible, encourage parties to attend ADR by consent.
87. ADR should be conducted by a third party, namely:
  - (a) A private mediator or neutral evaluator (e.g., from the Singapore Mediation Centre); or
  - (b) An in-house court mediator or neutral evaluator. The in-house court mediator or neutral evaluator conducting the ADR may be a High Court or a District Court judge who is not the trial judge allocated to the case. Such in-house ADR sessions may be provided to parties at a low cost or free-of-charge if feasible, bearing in mind the significant judicial resources likely required for implementation.
88. There will be more robust use of cost sanctions to discourage unreasonable refusals to attempt ADR or reach an amicable resolution of the matter. For instance, parties' conduct in relation to any attempts at resolving the cause or matter by ADR will be considered when ordering costs.

## **I. Factual Witness Evidence**

89. The CJRC proposes that:

- (a) Each party be required to submit a list of proposed factual witnesses to court; and
- (b) The judge be given the power (to be exercised sparingly) to call, on his own motion, a factual witness who is not in any party's list of witnesses and question that witness.

90. Currently, civil proceedings are lengthened when parties adduce unnecessary or irrelevant evidence from factual witnesses (whether written or oral) which does not assist in the fair and expeditious resolution of the dispute.

91. The objective of CJRC's proposal is thus to ensure, as far as possible, that parties call factual witnesses who are likely to provide evidence necessary and relevant to the dispute. Based on the LOI, Case Note and taking into account cost-proportionality considerations, the judge or registrar may issue directions on the following matters during the CMCs:

- (a) The number of factual witnesses;
- (b) The necessity and scope of evidence to be adduced from the factual witnesses; and
- (c) The manner in which evidence will be adduced, *e.g.*, length of examination.

92. The judge may also exercise a power to call a factual witness if none of the parties intends to call a witness whose evidence, in the judge's opinion, is likely to be necessary to resolve the dispute. The judge may question such a

witness before parties may ask further questions of the witness. Parties will share the cost of a witness called by the judge on his own motion.

93. Before exercising this power, the judge should ask parties why the witness was not called. After hearing and considering the reasons given by parties, the judge may exercise the power to call that witness on his own motion if he is still of the view that the witness' evidence is necessary to resolve the dispute. Some members of the CJRC noted that the proposed power for the judge to call and question a factual witness on his own motion should be exercised sparingly. This is to protect the judge from being perceived as having taken a particular perspective of the proceedings and assessed as no longer being a neutral umpire between parties.

## **J. Expert Witness Evidence**

94. The default position should be for a single court expert to be appointed in cases where expert evidence is necessary. The single court expert will be granted access to all evidence to assist in the formulation of his expert opinion. Generally, no party expert witnesses will be permitted. Where all parties are able to agree to the appointment of a particular expert witness, that expert will be appointed as the court expert.
95. There are difficulties with the current system which sees each party appointing its own expert witnesses, these being:
- (a) The expert witnesses often have irreconcilable differences in opinion. Their evidence may then unnecessarily complicate the issues before the court,

thus becoming counterproductive rather than helpful to the adjudicative process.<sup>19</sup> Indeed, the courts have sometimes found it necessary to disregard the conflicting opinions altogether.<sup>20</sup>

- (b) Party-appointed experts are presented with the facts of the case framed according to a particular perspective by the party engaging them. This may influence their interpretation of the evidence.
- (c) The disproportionately high costs usually incurred in the preparation and presentation of expert testimony.<sup>21</sup>

96. Our Court of Appeal has noted that it may be “wise and prudent” for parties to apply to the court to appoint an impartial and objective expert.<sup>22</sup> In Germany, a single court expert is selected and appointed by the court where expert evidence is necessary. While a party may also appoint his own expert, the court will discount the views of a party-appointed expert on account of his lack of neutrality.

97. The court will retain the discretion to allow party experts on the application of any party. In determining whether to allow party experts, the judge will take into account the following factors:

- (a) Views of the parties;

---

<sup>19</sup> Jeffrey Pinsler, “Expert Evidence and Adversarial Compromise: A Re-Consideration of the Expert’s Role and Proposals for Reform” (2015) 27 SAcLJ 55 at 56 and 59.

<sup>20</sup> See *Wong Meng Cheong v Ling Ai Wah* [2012] 1 SLR 549 at [200]

<sup>21</sup> Jeffrey Pinsler, “Expert Evidence and Adversarial Compromise: A Re-Consideration of the Expert’s Role and Proposals for Reform” (2015) 27 SAcLJ 55 at 59.

<sup>22</sup> *Muhlbauer AG v Manufacturing Integration Technology Ltd* [2010] 2 SLR 724 at [45].

(b) Cost proportionality-related issues such as the amount of money or property involved, the complexity of the expert issue(s), whether parties have already engaged their own experts; and

(c) Whether evidence from a party expert is necessary to reach a just outcome.

