CHAPTER 1

HISTORY OF THE SINGAPORE LEGAL SYSTEM

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I. Introduction

1.1 This Chapter tells the history of the Singapore legal system, starting with the pre-independence years from the founding of Singapore in 1819. However, the focus will be on the subsequent years, told mainly through three related, though not strictly chronological, parts. Each part is meant to piece together the development of the Singapore legal system, starting with the post-independence years, when a new, independent Singapore had to grapple with the consolidation of an equally new legal system. That was followed by the expansion years, when that new legal system was expanded and modernised to cope not only with the growing caseload, but also a technologically advanced world. Expansion was finally then followed by the refinement years, when an efficient legal system was remade and calibrated for the challenges of the new millennium. While these periods are phrased in terms of a fixed time-span, this is only done for ease of exposition, for they do overlap quite substantially.

II. The foundation of the Singapore legal system

A. The common law tradition

1.2 But before we tell the history of the Singapore legal system, let us first turn to its various and important aspects. First and foremost, the Singapore legal system belongs to the common law tradition. The common law refers to law made by judges in the course of deciding cases before them. Courts, especially higher courts, can

* I am grateful to Leung Liwen for his able research assistance. All errors remain my own.

develop the law incrementally in response to changing social and economic conditions. The "common" law is so-called because Henry II established secular courts that promulgated a law common to the whole of England. This system was spread to British colonies later on, including Singapore. In a sense, the system was meant to promulgate English law as the "common" law throughout the British Empire, but this was not to be. Laws had to be adapted to suit local conditions, particularly in colonies with customs and traditions quite unlike those in England. Today, the common law that still exists in former British colonies is "common" only insofar as it shares certain fundamental concepts inherent in English law. But looked at more closely, most laws have been adapted to suit their unique needs by the now-independent nations.

1.3 Statutory laws supplement the common law. These are written laws passed by Parliament. Unlike the common law, judges cannot modify such laws and must apply them pursuant to the legislative intent. However, the courts have a certain degree of latitude when discerning Parliament's intention; this is especially relevant for statutes meant to apply over an extended period and hence may not be drafted so comprehensively as to anticipate all possible eventualities. The common law and statutory law collectively make up the laws within the Singapore legal system. Different bodies of the Singapore legal system are responsible for promulgating, interpreting and applying these laws.

B. The bodies of the Singapore legal system

1.4 Singapore is a republic with a parliamentary system of government that is based on the Westminster model.[1] This model, which in Singapore is created by the Constitution, comprises three branches: the Executive, Legislature and Judiciary. In this context, the Singapore legal system is the system within that framework which promulgates, interprets and applies the law. The three branches play different, if at times overlapping, roles in that exercise. Although the Judiciary is widely regarded as the most prominent branch in the legal system, it does not alone make up that system.

1 Ministry of Law website <http://www.mlaw.gov.sg/content/minlaw/en/our-legal-system.html> (accessed 13 May 2014).

(1) The Executive

1.5 The Executive includes the Elected President, the Cabinet and the Attorney-General,[2] and each performs various roles in the Singapore legal system. For instance, if the President does not agree with the advice given to him by the Prime Minister, he has the power to refuse to make an appointment, or refuse to revoke an appointment, to a number of key offices in the legal system, including the Chief Justice, Judges and Judicial Commissioners of the Supreme Court and the Attorney-General.[3] This power was meant to avoid an irresponsible government making such key appointments based on considerations other than merit,[4] although its exercise is subject to certain limitations.

1.6 The Cabinet, which comprises the Prime Minister and Ministers appointed from the Members of Parliament, is responsible for the general direction and control of the Government.[5] Insofar as the legal system is concerned, the Prime Minister has the power to advise the President on the appointments of the Chief Justice, Judges and Judicial Commissioners of the Supreme Court and the Attorney-General.[6] While the President has the power to refuse such appointments, the Prime Minister alone has the power to suggest specific individuals for appointment to these key positions. Thus, the appointment of key officeholders in the Singapore legal system is decided first and foremost by the Prime Minister, whose choice is subject to the President's power of refusal, which is in turn subject to the Council of Presidential Advisers' recommendation and a two-third majority of Parliament.

1.7 This division of power among various entities within and across branches of the government is not unique to Singapore. For example, the appointment of Supreme Court Justices in the United States follows a similar process: the President of the United States nominates an individual to be appointed, and the United States Senate then has the power to refuse the appointment. Indeed, such division ensures that each branch oversees one another; indeed,

2 *Ibid*.
3 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 22(1).
4 Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services (Cmd 10 of 1988) (29 July 1988) at para 11.
5 *Supra* n 1.
6 *Supra* n 3 at Art 22.

the balance of powers is achieved as the Judiciary, after being duly appointed by the process just described, possesses the power to rule that the Executive or Legislature has exceeded the powers granted by the Constitution.

1.8 The Cabinet serves another important function in the Singapore legal system. A Minister on behalf of the Government usually introduces drafts of laws, also known as "Bills", before they are eventually passed by Parliament.[7] While the Bill must go through three readings in Parliament and receive the President's assent before it becomes law, the Minister's initial draft (should he, rather than an ordinary member, introduce the Bill) sets the initial direction of the law and may influence Parliament's debate of the Bill. Thus, subject to Parliament's passage and the President's assent, the Cabinet has considerable latitude in shaping the laws of the Singapore and, through that, developing the legal system.

1.9 Lastly, the Attorney-General is the principal legal advisor to the Government.[8] In that capacity, he may influence the drafting of Bills and other written laws. In conjunction with the various departments of the Attorney-General's Chambers, he may also be responsible for reforming the laws of Singapore. But, more than that, the Attorney-General is also the Public Prosecutor and possesses the sole discretion to "institute, conduct or discontinue any proceedings for any offence".[9] This has a direct bearing on the criminal aspect of the Singapore legal system.

(2) The Legislature

1.10 The Legislature comprises the President and Parliament. Together, they are responsible for enacting statutes, that is, written laws that govern Singapore.[10] Apart from elected Members of Parliament, Parliament also consists of non-elected Members, who sit in debates but whose voting rights are restricted. After a Bill has been introduced by a Minister (or a Member), it is given a First Reading without any debate. If the Minister proposes that the Bill be read

7 Parliament of Singapore website <http://www.parliament.gov.sg/what-we-do> (accessed 4 May 2014). However, any Member of Parliament may introduce a Private Member's Bill as well.

8 *Supra* n 3 at Art 35(7).

9 *Supra* n 3 at Art 35(8).

10 *Supra* n 1.

a second time, Members of Parliament then debate the Bill and vote on whether the Bill should be given a Second Reading. If the Bill is read a second time, it goes to the Committee of the Whole Parliament or a Select Committee, which will then examine the Bill clause by clause. Following the Committee's report back to Parliament, the Bill will be given its Third Reading and considered passed. The Bill then goes to the Presidential Council for Minority Rights that considers if the Bill has any differentiating measure that affects any racial or religious community. Once approved by the Council, the Bill will be assented to by the President before being gazetted in the Government Gazette to become statutory law.[11]

(3) The Judiciary

1.11 The Judiciary is headed by the Chief Justice, and consists of a two-tier court system. The first tier comprises the State Courts, which consist of the District Courts, the Magistrates' Courts and various specialised courts, such as the Small Claims Tribunal. Collectively, these courts are responsible for more than 95% of the Judiciary's caseload.[12] These courts form the first tier because their authority to hear civil and criminal cases is limited to prescribed monetary amounts or criminal sanctions specified in the written laws.

1.12 The second tier of the Singapore court system is the Supreme Court, which is a collective term for the Court of Appeal and the High Court. Both courts can hear criminal and civil cases in excess of the State Courts' authority. The Court of Appeal is the highest court of the land and its decisions are not subject to any further appeal.

1.13 The judicial power of Singapore is vested in the courts just mentioned.[13] The courts administer justice in Singapore through the interpretation and application of laws passed by Parliament. Furthermore, the courts also make common law on the basis of cases before them. Apart from these judicial functions, members of the Judiciary, mainly through the Singapore Academy of Law, also engage in the governance and reform of the Singapore legal system. For example, the Chief Justice chairs a committee that

11 *Supra* n 7.

12 State Courts of Singapore website <https://app.statecourts.gov.sg//subcourts/page.aspx?pageid=4393> (accessed 22 December 2014).

13 *Supra* n 3 at Art 93.

appoints Senior Counsel from outstanding lawyers in Singapore. The Academy, separately from the Attorney-General's Chambers, also engages in the reform of various aspects of the laws in Singapore. Thus, the Judiciary assumes a large responsibility over the development of the Singapore legal system.

C. The sources of Singapore law

1.14 From the bodies of the Singapore legal system, we now turn to the sources of Singapore law. The foundation of the Singapore legal system is clearly based on English law.[14] For a long time after Sir Thomas Stamford Raffles' arrival in 1819 and even after Singapore's independence in 1965, English law was highly influential in Singapore. The mechanics of the reception of English law is rather complicated, but may be divided broadly into two distinct periods: the first prior to the passage of the Application of English Law Act ("AELA")[15] by Parliament in 1993, and the second period, after.

(1) Pre-1993: Reception by three means

1.15 As for the first period, it was believed that English law was received into Singapore by three means: (a) general reception, (b) specific reception,[16] and (c) imperial legislation.[17] By way

14 The local literature pertaining to the reception of English law in Singapore is too numerous to list here completely. See, for example, Andrew Phang, "Reception of English Law in Singapore: Problems and Proposed Solutions" (1990) 2 SAcLJ 20 at note 1 for a sampling of the available literature.

15 (Cap 7A, 1993 Rev Ed). See generally Andrew Phang, "Cementing the Foundations: The Singapore Application of English Law Act 1993" (1994) 28 UBC LR 205 and Victor Yeo, "Application of English Law 1993: A Step in the Weaning Process" (1994) 4 Asia Bus LR 69.

16 Again, a problem exists in that no comprehensive list of applicable statutes exists. See generally G W Bartholomew, "English Statutes in Singapore Courts" (1991) 3 SAcLJ 1.

17 In some cases, a statute in defining the powers, privileges and jurisdictions of various persons refers to their English counterparts. Some statutes specifically refer to English law to fill in *lacunae* in the statute. Then, there may also be specific reception in the statute, such as in s 5 of the Civil Law Act (Cap 43, 1988 Rev Ed) (repealed). Section 5 of the Civil Law Act itself provided for the *continuous* reception of English *commercial* law. Section 5 received English law with respect to mercantile law with several exceptions. English land law does not apply: (a) where the law in question gives effect to a treaty or international agreement that Singapore is not part of, it does not apply; (b) where the statute regulates the exercise of any business through penalties or providing licenses, it does not apply; and (c) where

of elaboration, specific reception concerns the situation where the local statute, such as s 5 of the Civil Law Act, now repealed, which expressly provided for the reception of English law. In this regard, Singapore was part of the British Empire from 1824 to 1963, and any imperial statutes not repealed are still applicable. Imperial legislation refers to legislation enacted at Westminster by the English Parliament and which has been expressly extended to Singapore.

