

International Justice Forum 2019

**MANAGING QUALITY OF JUSTICE:
GLOBAL TRENDS AND BEST PRACTICES**

*Justice Steven Chong**

I. Introduction

1. In the global discourse on justice and quality of justice, much has been said about the substantive aspects of the law and justice – the importance of developing sound legal principles, a consistent body of jurisprudence, and adherence to the rule of law ideal. Somewhat less has been said of the procedural aspects – the legal rules of procedure which balance due process and the efficient running of the system. But almost nothing is said of what, in my view, is a matter oft-overlooked, and yet of critical importance – court administration and management.

2. The judiciary is, of course, an organ of state, but it is also, elementally, an organisation. Like any organisation, the courts face issues of administration and management – budgeting, human resources, public communications – and failings in these respects are just as much a threat to the administration of justice as are failings in the quality of its decisions. The key to success lies not just in elocution, but in execution; and failure lurks not just in the spectacular, but in the mundane as well.

3. This pragmatic thinking is almost hardwired into the Singaporean consciousness. Our founding Prime Minister, Mr Lee Kuan Yew, himself a former lawyer, put it this way: “*The acid test of any legal system is not the*

* Judge of Appeal, Supreme Court of Singapore. I wish to acknowledge the valuable assistance of my law clerk, Mr Reuben Ong, in the research of this paper.

*greatness or grandeur of its ideal concepts, but whether in fact it is able to produce order and justice in the relationships between man and man and between man and the State.”*¹ Being an island-nation with no natural resources and a tiny population entirely dependent on entrepot trade and foreign investment, the development of a robust, respected and sophisticated legal system which commands the confidence of foreign traders and investors is nothing less than a matter of survival for us. In this regard, it is essential that we remain on the cutting edge – not just of global legal developments, but also of administrative best practice and management policy.

4. In this paper, I discuss two unique Singaporean policies which bear on the topic under discussion – our “block budget” system of budget planning, and our strategy of close engagement with other stakeholders – and how they contribute to ensuring the high quality of justice dispensed by our judiciary. I then conclude by sharing an example of what we have achieved by the marriage of those two policies – the establishment of the Singapore International Commercial Court.

II. Matters of Purse: Independence and Initiative

5. I begin by examining Singapore’s model of budget control. I should begin by saying that in Singapore, the remuneration of judges does not come from the court’s budget. Instead, judicial remuneration is protected by constitutional guarantee and is paid out of a central “consolidated fund” which does not form part of the budget of any one organisation.² This removes any temptation to compromise on judicial remuneration in favour of other competing priorities in the face of scarce budgetary resources.

¹ Lee Kuan Yew, speech to the University of Singapore Law Society Annual Dinner at Rosee D’Or delivered on 18 January 1962
<www.nas.gov.sg/archivesonline/data/pdfdoc/lky19620118.pdf>.

² Sundaresh Menon CJ, speech at the 16th Conference of Chief Justices of Asia & The Pacific delivered on 8 November 2015 at para 8.

6. The budget for all other expenditure that the court will have to incur is allocated by the Ministry of Finance on a “block budget” system; a system which applies equally to the budgets allocated to all government ministries and organs of state in Singapore. Under the block budget system, budgets are allocated in 5-year blocks instead of a yearly annual budget. Each block budget begins with a baseline budget for the first year, set after careful and wide-ranging discussions between the Judiciary and the Ministry of Finance. That baseline budget is then set to increase in subsequent years by an annual growth factor linked to the GDP growth rate, reviewed annually. At the end of each 5-year block, the process starts again with a new baseline budget.³

7. The block budget system also provides for a mechanism by which government organisations may seek to obtain funds over and above the block budgets they are allocated. We call this “above-the-block” funding. The way this works is that funds are distributed from a separate pool in a competitive process under which government organisations submit bids to the Ministry of Finance, backed by proposals justifying the extra funds sought. The Ministry of Finance then assesses the merits of each proposal and decides on the allocations, taking into consideration the following criteria: (a) whether the proposal supports prevailing whole-of-government policies; (b) whether it entails the government organisation in question fulfilling an expanded mission; and (c) whether there is an element of innovation or novelty of ideas involved. At the end of the process, the funds sought may be granted either in whole or in part, or the bid may be rejected altogether.⁴

³ Sundaresh Menon CJ, speech at the 16th Conference of Chief Justices of Asia & The Pacific delivered on 8 November 2015 at paras 9–10.