98. While the above position will be applicable by default, parties should be given the option to appoint their own expert witnesses if all parties so agree. Where parties appoint their own experts, the judge should first approve a common brief which sets out the issues to be referred to the experts.

99. Where there is more than one expert witness, the court may, of its own motion, order the expert witnesses to testify as a panel (commonly known as “hot-tubbing” or “concurrent expert evidence”). Currently, the court is allowed to order expert witnesses to testify as a panel only if parties consent to do so. This proposal gives the court the flexibility to decide how evidence should be given by expert witnesses.



## **V. Reforms to Trial and Appeals Procedure**

### **A. Trial**

100. Just as there should be increased judicial involvement before a case comes to trial, so judicial involvement during the trial should be enhanced. This should include giving judges powers to take greater control of the conduct of the trial, and in particular, the cross-examination of witnesses, always bearing in mind the need of judges to be impartial.

101. Lengthy trials lead to excessive time and costs being expended to resolve the dispute. Trials may be prolonged because parties address issues which are not key to resolving the dispute, and engage in unnecessarily extensive cross-examination of witnesses.

102. The CJRC therefore proposes that the judge may exercise the following powers at any time during trial:

- (a) Directly question witnesses, including on issues outside the scope of pleadings if necessary.
- (b) Restrict the issues for examination of witnesses.
- (c) Restrict the time for examination of witnesses.<sup>23</sup>
- (d) Direct the order in which any speech or evidence by a party or witness should be made or given.

---

<sup>23</sup> Under the O 108 simplified civil process, simplified trials are conducted with limited times allocated for examination (10 minutes), cross-examination (60 minutes) and re-examination (10 minutes) for each witness; and closing submissions (30 minutes).

103. Judicial impartiality remains an important feature of our civil procedure, and broad guidelines should be introduced for judges who engage in the examination of witnesses.
104. The courts could consider a pilot project for judge-led cross-examination in certain types of cases e.g. family cases and Community Disputes Resolution Tribunal cases. These are cases where parties could benefit from the judge having greater control of the cross-examination of witnesses (for example, because parties are often litigants-in-person).

## **B. Appeals**

105. There is currently a large number of appeals in relation to interlocutory matters (“interlocutory appeals”) to the Court of Appeal, not all of which are necessary e.g. interlocutory appeals are sometimes filed for strategic reasons such as to delay proceedings. Such unnecessary appeals serve only to increase the time and costs expended on a case.
106. To address the large number of interlocutory appeals, section 34 of the Supreme Court of Judicature Act (“SCJA”), read with the Fourth and Fifth Schedules to the SCJA, prescribe the matters which are non-appealable to the Court of Appeal, or appealable only with leave of the High Court or the Court of Appeal. However, this has resulted in a large number of applications for leave to the High Court and Court of Appeal. To reduce the number of applications for leave, a High Court Judge and Judge of Appeal could jointly decide whether to grant leave to appeal to the Court of Appeal on the basis of

written submissions without oral hearing. The decision on whether to grant leave is final and non-appealable.

**VI. Reforms to Post-trial Procedure: Enforcement of Monetary & Non-Monetary Judgments**

107. The CJRC recommends that the enforcement process for civil judgments be privatised.
108. The tools currently available for enforcing both monetary and non-monetary judgments are limited and unsophisticated. For example, the burden of tracking the assets of the judgment debtor falls on the judgment creditor. The enforcement process is too court-centric, which may lead to disproportionate costs. Finally, there are limited modes of enforcing non-monetary judgments. All these hinder the effective enforcement of judgments.
109. However, the CJRC recognises that there are issues with privatising the enforcement process which should be considered and addressed before implementation. The CJRC therefore recommends that the Ministry of Law study the problems and proposals in further detail, and implement the civil enforcement reforms separately from the rest of the civil justice reforms.
110. For a detailed consideration of the problems and proposals relating to Enforcement, please refer to **Annex A**.

## **VII. Professional Training and Public Education Measures**

111. Access to justice begins with knowledge of one's legal rights and remedies.
112. This may be achieved through public education measures to inform members of public of key features of the new civil justice framework. For example, pamphlets containing such information can be distributed via the courts, the Legal Aid Bureau and legal clinics.
113. In order to adapt to and thrive in the changing landscape of the civil justice system, both judges and lawyers will need to undergo training. This will ensure that they are suitably equipped with the skills and competence that will be expected of them in the years to come.
114. Judges should receive training on how to play an appropriately active role in civil proceedings. This can be done under the auspices of the Singapore Judicial College, which already provides Judicial Education Programmes, such as courses on case management.
115. Increased judicial control should not be a license for lawyers to abdicate their responsibility to resolve disputes in a cost-effective manner. Lawyers must remain primarily responsible for the skilful and effective conduct of their cases. Continuing Professional Development ("CPD") courses should be conducted for lawyers to familiarise themselves with the changes in the civil litigation process.