1.16 These three means govern the reception of English common law and legislation. Leaving aside the reception of English *legislation*, English *common law* was received in Singapore by way of *historical or general* reception through the Second Charter of Justice of 1826 ("Second Charter").[18] The controversy that ensued after the passage of the Second Charter concerned the body of law that was received into Singapore, given that there was no explicit reference to the reception of the English common law. In the landmark case of *Regina v Willans*,[19] it was held by Sir Peter Benson Maxwell R that the law of England, as it existed in 1826, was to be applied to the Straits Settlements, subject to modifications to suit the circumstances of the place and the customs, religions, usages, and manners of the native inhabitants.[20] Therefore, with this decision, it was accepted that principles and rules of English common law and equity[21] (as well as pre-1826 statutes of general application) were received into Singapore, as of 1826, with suitable modifications.

(2) The Application of English Law Act 1993

1.17 The second period of reception came with the passage of the AELA on 12 November 1993. The then Minister for Law, Professor S Jayakumar, announced its purpose as being to "clarif[y] the

there is corresponding Singapore written law. "For a sampling with regard to the *specific* reception of English commercial law under s 5 of the Civil Law Act," see the list in Andrew Phang, *supra* n 14.

18 See generally Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Academy Publishing, 2006).

19 (1858) 3 Kyshe 16. Although the case was one from Penang, the three Settlements were effectively one political unit and thus its reasoning could be extended to Singapore.

20 See, *eg*, Andrew Phang, *supra* n 15 at 208.

21 Equity refers to a separate stream of law, distinct from the common law, where judges apply rules guided by equitability and flexibility.

application of English law, particularly English statutes, as part of the law of Singapore and remove the considerable uncertainty that currently exists in this regard."[22] He also highlighted that the AELA "is one of the most significant law reform measures since [Singapore's] independence."[23] Indeed, the first part of the Preamble states that the AELA is "to declare the extent to which English law is applicable in Singapore and for purposes connected therewith."

1.18 Insofar as the reception of English common law is concerned, s 3 of the AELA provides that the common law of England, so far as it was part of the law of Singapore immediately before the commencement of this Act, shall continue to be the law of Singapore, subject to such modifications as applicable to the circumstances of Singapore and its inhabitants.[24] The practical effect of this section is that, even where English common law was received, the Singapore courts retained the residual power to depart from such law if the local conditions require such a departure. This continues with the "exception" recognised even prior to the passage of the AELA following the decision in *Regina v Willans*.[25] Thus, s 3 of the AELA actually encourages the development of an independent Singapore legal system in which the courts have the power to reject or accept law originating from elsewhere.

1.19 And it is with the above background of the Singapore legal system in mind that we now turn to examine briefly the history of the Singapore legal system, a story that takes into account the

22 *Singapore Parliamentary Debates, Official Report* (12 October 1993) vol 61 at col 609 (Prof S Jayakumar, Minister for Law).

23 *Ibid*.

24 For completeness, s 3 of AELA provides as follows:

Application of common law and equity.

3. —(1) The common law of England (including the principles and rules of equity), so far as it was part of the law of Singapore immediately before 12th November 1993, shall continue to be part of the law of Singapore.

(2) The common law shall continue to be in force in Singapore, as provided in subsection (1), so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require.

It has been speculated that the probable source of s 3 is s 5 of the New Zealand Imperial Laws Application Act 1988 (Act No 112 of 1988) (NZ): see Andrew Phang, *supra* n 15 at 229.

25 *Supra* n 19.

common law tradition, the bodies of the Singapore legal system and the sources of Singapore law.

III. A brief history of the Singapore legal system

A. The British years

1.20 The history of the Singapore legal system began with the arrival of the British in 1819. Indeed, before the British arrived, there was hardly a legal system to speak of. Singapore before colonisation was characterised by a plurality of "indirect rules" that applied depending on one's ethnicity or religion.[26] While a long time removed from Singapore's eventual independence in 1965, the British years brought structural and institutional transplants that influenced, and continues to influence, the workings of the present Singapore legal system.

1.21 The introduction of various aspects of the British legal system into Singapore was slow and disorganised. The founding of Singapore was, above all, a political and military decision driven by the need to quickly establish ports in territories unoccupied by the Dutch to check the latter's domination of trade in the East.[27] With resources diverted towards expanding the British Empire, the establishment of a legal system was beset by formalistic pronouncements with no real substantive effect, at least in the early years of British occupation. Moreover, the relative remoteness of territories in the East, coupled with the concentration of decision-making processes in the West, meant that decisions relating to the legal system took a long time to be considered, approved and communicated. These problems collectively gave rise to a certain sense of reactionary pragmatism in how the structural and institutional aspects of the British legal system were extended into Singapore.

(1) Earliest times: Pragmatism without authority

1.22 The first instance of British pragmatism in the early years of British occupation is illustrated by the administration of justice following the founding of Singapore. After concluding a treaty

26 *Supra* n 18 at 3.

27 Kevin Tan Yew Lee, "A Short Legal and Constitutional History of Singapore" in Kevin YL Tan (ed), *The Singapore Legal System* (Singapore University Press, 2nd Ed, 1999) ch 2 at pp 28–29.

with Sultan Hussein and the Temenggong on 6 February 1819 that allowed the British to set up a trading post in Singapore, Raffles left the first Resident, William Farquhar, with vague instructions on how to administer justice on the island. Without resources to do any better,[28] Farquhar held weekly court sessions with two Malay Chiefs to hear appeals from decisions made as a result of the "indirect rules" that permeated the island.[29] The first formal semblance of the British legal system arrived on 1 January 1823, when Raffles formulated a code of local laws and regulations to govern Singapore. Somewhat ironically, this Code – meant to administer justice – may itself have been illegal: Raffles simply did not have authority to pass such a Code.[30] Nonetheless, driven by the pragmatic acknowledgment that general rules and regulations were necessary for the order and good governance of Singapore, the Code was passed.[31]

1.23 Two aspects of the British legal system were introduced by the 1823 Code. First, it established the procedure for the passage of laws. By Regulation No III, either the Resident or the Magistracy was empowered to provisionally pass such regulations as the circumstances of the Settlement required.[32] However, for the proposed regulation to be passed permanently, whether originating from the Resident or the Magistracy, it must receive the concurrence of the other; in the absence of such concurrence, the Governor-General in Council shall resolve the difference in opinion.[33] Secondly, the 1823 Code established the first courts in Singapore modelled after the British system. Regulation No III, read with Regulation No VI, established the Resident's Court and the Magistrates' Court. The Resident's Court was presided over

28 By 1820, Farquhar's administration had been reduced to one clerk: see Mavis Chionh, "The Development of the Court System" in *Essays in Singapore Legal History* (Kevin YL Tan ed) (Marshall Cavendish Academic, 2005) ch 5 at p 96.

29 C M Turnbull, *A History of Singapore 1819–1988* (Oxford University Press, 2nd Ed, 1989) at p 12.

30 *Supra* n 27 at p 29.

31 "Proclamation by Lieutenant-Governor" in *The Singapore Local Laws and Institutions, 1823* (London: Cox and Baylis, 1824) ("*The Singapore Local Laws*") at p 1.

32 "Regulation, No III, Article 7 (Local Laws and Regulations)" in *The Singapore Local Laws*, *supra* n 31 at p 9.

33 *Id*, at pp 9–10.

by the Resident with the assistance of two Magistrates,[34] and sat as often as necessary for the "hearing and trying of offences and the adjustment of civil suits, where the amount in dispute may exceed one hundred dollars".[35] Where natives were concerned, the Sultan and the Temenggong assisted the Resident.[36] The Magistrates' Court, which had limited jurisdiction when compared to the Resident's Court, was jointly presided by two Magistrates.[37] Its decisions were reached by consensus, in the absence of which, a new trial was commenced in the Resident's Court. Thus, we see in Singapore the first semblance of a court system with a loose system of appeals, supplemented by a procedure for commencing suits[38] and detailed rules governing the operation of both courts.[39]

1.24 Raffles' provisional Code could only go so far in dealing with Singapore's growing population. Something more permanent was needed, but that again was dependent on broader political developments since it was doubtful whether the British had legally acquired Singapore. The Anglo-Dutch Treaty of 1824, in which the Dutch recognised British occupation of Singapore, was a significant step in resolving this doubt. With the conclusion of that treaty, Singapore and Malacca were transferred to the East India Company on 24 June 1824 and became subordinate to Fort William in Bengal, subject to the jurisdiction of its Supreme Court of Judicature.[40] However, the Resident, by now John Crawfurd, was tasked not with resolving the administration of justice in Singapore, but with advancing the political and military interests of the Empire. To that end, he was instructed to rectify all existing constitutional deficiencies concerning British possession of Singapore, which he did by concluding a treaty on 19 November 1824 with the Sultan and the Temenggong that ceded Singapore to the British East India Company.[41]

34 "Regulation, No VI" in *The Singapore Local Laws*, *supra* n 31 at p 17.
35 "Regulation, No III, Article 1 (Administration of Justice)" in *The Singapore Local Laws*, *supra* n 31 at pp 8–9.
36 *Id*, at p 8.
37 *Supra* n 34.
38 *Supra* n 34 at p 18.
39 "Regulation, No VI, Appendix A and Appendix B" in *The Singapore Local Laws*, *supra* n 30 at pp 19–32.
40 *Supra* n 27 at p 30.
41 *Supra* n 27 at p 29.

1.25 Until the British Parliament ratified the possession of Singapore, permanent provisions for the administration of justice in Singapore could not be made. Crawfurd's actions on the island until the conclusion of the long-drawn ratification process thus constituted the second instance of British reactionary pragmatism on the island. Crawfurd doubted the legality of Raffles' 1823 Code and abolished the Magistrates' Courts, replacing them with a Court of Requests, which was a small debts court. The Resident's Court was retained, and it decided all civil and criminal matters on general principles of English law so far as local conditions and the character and manners of the different classes of inhabitants permitted.[42] The irony was that Crawfurd's own refinement of the judicial structure was as illegal as Raffles' Code: until the British monarch issued a Charter, Crawfurd had no authority in setting up courts.[43] Like Raffles and Farquhar before him, Crawfurd was driven by a sense of pragmatism in his actions and the simple realisation that Singapore needed a court system of some kind.

(2) Arrival of the Second Charter: Formalism without substantive effect

1.26 The second phase of British Occupation can be described as formalism without substantive effect: while structural and institutional aspects of the British legal system arrived in Singapore through formal instruments, the reality was that they achieved little substantive effect given the lack of control and resources. Crawfurd's provisional measures finally ended with the arrival of the Second Charter of Justice, dated 27 November 1826.[44] The Second Charter established the Court of Judicature of Prince of Wales' Island, Singapore and Malacca to administer civil and criminal justice.[45] A Recorder, who was based in Penang and travelled on circuit to Malacca and Singapore, headed this court. He was assisted by the Governor of the Straits Settlements and the Resident Councillors of each Settlement. However, problems on the ground, occasioned by the lack of judicial resources, disrupted this formal arrangement. The first Recorder,

42 L A Mills et al, *British Malaya*, *1824–67* (Nanyang Printers Limited, 1961) at p 83.
43 *Supra* n 27 at p 31.
44 It was the *Second* Charter as the First Charter was already promulgated in 1807 and applied only to Penang.
45 *Supra* n 27 at p 31.

John Claridge, disputed his travelling arrangements and refused to travel to Malacca and Singapore. As a result, Robert Fullerton, the Governor of the Straits Settlements, proceeded to Singapore and held the first Court or Session of Oyer and Terminer with the Resident Councillor on 22 May 1828.[46] After Claridge was recalled in 1829 for insubordination, the Resident Councillors in each Settlement conducted the business of the Recorder's Court until 20 June 1830, when the Straits Settlements were transferred to the direct control of the Bengal Presidency.

1.27 This transfer of control complicated the operation of the Second Charter. It also exposed the difficulty of governing from afar and how such governance depended greatly on the extent to which the individual in charge was willing to adopt pragmatic measures. As an example, Fullerton adopted a decidedly formalistic reading of the Charter: for him, since the offices of Governor and Resident Councillors were central in the Charter for the administration of justice, their abolishment occasioned by the transfer of control meant that the formal terms of the Charter could not be enforced. Fullerton therefore closed the courts pending the grant of another charter.

1.28 This act of formalism, in contrast to the reactionary pragmatism of those previously in charge, created legal chaos in Singapore. By this time, Singapore already enjoyed an international trade valued at $11.4 million,[47] and was largely dependent on the judicial system to resolve commercial disputes. Although Deputy Registrar Murchison opened a court, the formalism that prevailed quickly shut it as well.[48] This state of legal chaos persisted until 9 June 1832, when the concerns occasioned by a strict adherence to formalism were finally addressed by the reinstatement of the offices of Governor and Resident Councillors. This allowed the Court of Judicature to reopen in Penang under the presidency of the new Governor. A new Recorder of the Court of Judicature, Sir Benjamin Malkin, was also appointed.[49]

46 J W Norton Kyshe, "A Judicial History of the Straits Settlements 1786–1890" (1969) 11 Mal L Rev at 99.
47 *Supra* n 28 at p 101.
48 *Supra* n 28 at p 101.
49 *Supra* n 27 at p 33.

1.29 Addressing the concerns of formalism did not simultaneously resolve the substantive problems in Singapore. In particular, two problems relating to both legislative and judicial powers persisted. First, the only source of legislative power over Singapore was the Governor-General of India in Council, as established by the Government of India Act.[50] There was no attempt to promulgate local regulations, much to the dissatisfaction of those in Singapore.[51] Secondly, there was dissatisfaction with the judicial setup. Because the Governor had the power to overrule the Recorder's legal judgments, there was a concentration of judicial and executive power in the Governor's hands.[52] There was also a severe lack of judicial resources: the Resident Councillors in Singapore and Malacca had to deal with much of the judicial work alone. Thus, there was a call for a second Recorder to be appointed in Singapore to deal with its increasing judicial work.[53] In a related vein, a serious riot in May 1854 exposed the lack of an Attorney-General or Crown Prosecutor. This prompted Governor Butterworth to appoint a Law Agent to conduct the prosecution on behalf of the Crown.[54]

1.30 These problems were supposed to be resolved by a Third Charter of Justice granted on 12 August 1855, which created the office of the Second Recorder in Singapore. Thereafter, the Recorder of Singapore, together with the Governor and the Resident Councillor, had jurisdiction over Singapore and Malacca. However, the Third Charter did not increase the judicial resources available; rather, it reduced the salaries of the entire judicial establishment by half to accommodate the Second Recorder.[55] While not clear from the historical record, this must have damaged the morale and, consequently, the productivity of the judicial establishment

50 3 & 4 Will IV c 85 (UK).

51 G W Bartholomew, "The Singapore Legal System" in *Singapore: Society in Transition* (Riaz Hassan ed) (Oxford University Press, 1976) ch 5.

52 *Supra* n 27 at p 34. Although Phang notes that colonial judges did manifest a certain sense of independence: see Andrew Phang Boon Leong, *The Development of Singapore Law* (Butterworths, 1990) at p 32.

53 *Supra* n 27 at p 35.

54 Wong Kok Weng & Sia Aik Kor, "A History of the Singapore Legal Service" in Kevin YL Tan (ed), *Essays in Singapore Legal History* (Marshall Cavendish Academic, 2005) ch 4 at p 78.

55 C M Turnbull, *The Straits Settlements 1826–1867* (London: Oxford University Press, 1972) at p 69.

as a whole. In the end, the grant of formalism, and adherence to formalism, proved unable to deal with the substantive problems occasioned by the administration of justice in Singapore.

(3) Substantive changes in response to Singapore's commercial importance

1.31 The full transplantation of the British legal system with all its attendant substantive effects happened only in response to Singapore's growing commercial importance.[56] Recognising Singapore's importance, the Straits Settlements was transferred to the Colonial Office on 1 April 1867.[57] This resolved the outstanding problems and consolidated both legislative and judicial authority in Singapore. It also formed the basis of the Singapore legal system in the following ways.

1.32 First, legislative authority was vested in the Legislative Council, which consisted of, among others, the Governor, Chief Justice and the Attorney-General. The Legislative Council had the power to establish laws, ordinances, institutions and courts. An Executive Council was established in 1877 that empowered the Governor to appoint, among others, judges.[58] This thus constituted a very basic form of the present processes used to appoint judges to the Supreme Court.

1.33 Secondly, judicial authority was vested in courts that are predecessor courts of today's modern courts. The Straits Settlements Act made the Recorder of Singapore the Chief Justice of the Straits Settlements.[59] The Recorder of Penang became the Judge of Penang.[60] The Governor no longer sat as a Judge on the Court of Judicature, although Resident Councillors still did under their new titles of Lieutenant-Governors.[61] Eventually, by 1868, the Court of Judicature of Prince of Wales' Island, Singapore and Malacca was replaced by the Supreme Court of the Straits Settlements by

56 Andrew Phang Boon Leong, *The Development of Singapore Law* (Butterworths, 1990) at p 26.

57 This was following the passage of the Government of the Straits Settlements Act (29 & 30 Vic c 115) (UK) on 10 August 1866 and the subsequent declaration by order in council on 28 December 1866.

58 *Supra* n 27 at pp 35–36.

59 (Act 3 of 1867) s 4.

60 *Ibid*.

61 *Id*, at ss 1, 3.

operation of the Straits Settlements Supreme Court Act 1867[62] and the Straits Settlements Supreme Court Ordinance 1868.[63] By then, Resident Councillors also ceased to sit as Judges of the court.[64] Accordingly, there was now a clearer division between executive, legislative and judicial authority in the Straits Settlements.

1.34 Thirdly, the Straits Settlements was provided with dedicated legal advisers when Thomas Braddell and Daniel Logan were appointed as Attorney-General and Solicitor-General respectively in 1867. Braddell was to be responsible for giving the Straits Settlements its own body of statutes. His most valuable contribution was the remodelling of the court system and its procedure by way of several pieces of legislation.[65] With these changes, there was finally a coincidence of formalism and their intended substantive effects in Singapore. This laid the groundwork for the further refinement and consolidation of structural and institutional elements of the court system in the remainder of the British years.

1.35 This process of refinement and consolidation was continued with the Straits Settlements Court's Ordinance 1873, which restructured the courts' jurisdiction.[66] This Ordinance provided that the Supreme Court now consisted of the Chief Justice, the Judge of Penang, a Senior Puisne Judge and a Junior Puisne Judge.[67] The Court had two divisions, one sitting in Singapore and Malacca, and the other in Penang.[68] The Ordinance also gave further power to the Supreme Court; it could now sit as a Court of Appeal as well.[69] These changes were followed by the Straits Settlements Courts Ordinance 1878, which was itself the result of changes in the court structure in England after the UK Judicature Acts 1873–75.[70] This Ordinance further restructured the courts in Singapore by spelling out, in different specific parts, the civil and criminal jurisdiction

62 *Id*, at ss 1–4, 37, 39.
63 (Ordinance V of 1868) ss 1–4, 23, 41, 43.
64 (Act 30 of 1867) s 6.
65 *Id*, at p 80.
66 (Ordinance V of 1873) s 1.
67 *Id*, at s 2.
68 *Id*, at s 3.
69 *Id*, at s 83. Previously, appeals could only be made to the King-in-Council: see *supra* n 27 at p 36.
70 Supreme Court of Judicature Act 1873 (36 & 37 Vict c 66) (UK); Supreme Court of Judicature Act 1875 (38 & 39 Vict c 77) (UK).

of the courts.[71] The jurisdiction of the Supreme Court was now similar to the jurisdiction of the new English High Court.[72] Insofar as the discipline of lawyers was concerned, an entire Chapter was devoted to "Advocates and Solicitors". In particular, s 50 laid out, for the first time, that advocates and solicitors are "subject to the control of the Supreme Court".[73] The constitution of the Supreme Court was reordered again by Ordinance No XV of 1885 to comprise the Chief Justice and three Puisne Judges.[74]

1.36 Indeed, by 1907, the Straits Settlements Courts Ordinance 1907 would definitively divide the Straits Settlements Supreme Court's jurisdiction into its general, original and appellate civil and criminal jurisdictions.[75] Since the Federated Malay States had been created by this time, the Ordinance also provided that the Judicial Commissioners of the Federated Malay States should be supernumerary judges of the Supreme Court of the Straits Settlements and the Governor could appoint them to perform the duties of Supreme Court Judges.[76] District Courts with both civil and criminal jurisdictions replaced the lower Magistrates' Courts.[77] The next major change to the judiciary came in 1931, when the Court of Criminal Appeal Ordinance 1931 created the Court of Criminal Appeal, a distinct appellate court from the Straits Settlements Supreme Court.[78]

1.37 This state of affairs continued largely until the surrender of the British to the Japanese in 1942. When the Japanese Occupation began, all existing British courts ceased to function and were replaced by a Military Court of Justice of the Nippon Army on 7 April 1942.[79] However, by 27 May 1942, the civil courts were reopened and all former laws were applicable so long as they did not interfere with the Military Administration.[80] A Supreme Court

71 (Ordinance III of 1878) Chapters V–VI.
72 *Supra* n 27 at p 39.
73 *Supra* n 71 Chapter IX.
74 (Ordinance XV of 1885) s 2.
75 (Ordinance XXX of 1907) ss 8–14.
76 *Id*, at s 6(2).
77 *Id*, at ss 2, 52–62.
78 (Ordinance V of 1931) s 3.
79 *Supra* n 27 at p 40.
80 *Supra* n 27 at p 40.

was established on 29 May 1942, as well as a Court of Appeal, although the latter never sat.

1.38 When the Japanese Occupation ended on 12 September 1945, the British Military Administration administered all laws and customs prior to the Japanese Occupation.[81] The substantive changes that were promulgated before the Occupation continued, although they were now carried out against the backdrop of a growing movement towards independence. The Straits Settlements Repeal Act 1946[82] disbanded the Straits Settlements and Singapore became a separate Crown Colony with a constitution of its own.[83] The Singapore Colony Order in Council[84] provided for a court of unlimited jurisdiction known as the Supreme Court, consisting of a High Court and a Court of Appeal. The Court of Criminal Appeal functioned by virtue of the Straits Settlements Courts Ordinance 1936. The 1955 Courts Ordinance very much retained this court structure,[85] although more courthouses were constructed to cater to the growing judicial workload.[86] Thus, at the end of the British years, in the lead-up to Singapore's merger with the states of the Federation of Malaya, the colonies of North Borneo and Sarawak in 1963, Singapore had a High Court, a Court of Appeal and a Court of Criminal Appeal.[87] These structural and institutional elements were established through a process that began with reactionary pragmatism, followed by adherence to formalism without substantive effects, and finally with substantive changes occasioned by Singapore's rise as an important commercial asset to the British.