### **VIII. Review Mechanism to Assess Implementation of Recommendations**

116. If these proposals are implemented, the CJRC recommends that the Ministry of Law work with the courts to assess the implementation of the recommendations after two years.
117. To determine if the new procedures have indeed led to time- and cost-savings, focus group discussions can be held with judges, lawyers and litigants.
118. Data can be collected to ascertain how frequently the default track was departed from, to assess whether parties prefer the default positions under the single track or the options for more time- and cost- intensive procedures.
119. Finally, court users (litigants, witnesses, and counsel) can be surveyed, to find out if their navigation of the civil justice system has been aided by an active judge, who gives guidance at each stage of the proceedings.

## **IX. Conclusion**

120. The recommendations presented in this report seek to ensure that the civil justice system continues to meet the needs and demands of all in our society.
121. For parties who have been navigating the current civil justice system well, the recommendations introduce more flexibility so that parties will have more autonomy to choose the procedure which best suit their needs. For parties who have difficulties doing so, the recommendations are aimed at ensuring that our civil justice system remains accessible and affordable for them.
122. The CJRC recognises that the recommendations represent a significant change to the civil justice system. If the recommendations are implemented, the CJRC envisages that all stakeholders of the civil justice will require some time to understand their role in this new landscape before the benefits of the recommendations can be reaped.

## **ANNEX A**

### **Post-Trial Procedure: Enforcement of Money & Non-Monetary Judgments**

1. The current system for enforcement of court judgments meets with the following problems:
  - (a) There is a lack of access to information on the judgment debtor's assets. Apart from examining a judgment debtor in court, there is no legal avenue to compel a judgment debtor to disclose information on his assets. A judgment creditor is not legally empowered to mandate disclosure of such information, be it from the judgment debtor or third parties.
  - (b) The burden of tracking and tracing assets falls on the judgment creditor. It may not be feasible or practicable, particularly for judgment creditors who are impecunious, or do not have the means to conduct investigations themselves, or where the quantum of the judgment debt is small. This also makes it easy for judgment debtors to impede investigations (e.g., by hiding their assets).
  - (c) The court-centric enforcement process can result in disproportionate costs. There may be repeated applications and hearings in court for examining judgment debtors. Each type of order requires the judgment creditor to comply with a different set of legal and procedural requirements, which may require the judgment creditor to file different documents.
  - (d) There are limited modes of enforcement, especially for non-monetary judgments. These existing modes of enforcement may not be sufficiently effective.



2. The CJRC recommends that the Ministry of Law establish a new profession of private “enforcement officers”, who can provide a “one-stop shop” for the enforcement of court judgments and orders. This is based on the approach in the UK, Netherlands and France.<sup>24</sup>
3. A judgment should be made immediately enforceable. The person in whose favour judgment has been granted should not be required to make a separate application to court to enforce the judgment. Instead, the person in whose favour judgment has been granted should only need to hand the court judgment to the private enforcement officer, who will then proceed to enforce the judgment. Safeguards can be developed to ensure authenticity of the judgment.
4. The burden of tracking and tracing assets should be shifted to these private enforcement officers. They should therefore be given sufficient powers to carry out this function effectively.
5. The private enforcement officers should also be empowered to directly effect enforcement without prior leave of court, save where the chosen mode of enforcement is too intrusive to effect without court supervision. Where leave of court is required, procedures for obtaining such leave should be streamlined as far as possible.
6. More effective modes of enforcement should also be introduced. For example:

---

<sup>24</sup> This is based on study visits and/or comparative studies of the civil enforcement regime in other countries (e.g., France, Germany, Sweden, United Kingdom, and the Netherlands).

- (a) The modes of enforcement presently available for maintenance orders under the Women's Charter could be extended to all civil money judgments, including attachment of earnings order and lodging reports to credit bureaus;
- (b) The procedure for committal proceedings under the Rules of Court could be streamlined, to ensure that contempt of court proceedings initiated by a judgment creditor against a defaulting judgment debtor are more effective, efficient and accessible; and
- (c) The court could be given the power to order new and more intrusive modes of enforcement to encourage compliance with monetary and non-monetary judgments. These may include travel restriction orders, suspension of driving licenses and freezing of bank accounts.

7. The fees of such private enforcement officers should be regulated, to incentivise them to effect enforcement in the most cost-effective and efficient manner possible (e.g., permitting enforcement officers to take a percentage of assets realised). This will help to ensure that the costs of enforcement are proportionate to the value of the judgment debt, and to minimise the extent to which the judgment creditor is out-of-pocket where enforcement is unsuccessful.