B. The post-independence years

1.39 The British years ended with Singapore's merger with Malaysia in 1963. That merger was, however, to last only two years. On 9 August 1965, Singapore separated from Malaysia and achieved national independence. The post-independence years were challenging

81 *Supra* n 27 at p 40.
82 (9 & 10 Geo VI c 37) (UK).
83 *Supra* n 27 at p 41.
84 *The Singapore Colony Order in Council 1946 No 464* (SR & O, 1946, No 464) s 14.
85 (Ordinance 14 of 1955).
86 *Supra* n 28 at p 112.
87 Walter Woon, "The Doctrine of Judicial Precedent" in Kevin YL Tan (ed), *The Singapore Legal System* (Singapore University Press, 2nd Ed, 1999) ch 8 at p 307.

ones for both the nation and its legal system. In particular, there were serious challenges in setting up a truly *Singapore* legal system through promulgating key legal documents, reorganising the court system and governing of the legal profession. In light of these challenges, it might be tempting to dismiss the post-independence years as those in which the Singapore legal system was crude in its institution and slow in the dispensation of justice. However, this would be a highly myopic view to take. Rather, we should, and must, assess the post-independence years in their proper context. In that context, those years gave the Singapore legal system its most important present-day trait: an unwavering adherence to the rule of law. In doing so, the post-independence years also guaranteed the Singapore legal system its legitimacy, laying the foundation for future refinements in the years to come.

1.40 Apart from these important contributions, the post-independence years also saw key institutions of the Singapore legal system take shape. Furthermore, important laws were passed in tandem with an emerging sense of social justice and well-being in Singapore.

(1) The consolidation of a new legal system

1.41 Given both the urgency of social problems and the suddenness of independence, it was unsurprising that changes to the legal system were marked by a sense of pragmatism. This pragmatism manifested itself in two ways. First, key legal documents vital to legitimising Singapore's independence were passed quickly and somewhat haphazardly. For example, as will be seen below, the Constitution of Singapore – the nation's foremost written legal document – was a composite of three separate documents until 1980. Secondly, Singapore's Judiciary remained formally part of Malaysia's Judiciary until 1969, some four years after national independence was achieved. It should have been expected that the Judiciary of an independent nation be itself independent. Given the context of the times, such pragmatism was understandable. Later, the same pragmatism gave way to a more considered effort to enact new laws and to govern the legal profession in the context of post-independence Singapore.

(a) Promulgation of key legal documents

1.42 The promulgation of key legal documents was the immediate issue which required addressing after Singapore's sudden independence,

since it served to ensure the legitimacy of independence. First, the Malaysian Parliament enacted the Constitution and Malaysia (Singapore Amendment) Act,[88] which transferred all legislative and executive powers possessed by the Federal government to the Government of Singapore.[89] All laws in force in Singapore immediately before Singapore Day were to have effect according to their tenor, subject to amendment or repeal by the Singapore legislature.[90] This was a document necessitated by Malaysia's desire for Singapore to leave the Federation.

1.43 Secondly, the Singapore Parliament in turn passed the Constitution of Singapore (Amendment) Act[91] on 22 December 1965, but which retrospectively took effect on 9 August 1965. This piece of legislation changed certain terms in the previous State Constitution of Singapore to make it consonant with Singapore's independent status.[92] As a sign of the need for decisive measures to be taken, it also substituted the two-thirds majority required to amend the Constitution with a simple majority, therefore making changes less difficult. Indeed, the very flexible Constitution was necessary for wide-ranging legislation to be passed to enhance the economic and social development of the newly independent Singapore.[93] This was subsequently reversed in 1979, when Singapore stabilised sufficiently for the two-thirds majority rule for amendments to be restored.[94]

1.44 Thirdly, the Singapore Parliament also passed the Republic of Singapore Independence Act 1965 ("RSIA").[95] The RSIA vested the powers relinquished by the Constitution and Malaysia (Singapore Amendment) Act in the executive and legislative branches of Singapore. Section 13(3) provided a broad power to the President, exercisable within three years after the passing of the RSIA, to

88 (Act 53 of 1965). See "Independent S'pore Bill: Full details" *The Straits Times* (10 August 1965) at p 20.

89 *Supra* n 27 at p 47.

90 Constitution and Malaysia (Singapore Amendment) Act (Act 53 of 1965) s 7.

91 (Act 8 of 1965). See also "Passed without debate: S'pore Republic Bill" *The Straits Times* (23 December 1965) at p 5.

92 *Supra* n 27 at p 48.

93 *Supra* n 27 at p 49.

94 Constitution (Amendment) Act (Act 10 of 1979). See also "Two-thirds majority rule restored" *The Straits Times* (1 April 1979) at p 11.

95 "Passed without debate: S'pore Republic Bill", *supra* n 91.

"make such modifications in any written law as appear him to be necessary or expedient in consequence of the enactment of [the RSIA] and in consequence of the independence of Singapore upon separation from Malaysia". Such a broad power was in line with the pragmatism of the day, which dictated that changes were to be swiftly effected so that important economic and social reforms could be carried through quickly.

1.45 The haste and pragmatism of the entire situation are also evidenced by the fact that Singapore's Constitution was found in three separate documents for a time after its independence.[96] These documents were the RSIA, the State Constitution of Singapore and parts of the Federal Constitution of Malaysia made applicable by the RSIA.[97] Although the then-Prime Minister Lee had promised Singaporeans that a new Constitution would be drafted – to the extent of emphasising the importance of protecting minorities' rights and asking the Chief Justice to gather a group of Commonwealth chief justices and legal professionals to recommend a draft[98] – this did not materialise due to his concern that a new Constitution based on a foreign model might not sufficiently account for Singapore's context and interests.[99] Although this state of affairs was messy, it persisted until 1979, when a constitutional amendment was finally passed to allow the Attorney-General to issue a consolidated reprint of the Constitution in 1980.

1.46 However, it was not as if the Constitution prior to 1980 was pieced together without any regard to the social and economic conditions in post-independence Singapore: a Constitution Commission headed by Chief Justice Wee was set up in December 1965 to consider how the rights and interests of minorities can be safeguarded in the Constitution.[100] This principally resulted in the

96 *Supra* n 27 at p 48.

97 *Ibid*.

98 Jackie Sam, "Safeguards for the minorities" *The Straits Times* (13 August 1965) at p 1. See also "Three CJs may aid drafting" *The Straits Times* (5 September 1965) at p 1 and "A team of experts to draft S'pore Charter" *The Straits Times* (11 September 1965) at p 20.

99 *Singapore Parliamentary Debates*, *Official Report* (25 July 1984) vol 44 at cols 1817–1819 (Lee Kuan Yew, Prime Minister).

100 "Protection of minorities" *The Straits Times* (23 December 1965) at p 16.

establishment of the Presidential Council for Minority Rights[101] to assess whether Bills passed by Parliament discriminated against any racial or religious community.[102]

(b) Reorganisation of court system

1.47 In yet another sign of post-independence Singapore's pragmatism, the Singapore Judiciary remained tied to the Federation of Malaysia until 1969. After Singapore's merger with Malaysia, the Malaysia Act 1963[103] vested the judicial power of Malaysia in a Federal Court and, among others, a High Court in Singapore. Subsequently, the Courts of Judicature Act 1964[104] defined the jurisdictional limits of the Federal Court and the High Court of Singapore. The Singapore court system thus came within a larger national system with the Federal Court at the top of the hierarchy.[105]

1.48 When Singapore became independent, its Constitution did not constitute the Singapore Judiciary, which remained part of the Federation. This state of affairs – which was somewhat anomalous since the Singapore High Court remained part of a foreign judicial system[106] – continued until 1969, when the Constitution (Amendment) Act 1969[107] and the Supreme Court of Judicature Act[108] were passed to constitute the Singapore Judiciary and prescribe the courts' jurisdiction. Following the passing of these two Acts, Singapore had a Supreme Court, consisting of the High Court and Court of Appeal. The reasons for this delay seem to have been two-fold. The first, as identified by Minister Barker, was the suddenness of Singapore's independence. Given that Singapore had a working court system staffed by capable people, more important social issues were dealt with first. The second was the

101 Cheah Boon Kheng & Yeo Toon Joo, "Yes: 'Watchdog' council; No: Ombudsman" *The Straits Times* (22 December 1966) at p 1.

102 See "CJ: Our job is to check on new laws" *The Straits Times* (9 November 1971) at p 13 and "President Council will deal only with minority rights" *The Straits Times* (17 February 1973) at p 11.

103 (Act 26 of 1963).

104 (Act 7 of 1964). See also "Judicial powers of the various High Courts" *The Straits Times* (17 December 1963) at p 6.

105 *Supra* n 27 at p 51.

106 *Supra* n 28 at p 113. See also "Singapore to have its own Supreme Court" *The Straits Times* (13 June 1969) at p 6.

107 (Act 19 of 1969).

108 (Act 24 of 1969).

sense of familiarity with the existing system that had worked since colonial times.[109] However, these reasons, especially the second, weakened when considered against the importance of recognising Singapore's independence. It was simply unacceptable that Singapore's status as an independent nation was left incomplete by its Judiciary's ties to that of another nation.

1.49 However, even after these reforms, the Singapore Judiciary was not fully independent, since the Privy Council was still the final court of appeal in Singapore. This dependence was deliberate, and was driven by pragmatism. David Marshall recalled the explanation given to him by Dr Goh Keng Swee: appeals to the Privy Council were allowed to provide a sense of security to foreign capital since foreign capitalists were still not confident of the stature and integrity of the Singapore Judiciary in the post-independence years.[110] Access to the highest court in the Commonwealth thus provided considerable assurance for potential big investors.[111] Quite apart from commercial reasons, the professions also had an attachment to and trust of the Privy Council, borne out of the fact that lawyers of that time were all trained in England. Indeed, this can be seen from the "grave concern" expressed by lawyers in Malaysia and Singapore[112] when Malaysia considered abolishing appeals to the Privy Council in 1965. This concern was perhaps due to, among other things, the right of appeal to the Privy Council being regarded in Malaysia as a safeguard for the rule of law.[113]

1.50 When the Singapore Judiciary did become more established in its stature, it still did not abolish its link to the Privy Council. This was in part driven by a comfort with the status quo and by the sense of legitimacy that the Privy Council continued to supplement the Singapore Judiciary with. Indeed, when J B Jeyaretnam claimed in Parliament in 1986 that the Singapore Judiciary was

109 "'As we were' appeal by Law Society" *The Straits Times* (21 August 1965) at p 6.

110 "Response by Mr David Saul Marshall" (1992) 4 SAcLJ 7 at 8.

111 Harry Miller, "Australia opts out but Privy Council still appeals to Singapore" *The Straits Times* (2 February 1973) at p 14.

112 "Lawyers express their 'grave concern' over proposed Bill" *The Straits Times* (25 May 1965) at p 12. See also "Lawyers protest against Bill on appeals" *The Straits Times* (23 May 1965) at p 8.

113 See K L Devaser, "Sovereignty and a citizen's rights" *The Straits Times* (26 May 1965) at p 10. and T O Thomas, "Malaysia and the Privy Council" *The Straits Times* (1 June 1965) at p 10.

not independent, the Home Affairs Minister and Second Minister for Law, Professor S Jayakumar, said that the "litmus test" of the Singapore judicial system was that it allowed appeals to the Privy Council.[114] Singapore's continued dependence on the Privy Council was also due to the fact that the Privy Council did not overstep any sensitive boundaries.[115]

1.51 However, the pragmatism of preserving appeals to the Privy Council for commercial reasons eventually gave way to abolition. Notably, this was barely three years after Jayakumar had held out appeals to the Privy Council as an indicator of the Singapore Judiciary's independence. The process of abolition started as a result of the Privy Council allowing in October 1988 Jeyaretnam's appeal against a Singapore court's decision to strike him off the rolls for certain criminal convictions.[116] The problem was not so much the decision to allow the appeal, but the fact that the Privy Council re-examined the correctness of the criminal convictions, although, strictly speaking, it could not scrutinise them.[117] The Government's concerns with the Privy Council were raised again in December 1988, albeit indirectly, when the Court of Appeal decided in *Chng Suan Tze v Minister for Home Affairs*[118] that preventive detention under the Internal Security Act[119] was subject to judicial review. The Minister for Trade and Industry, Lee Hsien Loong, said that recent Privy Council decisions must have affected the Court of Appeal's decision.[120] Within a month, in January 1989, the Internal Security Act was amended to clarify that courts could not review decisions made under the Act.[121] In the same month, another Bill was tabled in Parliament to abolish appeals to the Privy Council for cases under the Internal Security Act, as well as

114 "The litmus test of an independent judiciary" *The Straits Times* (12 January 1986) at p 2. See also Cheng Shoong Tat, "Good reasons for Singapore to stay with the Privy Council" *The Straits Times* (7 October 1987) at p 20.

115 Irene Ngoo, "Crime appeals better dealt with here" *The Straits Times* (20 September 1978) at p 7.

116 Alan Hubbard, "Jeya wins right to practice law again" *The Straits Times* (27 October 1988) at p 21.

117 "Privy Council: Why we allowed Jeya's appeal" *The Straits Times* (22 November 1988) at p 19.

118 [1988] 2 SLR(R) 525.

119 (Cap 143, 1985 Rev Ed).

120 "Govt's stand on ISA unchanged, says BG Lee" *The Straits Times* (17 December 1988) at p 20.

121 "Govt to amend ISA next month" *The Straits Times* (20 December 1988) at p 1.

cases involving the removal of errant lawyers.[122] Not only did the Government abolish specific future appeals to the Privy Council, it also legislated that case law decided by the Privy Council after 13 July 1971 was inapplicable in Singapore insofar as the Internal Security Act was concerned.[123] The intention was not only to prevent the Privy Council from influencing Singapore cases in these areas in the *future* but also, at least for Internal Security Act matters, to eradicate the Privy Council's *past* influence.

1.52 Ties to the Privy Council were fast being cut. In fact, the Government had further intentions: Second Deputy Prime Minister Ong Teng Cheong stated that it was "a matter of time" before Privy Council appeals would be abolished.[124] Various Members of Parliament added that Singapore was a sovereign nation and that the time had come for its courts to be the final arbiter of justice.[125] In April 1989, two more pieces of legislation were passed to place more stringent curbs on Privy Council appeals in civil and criminal cases: (1) there was to be no more civil appeals unless parties agreed beforehand for the right of appeal, and (2) there was to be no more criminal appeals except in cases involving the death penalty or life imprisonment, and only when the decision of the Court of Appeal was not unanimous.[126] Finally, in February 1994, all appeals to the Privy Council were abolished.[127]

1.53 While it is entirely justifiable that appeals to the Privy Council should be abolished such that the Singapore courts could be truly independent, it is hard not to be surprised by the speed at which the abolition had taken place. Concerns about external interference resulted in swift legislative action that superseded the years of inaction driven by commercial reasons. Indeed, Non-Constituency Member of Parliament Dr Lee Siew Choh had charged that the

122 See "New Bill to rule out Privy Council appeals for ISA cases" *The Straits Times* (17 January 1989) at p 1 and Cheng Shoong Tat, "Details out on Bills to end appeals to Privy Council" *The Straits Times* (18 January 1989) at p 1.

123 Cheng Shoong Tat, *ibid*.

124 "Days numbered for appeals to Privy Council" *The Straits Times* (26 January 1989) at p 18.

125 *Ibid*.

126 "Two laws curbing appeals to Privy Council come into effect" *The Straits Times* (22 April 1989) at p 16.

127 "Bill abolishing appeals to Privy Council passed" *The Straits Times* (24 February 1994) at p 13.

move was a "knee jerk" reaction to the Privy Council's decision to reinstate Jeyaretnam.[128] Whether it was a "knee jerk" reaction is perhaps immaterial; as Jayakumar himself pointed out, it ought not to matter that the Government reacted in a decisive manner when problems arose with appeals to the Privy Council provided there were good reasons for doing so.[129] Indeed, the broader decision to abolish all appeals to the Privy Council was probably not taken on impulse. It is hard to imagine a Government abolishing *all* appeals on a whim, especially when it had for a long time been aware of the important role that the Privy Council played in assuaging the concerns of foreign investors. Indeed, even in April 1989, Jayakumar had assured foreign investors that despite the abolition of specific appeals then, they still had the protection of the Privy Council.[130] The final decision to abolish all appeals, coming five years later, was probably taken after the Government was reasonably certain that the earlier, incomplete abolition did not harm Singapore.

1.54 Concurrently with the abolition of appeals to the Privy Council, there were calls for the setting up of a permanent Court of Appeal. In 1989, the Government accepted the concept of a permanent Court of Appeal for Singapore.[131] In January 1993, Chief Justice Yong Pung How announced that Singapore was to have a single permanent Court of Appeal, which amalgamated the existing Court of Appeal and Court of Criminal Appeal into a single court. The single court was to consist of the Chief Justice and two Judges of Appeal,[132] and was made a reality after Parliament passed two Bills making amendments to the Constitution and the Supreme Court of Judicature Act.[133] Justices LP Thean and M Karthigesu were appointed the first Judges of Appeal. They were to sit primarily in the Court of Appeal but could sit in the High Court at

128 "Not 'knee jerk' reaction to recent judgment: Jaya" *The Straits Times* (18 February 1989) at p 13.

129 *Ibid*.

130 Martin Soong, "Privy Council option available to businessmen" *The Business Times* (8 April 1989) at p 1.

131 "Govt will make permanent Court of Appeal a reality" *The Straits Times* (16 March 1989) at p 15.

132 "Permanent court of appeal to be set up" *The Straits Times* (10 January 1993) at p 1.

133 "One Permanent Court of Appeal to be set up with own panel of judges" *The Straits Times* (13 April 1993) at p 19.

the invitation of the Chief Justice. This court structure has endured to the present day.

1.55 Ultimately, the abolition of appeals to the Privy Council probably hastened the establishment of a permanent Court of Appeal. To that extent, the abolition did no harm to Singapore, but only good. Singapore's economic growth appeared to have been unaffected. And with a permanent Court of Appeal unimpeded by decisions of a foreign court, Singapore jurisprudence was allowed the room to grow in the 1990s and beyond. Accordingly, the result of what some may view as a "knee jerk" reaction was in fact the further consolidation of the Singapore court system. It was this further consolidation that provided the Singapore legal system with a suitable platform to flourish and develop further in the years ahead.

1.56 Insofar as the lower courts – such as the District Courts and the Magistrates' Courts – were concerned, the Subordinate Courts Act 1970[134] was passed to give them greater powers to reduce the High Court's workload.[135] The Subordinate Courts (now known as the State Courts) were given further power to impose heavier sentences for offenders in 1975.[136] These began the considered move towards calibrating the responsibilities of the High Court and the Subordinate Courts after independence.

C. The expansion years

1.57 The post-independence years were vital ones in the history of the Singapore legal system. During those years, vital legal documents were promulgated that guaranteed Singapore's independence. As legal institutions were established, their purposes were fleshed out too. Most fundamentally, the legitimacy of the Singapore's legal system was assured through a steadfast adherence to the rule of law. But as the post-independence years transited to the 1990s, a backlog problem plagued the courts. Cases took years to be heard and this affected Singapore's economy adversely. Perhaps more damaging was the effect on the public's otherwise favourable perception about the legal system. The expansion years thus encapsulated a determined effort to solve the backlog problem.

134 (Act 19 of 1970).

135 "Greater powers for the lower courts" *The Straits Times* (8 May 1970) at p 7.

136 "A stronger hand for lower courts" *The Straits Times* (6 August 1975) at p 7.

By the end of those years, the Singapore legal system became efficient and world-class and was thus the envy of other countries.

(1) Solving the backlog problem

1.58 Along with economic prosperity and social stability, the Singapore legal system had also come a long way from the immediate post-independence years. Most significantly, the steps to a truly independent legal system had been taken: there was talk of a permanent Court of Appeal with no right of appeal to the Privy Council. This pointed to a reconsideration of the relevance of English law in Singapore courts. Indeed, it was an exciting time for a country coming out of the post-independence years. This optimism led Mavis Chionh to describe the prevailing mood in the Singapore courts in the 1990s as one of "a readiness to move forward, a determination to be attuned to the shifting needs of modern Singapore society, and an unwavering commitment to the continual improvement of the administration of justice".[137] However, a severe backlog problem continued to plague the courts. In his Welcome Reference in October 1990, Chief Justice Yong Pung How – who assumed office as independent Singapore's second Chief Justice on 28 September 1990 – pointed out the "large and embarrassing" backlog of some 2,000 cases in the Supreme Court.[138] At that time, it took on average at least five years before a case was heard by a judge, and another two years if it went on appeal. A capital case could take up to four years, and similarly required another two years if it went on appeal.[139]

1.59 As Malik notes, the primary strategy employed by the Judiciary to solve the backlog problem was to put in place an effective leadership team.[140] Chief Justice Yong, who had been a leading banker and had held key appointments in the public sector, was well-equipped for the task at hand.[141] He set in motion a series of reforms that not only solved the backlog problem, but also fundamentally changed the Singapore legal system. He dealt with

137 *Supra* n 28 at p 117.

138 Serene Lim, "CJ Yong sets new direction for judiciary" *The Straits Times* (17 October 1990) at p 28.

139 *Ibid*.

140 Waleed Haider Malik, *Judiciary-Led Reforms in Singapore: Framework, Strategies, and Lessons* (Washington DC: The World Bank, 2007) at p xix.

141 *Id*, at p 35.

the backlog problem decisively by streamlining court processes, using technology in the courts, and attracting the best to the Judiciary and Legal Service. Ultimately, these methods engendered a more efficient court system and made positions in the Judiciary and Legal Service more attractive career options.

(a) Streamlining court processes

1.60 At his last Opening of the Legal Year speech, Chief Justice Wee expressed his opinion on how court procedures could be tailored not only to meet the complexity of the cases, but also to facilitate their early resolution and settlement. He suggested pre-trial conferences between lawyers and greater disclosure of evidence before cases go to court.[142] This was taken up seriously by his successor. Chief Justice Yong made it clear in his Welcome Reference that legal procedures and practices would be reviewed and updated.[143]

1.61 True to his word, under his tenure, Yong CJ initiated several measures aimed at streamlining court processes and hastening case disposal. For example, the Supreme Court began introducing new ways to speed up the judicial process from 1991. Recognising the limited judicial resources at the highest levels, matters involving little substantive legal issues were removed from the High Court judges' hearing lists to save valuable judicial time.[144] Thus, bankruptcy applications and summonses for directions, which were formerly heard by High Court judges, came to be heard by the Registrar and his deputies. Similarly, many quasi-judicial tribunals that used to be presided over by High Court judges were now presided by district judges. These tribunals included the Copyright Tribunal, the Income Tax Board of Review and the Valuation Review Board.[145] These were timely changes that consequently allowed High Court judges to concentrate on more complex legal matters. While the cases transferred away from them were still important, their effective disposal was nevertheless guaranteed

142 "Adapt to meet needs of high-tech S'pore: CJ" *The Straits Times* (7 January 1990) at p 19.

143 "Counter-productive practices to be updated, says CJ Yong" *The Straits Times* (9 October 1990) at p 21.

144 *Supreme Court Singapore: The Re-organisation of the 1990s* (Supreme Court Singapore, 1994) at p 44.

145 *Ibid*.

by capable, albeit more junior, judicial officers. Moreover, as the Legal Service attracted more talent over time, the quality of these judicial officers was all the more assured.

(b) Using technology

1.62 At his last Opening of the Legal Year speech, Chief Justice Wee called on the legal profession to meet the requirements of an increasingly hi-tech and modern Singapore.[146] Once again, this call was taken up seriously by his successor. Having taken office, Chief Justice Yong was determined to leverage on technology to solve the backlog problem. Initially, practical steps had to be taken to make utilising technology a feasible option. In 1991, the Economic Development Board and the National Computer Board assured smaller law firms that they could apply for loans through the Small Enterprise Computerisation program to aid their computerisation process. Minister for Law Jayakumar also announced the establishment of a high-powered council comprising also the Chief Justice and the Attorney-General to computerise the legal sector.[147] As technology gained a foothold in the Singapore legal system, steps were taken to ensure that all in the legal profession would truly benefit from it. In 1996, the Law Society announced plans to set up bureaus to help smaller law firms cope with the increased use of technology by the courts and government agencies. In particular, these bureaus provided collective points of services for individual firms located close together.[148]

1.63 LawNet was clearly the fulcrum of the push towards computerisation. It was further expanded after its successful introduction. In July 1992, LawNet subscribers gained access to "Caesar", which stood for "Case Electronic Search and Retrieval System". It contained a database of all the Straits Settlements Law Reports, the Singapore Law Reports Old Series, the Malayan Law Journals and the Singapore Law Reports.[149] The keyword search functions built into the database were regarded as revolutionary

146 *Supra* n 142.

147 "Loans to help smaller law firms tap LawNet" *The Straits Times* (16 March 1991) at p 26.

148 Brendan Pereira, "Law Society Plans Bureaus To Help Smaller Firms" *The Straits Times* (4 February 1996) at p 22.

149 Ramesh Divyanathan, "Caesar database brings case law within easy reach" *The Business Times* (8 July 1992) at p 16.

when compared to the then-laborious system of manually searching through printed law reports. The database also sped up the dissemination of information as cases appeared in it long before they did in the printed law reports.[150] In November 1992, Chief Justice Yong announced that LawNet would contain six modules covering all the major areas of legal practice by 1997.[151] This expansion was partially realised in 1993, when LawNet launched three main services: the Subordinate Court Notices listings, the writ of execution search and the company winding-up search. By March 1993, LawNet had reached 75% of all potential users with about 160 law firms subscribing to it and 1,600 out of 2,185 lawyers using it. The service also became much more affordable with a $750 registration fee and a $50 monthly subscription fee instead.[152]

1.64 Another centrepiece of the technological reforms was the $30 million-a-year Electronic Filing System, popularly known as "EFS". From 8 March 1997, some court papers at the High Court and the Subordinate Courts (now the State Courts) were to be filed electronically in an initial pilot programme before full implementation.[153] The primary benefit of the EFS was that it allowed lawyers to obtain electronic extracts of documents from case files without having to manually check the physical copies. The EFS also allowed lawyers to serve legal documents on other lawyers, if they did not require personal service.[154]

(2) Revamping the courts

1.65 The Judiciary was also improved. As mentioned above, a permanent Court of Appeal had been established in 1993, and a five-judge panel of the court – the first in Singapore's legal history – sat in August 1993.[155] In conjunction with these, all appeals from the

150 *Ibid*.

151 John Lui, "LawNet takes quantum leap with 5 new databases" *The Straits Times* (15 November 1992) at p 3.

152 "Legal database offers three new services" *The Straits Times* (27 March 1993) at p 27.

153 Diana Oon, "Law Firms Preparing For Electronic Filing System" *The Business Times* (14 March 1997) at p 2.

154 Lim Li Hsien & Tan Ooi Boon, "Court Filing System To Go Electronic In March" *The Straits Times* (5 January 1997) at p 19.

155 "First five-judge court sits and reserves judgment" *The Straits Times* (11 August 1993) at p 25.

Court of Appeal to the Privy Council were also abolished in 1994. The Singapore legal system was, for the first time in its history, truly independent. However, as court processes were improved to solve the backlog problem, it became increasingly difficult to gain a hearing in the Supreme Court. Beginning in 1993, an automatic right of appeal to the High Court lay only if the amount in dispute exceeded $5,000, as amended upwards from $2,000. Similarly, no case could be brought before the Court of Appeal unless the amount in dispute exceeded $30,000, which was amended upwards from $2,000.[156] These changes were meant to reduce the judicial workload and avoid backlogs. However, they also made the Supreme Court more exclusive. While judicial appointments consequently became more prestigious, access to justice in the Supreme Court was also (relatively speaking) reduced.

1.66 On the other hand, the Supreme Court gained more powers. In February 1993, Parliament passed the Interpretation (Amendment) Bill that allowed courts to refer to parliamentary materials when interpreting statutes.[157] More significantly, in August 1994, Parliament also gave the Supreme Court an advisory role in interpreting the Constitution with the new Article 100.[158]

1.67 The Subordinate Courts (now the State Courts) were also improved. In 1993, a Bill was introduced in Parliament to give them wider powers and more flexibility to hear more types of cases. Specifically, the monetary limits of the District and Magistrate's Courts were increased from $50,000 and $10,000 to $100,000 and $30,000 respectively.[159] The new limits and the enlarged jurisdiction gave the district judges the opportunity to acquire a broader range of experience and a more extensive knowledge of the law.[160] These changes also resulted in a drop in

156 "Govt moves to create single Court of Appeal" *The Straits Times* (27 February 1993) at p 2.

157 Conrad Raj, "Parliamentary Proceedings Can Be Used To Interpret Laws, Says Appeal Court" *The Business Times* (18 March 1993) at p 27.

158 See Cherian George, "Supreme Court to advise on Constitution" *The Straits Times* (26 August 1994) at p 1 and "Bill giving court a role in interpreting the Constitution among those gazetted" *The Straits Times* (24 September 1994) at p 26.

159 See Conrad Raj, "Three Amendment Bills submitted to speed up work of the courts" *The Business Times* (27 February 1993) at p 5 and "Subordinate Courts' jurisdiction increased" *The Straits Times* (14 April 1993) at p 22.

160 "Lower courts may get wider powers and flexibility" *The Straits Times* (27 February 1993) at p 2.

the average number of cases filed in the High Court from 239.2 a month between January 1993 to June 1993 to just 157.6 a month from August 1993 to December 1993.[161] Further, in January 2000, Chief Justice Yong announced that a group of courts known as the Commercial and Civil (District) Courts would be established. These courts were meant to deal with the increasing number and more complex nature of criminal and civil matters with commercial facts.[162] Hence, while these measures were initially meant to increase the lower courts' jurisdiction to hear more cases and simultaneously reduce the backlog in the High Court, they also exposed the lower Judiciary to a wider variety of cases. That no doubt improved the quality of the lower courts' Bench.

D. The refinement years

1.68 The expansion years gave Singapore a world-class legal system that was efficient and modern. This was vital in sustaining Singapore's fast economic and social progress in the 1990s. As the new millennium dawned, however, there were concerns that the unprecedented changes in the legal system were giving rise to unprecedented problems as well. There was a sense that access to justice was more costly, with the implementation of high court fees and the onset of even higher lawyers' fees. The legal profession was shrinking annually, with lawyers complaining that the changes that fundamentally transformed the Singapore legal system had come about much too fast. And, perhaps relatedly, there was the perception that the Bench was becoming more distant from the Bar, with the former being seen as unable to understand the latter's concerns, and all too ready to leave certain segments of the legal profession behind in the unrelenting quest for even greater efficiency and modernity.[163]

1.69 By the mid-2000s, it had become clear that the Singapore legal system, while fast, efficient and modern, required refinement. The appointment of independent Singapore's third Chief Justice, Chan Sek Keong, on 12 April 2006[164] was to provide the impetus for

161 *Supra* n 161 at p 61.
162 Conrad Raj, "Separate courts set up to deal with commercial cases" *The Business Times* (11 January 2000) at p 2.
163 "Courts moving 'too fast' for lawyers", *The Straits Times* (May 11, 1999).
164 "New Chief Justice sworn in" *The Straits Times* (12 April 2006) at p 3.

that refinement. Under Chan CJ's tenure in the refinement years, the relentless efficiency that had become the hallmark of the Singapore legal system was supplemented with a "more human touch".[165] Disputes were still settled in a timely manner, but not hurriedly, and always emphasising a "kinder" side to justice.[166] The refinement years also saw the emergence of a truly autochthonous – that is, a truly local – set of Singapore laws that were not only suited to local conditions but well-positioned Singapore to be a legal thought leader in the global arena. This was pivotal because even as the Singapore legal system was refined domestically, it had to meet the new challenges posed by an increasingly globalised world.

(1) A world-class legal system poised for the next chapter

1.70 It is important to first recognise the background in which Chief Justice Chan became Singapore's third Chief Justice. By 2006, the Singapore legal system was world-class through the leadership of two successive Chief Justices, each with an appropriate impact at important stages of its history. Independent Singapore's first Chief Justice, Wee Chong Jin, upheld the rule of law amidst the difficulties of the post-independence years. In doing so, Wee gave the Singapore legal system its fundamental hallmark that is not only key to its legitimacy, but also to Singapore's stability and growth. Indeed, looking back at Singapore's development, Minister Mentor Lee Kuan Yew said in 2007 that the rule of law gave Singapore the advantage in the centre of South-east Asia back in 1959, imbuing it with the distinctive characteristics of reliability and predictability in order to prosper to the thriving business hub of the present day.[167]

1.71 Under Chief Justice Yong Pung How's leadership, the Singapore legal system was transformed from one that was plagued by a serious backlog problem in the 1980s to one that was the envy of other jurisdictions for its efficiency and modernity. By the mid-1990s, the Singapore legal system was widely recognised as being

165 Ben Nadarajan, "A more human touch to the Bench" *The Straits Times* (20 May 2006) at p H6.

166 *Ibid*.

167 Li Xueying, "Rule of law key to S'pore stability, growth: MM Lee" *The Straits Times* (15 October 2007) at p 1. See also "CJ praises Singapore's fair, efficient legal system" *The Straits Times* (6 May 1994) at p 29.

one of the best in the world. For example, in 1995, expatriate mangers ranked it as the best in Asia according to a poll conducted by the Political and Economic Risk Consultancy (PERC).[168] The Singapore courts clinched top spot again in this survey several times in the 2000s.[169] In a 1997 survey of the Singapore business community, 90% of the respondents found judges to be "on the right track in the way they meted out justice" and between 90% and 95% also agreed that the courts were independent, open, and followed the law.[170] The 1997 World Competitiveness Yearbook ranked Singapore first in legal framework for being "supportive of the competitiveness of the economy". The World Competitiveness Report also rated the Singapore legal system fourth, a notch above its former colonial master, Britain.[171] In 1999, a visiting delegation from the International Tribunal for the Law of the Sea gave the Supreme Court the thumbs-up for the use of technologies in the courts.[172] Further, in 2001, judges from the Subordinate Courts (now the State Courts) became the only judges invited by the United Nations Centre for International Crime Prevention to share their experiences. In Yong CJ's words, the courts had become a "judicial learning node" for foreign judges and court administrators.[173] Finally, in 2007, the World Bank Business Report ranked Singapore top for ease of doing business, driven by a sound legal system.[174]

1.72 Foreign judiciaries have also praised the Singapore judiciary. For example, in 1999, the British Lord High Chancellor praised the Singapore judiciary for using information technology effectively

168 Ven Sreenivasan, "S'pore has the best legal system in Asia: Perc Poll" *The Business Times* (20 July 1995) at p 15. This was to be repeated in later years, for example, see "Singapore's legal system rated best in Asia again" *The Straits Times* (13 August 2003) at p H3 and "S'pore's judicial system retains top spot in Perc survey" *The Straits Times* (26 June 2004) at p H2.

169 See, *eg*, the news articles from *The Straits Times*, *ibid*.

170 Tan Ooi Boon, "Judiciary gets top marks from business community" *The Straits Times* (20 July 1997) at p 39.

171 Chua Mui Hoong, "Is Singapore's legal system getting a bad name?" *The Straits Times* (25 October 1997) at p 66.

172 "Delegates visit Supreme Court" *The Straits Times* (14 May 1999) at p 38.

173 Alethea Lim, "Nation's law system up with world's best" *The Straits Times* (7 January 2001) at p 4.

174 Lynette Khoo, "Legal system can't rest on its laurels: M M Lee" *The Business Times* (15 October 2007) at p 11.

to improve the courts' efficiency.[175] Indeed, back in 1995, the English courts had adopted Singapore-style changes, such as instructing witnesses to give their main evidence as written statements and holding pre-trial conferences to speed up the administration of justice.[176] Then, in 2006, Colombo High Court Judge I.M. Abeyratne praised the high efficiency of the Singapore legal system. In the same year, Hong Kong Judge William Waung also lauded the high standards in shipping and admiralty law.[177] Perhaps, most importantly, global recognition aside, a 1998 survey showed that 97% of Singaporeans agreed that the courts administer justice fairly to all, while 96% thought the courts carry out justice independently, according to law.[178] This trust in the Singapore legal system by Singaporeans was reaffirmed in a 2000 survey.[179]

(2) Supplementing efficiency with heart

1.73 While Chief Justice Chan believes in the usefulness of rankings as benchmarks to assess the efficiency of the Singapore legal system, he is also correct that they do not necessarily deliver justice in the right outcomes; in his words, "[f]avourable statistics are an indicator of progress but do not make a justice system".[180] Chan CJ's de-emphasis on rankings shaped his tenure and the refinement years in two broad ways.

1.74 First, Chief Justice Chan made it clear that he wanted to find a balance between efficiency and just outcomes.[181] Thus, his caveat that judicial reform must not be at the expense of sacrificing the quality of justice – which he refers to as the fundamental values of procedural and substantive justice, such as due process, fairness

175 "Praise for Singapore's judiciary" *The Straits Times* (11 September 1999) at p 53.

176 Brendan Pereira, "English courts adopt S'pore-style changes to speed up justice" *The Straits Times* (12 February 1995) at p 3.

177 K C Vijayan, "Praise for S'pore judiciary from courts in the region" *The Straits Times* (16 June 2006) at p H13.

178 "Judiciary gets high rating from S'poreans" *The Straits Times* (6 August 1998) at p 27.

179 "S'pore judicial system enjoys high standing" *The Straits Times* (13 August 2000) at p 23.

180 "Asia Pacific Judicial Reform Forum Roundtable Meeting 2009 - Welcome Address by Chief Justice Chan Sek Keong" *The Straits Times* (20 January 2009).

181 Elena Chong, "New CJ maps out his vision for the judiciary" *The Straits Times* (23 April 2006) at p 15.

and rationality in decision-making.[182] Indeed, this was a point that Chan CJ emphasised throughout his tenure. For example, at his Welcome Reference, Chan CJ said that efficiency must not be pursued to the point "where it starts to yield diminishing returns in the dispensation of justice".[183] Similarly, he said in 2008 that although the lower courts may have been placed high in international rankings, what truly mattered was the quality of justice people receive here. While rankings are important, we "should not allow them to dominate and overwhelm our own assessment of the quality of justice that we administer to our people".[184]

1.75 Secondly, Chief Justice Chan returned to the fundamentals of judging. After stressing the importance of striking a balance between efficiency and just outcomes, he then added that the courts should be confident enough to give greater emphasis to the basics of judicial decision-making without the recurrent fear of a resurgent backlog.[185] This was important so as to ensure that no litigant leaves the courtroom "with the conviction or feeling that he has not been given a fair or full hearing because it was done hurriedly".[186] Another reason was to make Singapore courts' substantive decisions the standard others aspire to, just as their administration of procedural justice already is. One example of Chan CJ's emphasis on the fundamentals of judging was how he undertook a detailed study of past cases to show that the courts do not shield government agencies. Rather than assert the point without proof, Chan CJ pointed out that nearly 30% of cases brought by aggrieved persons against the Government have succeeded.[187] The figures showed that the courts were not out to protect the mistakes of the public authorities at the expense of the public.[188]

182 *Supra* n 180.
183 *Supra* n 181.
184 Chong Chee Kin & K C Vijayan, "Quality of justice, not rankings, matters: CJ" *The Straits Times* (5 April 2008) at p H2.
185 *Supra* n 181.
186 *Ibid*.
187 K C Vijayan, "Courts do not shield govt agencies: CJ Chan" *The Straits Times* (28 September 2010) at p A6.
188 *Ibid*.

IV. Looking into the future

1.76 By the end of Chief Justice Chan's tenure, the Singapore legal system was both effective and substantive. Looking to the future, we can be certain that two aspects of the Singapore legal system will endure even as it faces new challenges ahead.

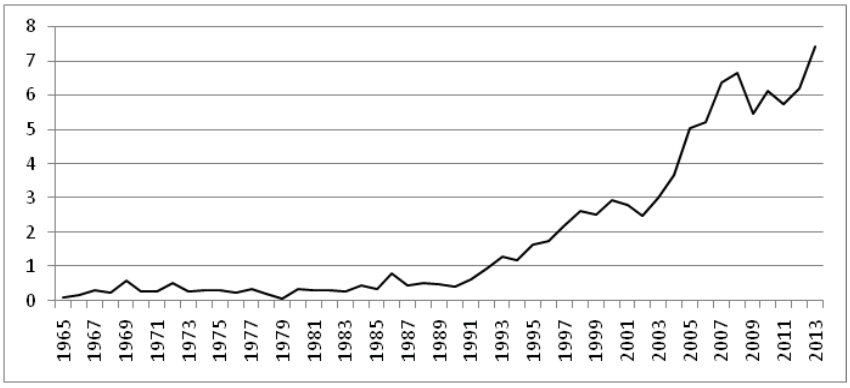
A. The continued growth of an autochthonous Singapore legal system

1.77 The first is the continued growth of an independent Singapore legal system. As we have seen, the AELA has freed the courts to develop a uniquely Singapore jurisprudence. In 1995, after the passage of the AELA, Chief Justice Yong said that Singapore "must develop its own legal system, and where necessary, part company with the English".[189] He highlighted that the courts' approach to the law "must reflect our own Asian values, such as consensus and respect for authority".[190] The essence is that Singapore law must develop in accordance with local conditions, and not follow English developments blindly.

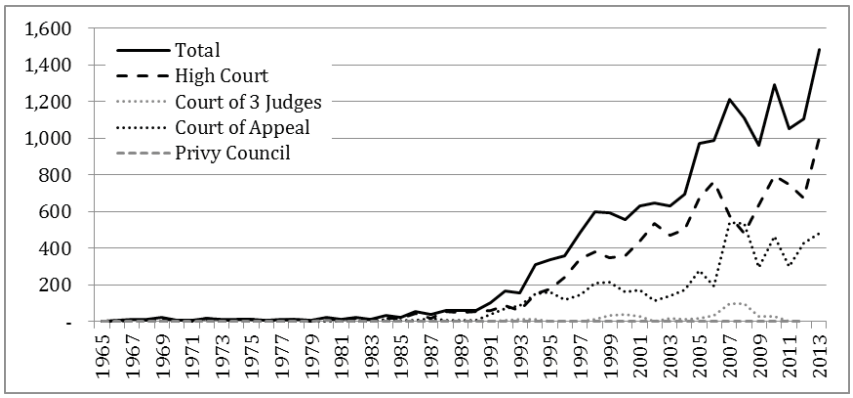
1.78 A statistical study of the Singapore cases decided between 1965 and 2013 show the effect that the AELA has had on the growth of Singapore law. The study first examines the average number of Singapore cases cited per Singapore case, as well consider the total number cited per level of court. It then uses that information to ascertain the development of local jurisprudence, with the premise being that the more Singapore cases the courts cite, the more indicative it is that there is, firstly, a body of Singapore jurisprudence from which the courts can cite from, and secondly, that the courts are engaged with the continued development of that jurisprudence.

189 "S'pore 'must develop its own legal system'" *The Straits Times* (13 September 1995) at p 27; see also Diana Oon, "Distinctively S'porean" *The Business Times* (9 November 1995) at p 6; Karen Wong, "Courts' role to develop the law" *The Straits Times* (15 September 2000) at p 59.

190 *Ibid*.



Graph 1: Average number of local cases cited per Singapore case



Graph 2: Total number of local cases cited by level of court

1.79 Graphs 1 and 2 show that the average and total number of local judgments cited has seen an increase coinciding with three distinct periods. While the number of local judgments cited was relatively low until 1990, this has since been increasing steadily. This echoes local calls for the development of an independent body of Singapore law. By 1995, Chief Justice Yong said that the Singapore legal system was showing signs of being ready and able to shape its own destiny.[191] The subsequent rise in the total number of local judgments cited, which can be taken as indicative of the growth of local jurisprudence, is not surprising for a number of reasons.

1.80 First, the AELA came into effect in 1993, and this was swiftly followed by the abolition of appeals to the Privy Council and the

191 Diana Oon, *supra* n 189.

issuance of the Practice Statement in 1994. The effect of now being free to develop Singapore's own local jurisprudence is quite remarkable as the years 1993–1994 saw the beginning of a steady increase in the number of local decisions being cited relative to foreign citations.

1.81 Second, the wider availability of and greater accessibility to local decisions through the *Singapore Law Reports* (and later the *Singapore Law Reports (Reissue)*) and LawNet also appear to have had an effect on sustaining the increased citations of local decisions in the 1990s. In 1989, the Singapore Academy of Law introduced its own journal; and in 1991, Singapore launched its own version of the *Halsbury's Laws of England*, covering all areas of commercial, family and personal law practice.[192] In the subsequent years, local textbooks began to increasingly emerge, culminating in the Singapore Academy of Law's publishing arm, Academy Publishing, commissioning and later publishing a series of local law textbooks under the Law Practice Series in the 2010s.[193]

1.82 Third, undoubtedly, the increase in the number of local decisions cited probably has to do with the increased number of locally-trained judges and lawyers.[194] Freed from the overwhelming

192 As Yong CJ put it, "the rapid and significant development of our local legal system and jurisprudence has made it imperative for a parallel work dedicated to Singapore law and interpretation": *Speeches and Judgments of Chief Justice Yong Pung How, Vol I. Speeches* (Audrey Lim et al ed) (Singapore: SNP International Publishing, 2006) at p 253.

193 Singapore Academy of Law website <http://www.sal.org.sg/eBookshop/law_books_LawPracticeSeries.aspx?userId=> (accessed 1 January 2014).

194 One of the points made in Lau Kok Keng *et al*, "Legal Crossroads – Towards a Singaporean Jurisprudence" (1987) 8 Sing L Rev 1 at 7–8 was that the training of our judges and lawyers affected the extent to which they were more familiar with English law, hence affecting the development of a local jurisprudence. The authors noted that the vast majority of the judges serving at that time received their legal training in England. As of 1991, four of the six new judges appointed received their undergraduate legal training in Singapore. Today, most of the judges received their legal training in Singapore. In terms of the legal practitioners, the Senior Counsel scheme was also set up to reduce dependence on Queen's Counsel from other Commonwealth jurisdictions, who would tend to be more familiar with the jurisprudence of their own. Chan CJ also noted in his speech at the National University of Singapore's Faculty of Law 50th Gala Anniversary Dinner on 1 September 2007 that from 1965 to 2007, graduates of the NUS Law Faculty groomed some 63% of those in private practice and 79% in the legal service, available at the Supreme Court website <http://supcourt.gov.sg> (accessed 1 September 2010).

influence of English law in their legal education, these judges and lawyers may feel freer to depart from English law, thus contributing to the growth of Singapore law.

1.83 Fourth, the courts actively encouraged the growth of Singapore law as well. In 2008, Chief Justice Chan issued a practice direction, which directed that "where there are in existence local judgments which are directly relevant to the issue, such judgments should be cited in precedence to foreign judgments"[195] so that the courts are not "unnecessarily burdened with judgments made in jurisdictions with differing legal, social or economic contexts".[196] If foreign judgments are to be cited, counsel should ensure that they "will be of assistance to the development of local jurisprudence on the particular issue in question".[197] This Practice Direction comes after a series of promptings by Chan CJ that Singapore should develop the sophistication of its own jurisprudence and that this can only be done if Singapore lawyers and academics "write Singapore [law]".[198] Implicit in this urging is the recognition that the project to develop Singapore law had at least achieved a sufficient degree of success such that one should not naturally feel the need to turn to English law as a first resort.[199] In 2011, Chan CJ also called on courts to build up a large body of local case law so local judgments can be referred to first, thereby building up local jurisprudence.[200]

1.84 Ultimately, due to the enactment of the AELA and its effects, Singapore courts began to develop local jurisprudence in a desire to create a local jurisprudence. This will undoubtedly carry on into the future.

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195 Practice Direction 1 of 2008, available at the Supreme Court website <http://supremecourt.gov.sg> (accessed 22 December 2014).

196 *Ibid*.

197 *Ibid*.

198 See Janice Heng, "Cite local court rulings first: CJ urges lawyers; other cases can be used for comparison or criticism" *The Business Times* (19 May 2007) at p 10. See also Melissa Sim & Tan Dawn Wei, "Write on local law, CJ tells academics" *The Sunday Times* (2 September 2007) at p 10; Also see Chan Sek Keong CJ at his welcome reference on 22 April 2006, available at the Supreme Court website <http://supremecourt.gov.sg> (accessed 22 December 2014).

199 Indeed, it has long been suggested that even where a local decision merely paraphrases an English decision, the former should be cited in preference to the latter: see Andrew Phang Boon Leong, *supra* n 14 at 25.

200 K C Vijayan, "Courts aim to build up Singapore case law" *Straits Times* (25 February 2011) at p C6.

B. Meeting the challenges of globalisation

1.85 While the expansion years saw the challenges of an increasingly technology-driven world, the refinement years had to confront the challenges of a globalising world. As the world became more inter-connected, the key challenge was whether to open up the Singapore legal sector to be part of that inter-connectedness, or to shield the domestic sector. As is typical of most Singapore policy measures, the decision was taken to try, as much as possible, to do both. Juxtaposed with the balance between liberalisation and protectionism, was the need to harmonise laws, particularly with those around the region, so that the benefits of a globalising world can be further reaped.

1.86 It is clear that Singapore is aiming to become the "premier destination" in Asia for legal services and dispute resolution, as Minister for Law K Shanmugam said in October 2013.[201] As Asia is expected to triple its gross domestic product to US$34 trillion between 2010 and 2020, the number of complex cross-border commercial transactions and investments will increase, and so will disputes. In this regard, arbitration will no doubt remain an important part of the Singapore legal system. As Attorney-General Sundaresh Menon said in 2012, arbitration will remain the most important means of international dispute resolution despite problems associated with the evolution of the arbitral process. Singapore's advantages of neutrality, a strong judiciary and a supportive legislative framework will all ensure the continued importance of arbitration.[202] In fact, the Singapore International Arbitration Centre handled a record 235 new cases involving multinational businesses in 2012 and hit a new high of US$3.61 billion.[203]

1.87 Drawing on the growth of arbitration, Chief Justice Menon, independent Singapore's fourth Chief Justice, established a committee co-headed by Justice VK Rajah and Senior Minister of State for Law and Education Indranee Rajah to study the

201 K C Vijayan & Ian Poh, "S'pore to be Asian centre for dispute resolution" *The Straits Times* (30 October 2013) at p B4.

202 Grace Leong, "Outgoing A-G sees place for Singapore in arbitration's evolution" *The Business Times Singapore* (12 June 2012) at p 8.

203 *Supra* n 201.

viability of establishing an international commercial court in Singapore.[204] In October 2013, drawing on the committee's work, Minister Shanmugam announced that the Singapore International Commercial Court ("SICC") would be established, in conjunction with improving Singapore's international commercial mediation capabilities.[205] The premise for the SICC was especially due to the Singapore Judiciary's strong international reputation, and its composition can also include foreign judges of international standing, to be known as International Judges.[206] Similarly, in December 2013, the International Commercial Mediation Working Group recommended the establishment of the Singapore International Mediation Centre, which would aim to help feuding business partners work out their differences through a process of discussion using qualified mediators so as to avoid the more costly arbitration or court processes.[207] In March 2014, Minister Shanmugam announced that the Singapore International Mediation Centre is expected to be launched in late 2014, while various changes to the law are being reviewed to make the SICC a reality.[208]

1.88 As globalisation continues to take hold in Singapore, the new challenge is to ensure that liberalisation of the legal sector actually benefits the nation, including the domestic legal sector. Thus, as Minister Shanmugam asked in deliberations between senior governmental officials and top lawyers in 2007, if the legal sector was opened and all that resulted was the moving of work from local to foreign firms, then what was the benefit to Singapore? Thus, when the legal sector was liberalised, the Government made sure that Qualifying Foreign Law Practices needed to generate a minimum amount of revenue from offshore work, and also employ

204 Grace Leong, "An international commercial court in the making here" *The Business Times* (5 January 2013) at p 4.

205 Mok Fei Fei, "New international court, mediation centre mooted" *The Straits Times* (4 December 2013) at p A8. See also Michelle Quah, "Law minister unveils two big initiatives" *The Business Times* (30 October 2013) at p 9.

206 Selina Lum, "Call for feedback on changes to law for new court" *The Straits Times* (10 April 2014) at p B3.

207 Mok Fei Fei, *supra* n 205.

208 Selina Lum, "S'pore paving way to be dispute resolution centre" *The Straits Times* (6 March 2014) at p B10.

a minimum number of lawyers in Singapore.[209] Furthermore, while the SICC involves international work, it is likely to generate a lot of work for local lawyers.[210]

1.89 Another effect of globalisation is the demand it places on the harmonisation of laws. In August 2013, Chief Justice Menon called for ASEAN countries – with a total population of 600 million and a nominal gross domestic product of more than US$2 trillion – to consider recognising one another's civil court judgments, so that they can be enforced throughout the region. He called on the states to look into signing the Hague Convention on Choice of Court Agreements, which would provide a ready-made platform to do this. That Convention provides that where disputing parties have chosen to have their case heard in another signatory state, their own country has to recognise and enforce the judgments except in certain limited circumstances.

V. Conclusion

1.90 This Chapter has attempted, in a short space, to tell the history of the Singapore legal system till the present time. From dealing with the challenges of post-independence to now grappling with the opportunities afforded by globalisation, the Singapore legal system has shown itself capable of responding with resilience and always with an emphasis on the rule of law. Moreover, after struggling to come to terms with its identity as an independent legal system in the initial years, the legal system of the present time has shown itself willing to consider issues afresh, free of external influences. The growth of an independent and autochthonous legal system is thereby assured. Indeed, we should have no doubt that that will continue in the years to come.

Further readings

1. GW Bartholomew, "English Statutes in Singapore Courts" (1991) 3 SAcLJ 1

2. Andrew Phang Boon Leong, *The Development of Singapore Law* (Butterworths, 1990)

209 Michelle Quah, "Foreign law practices must show they are bringing in foreign cases" *The Business Times Singapore* (30 May 2012) at p 2.

210 Mok Fei Fei, *supra* n 205.

3. Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Academy Publishing, 2006)

4. Andrew Phang, "Reception of English Law in Singapore: Problems and Proposed Solutions" (1990) 2 SAcLJ 20

5. Andrew Phang, "Cementing the Foundations: The Singapore Application of English Law Act 1993" (1994) 28 UBC LR 205

6. Goh Yihan and Paul Tan, "An Empirical Study of the Development of Singapore Law" (2011) SAcLJ 176

7. Kevin YL Tan (ed), *The Singapore Legal System* (Singapore University Press, 2nd Ed, 1999)