⁴ Sundaresh Menon CJ, speech at the 16th Conference of Chief Justices of Asia & The Pacific delivered on 8 November 2015 at para 11.

8. The thinking behind the block budget system is that each organisation should be empowered to plan ahead into the medium-term instead of taking a short-term, year-to-year view.⁵ There are two key aspects to this – certainty and flexibility. First, certainty, because each organisation is assured of at least the baseline budget for the duration of the 5-year block, allowing it to plan for the financing of projects and initiatives that stretch over several years. And second, flexibility, because organisations may marshal more funds either by bidding via the “above-the-block” system, or by internally re-allocating funds from one year to another. For example, if it is anticipated that an initiative would require additional funding in Year 3, part of the budget for Year 2 could be assigned to Year 3.⁶

9. How then does all of this relate to increasing the quality of justice? In my view, our system of budget control bears significantly upon two keys – independence and initiative.

10. Let me begin with judicial independence. Alexander Hamilton, one of the founding fathers of the United States, famously wrote that next to security of tenure, nothing contributes more to the independence of the judiciary than fixed provision for its support; for “*a power over a man’s subsistence amounts to a power over his will*”.⁷ What is true of the individual is also true of the organisation; independence can only exist if the judiciary as a whole is able to function like an independent institution. Any shortcomings in this regard may raise concerns as to both the reality and appearance of judicial independence.⁸ This is fundamental to the *quality* of justice dispensed by judges, for if the

⁵ Sundaresh Menon CJ, speech at the 16th Conference of Chief Justices of Asia & The Pacific delivered on 8 November 2015 at para 9.

⁶ Sundaresh Menon CJ, speech at the 16th Conference of Chief Justices of Asia & The Pacific delivered on 8 November 2015 at para 12.

⁷ Alexander Hamilton, *The Federalist No 79*
<<https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-79>>.

⁸ Chan Sek Keong CJ, “Securing and Maintaining the Independence of the Court in Judicial Proceedings” (2010) 22 SAcLJ 229 at paras 18–19.

judiciary is biased or beholden, or *seen to be* biased and beholden, then it is incapable of doing justice at all.

11. I turn next to initiative. By this I mean simply having the financial wherewithal to undertake our own initiatives which support the administration of justice. One important initiative which was made possible by the block budget system was the formation of an Office of Public Affairs (“OPA”) to strengthen the way in which we engage and communicate with the general public. This is an important but often overlooked aspect of the justice process. When we speak of the quality of justice, we are not concerned only with achieving a just *outcome* in each case, though that is important. We are concerned also with the *process* that litigants go through, and their *perceptions* of that process. In this regard, the OPA serves an important role in demystifying the justice system; for example, engaging the public in responding to their queries, compliments and complaints, or in its revamp of our website to present relevant information to laypersons in a way that is accessible and intuitive.⁹

12. Another key initiative we have launched is the Singapore International Commercial Court, and I will say more about this later.

III. Matters of Partnership: Engagement and Entrepreneurship

13. Next, I discuss about the Judiciary’s commitment to building a culture of consultation and partnership with our stakeholders. These stakeholders include the Ministry of Law, the Bar and the Attorney-General’s Chambers. Given that all of us share a common mission – the fair and efficient administration of justice – it would be a tragic waste if all of us simply went and pulled in uncoordinated directions. Consultation and collaboration mean that for every policy promulgated, a wide range of interests are first accounted for

⁹ Sundaresh Menon CJ, speech at the 16th Conference of Chief Justices of Asia & The Pacific delivered on 8 November 2015 at paras 19–20.

and balanced. These many and varied viewpoints result in policies which are better-tested, grounded by actual needs, and fuelled by committed stakeholders who feel a genuine sense of ownership and mission.

14. The Singapore Academy of Law (“SAL”) is the premier example of the collegiate culture we have built. The SAL is a unique institution which brings together every stakeholder of the legal industry – the Bench, the Bar, the Legal Service, corporate counsel, academia and foreign lawyers. It is led by a senate headed by the Chief Justice, and comprising of the Attorney-General, the Justices of the Supreme Court and key leaders of the legal profession. Under the auspices of the SAL, members of the Judiciary and the Bar sit together on various working committees, such as the Criminal Legal Assistance Steering Committee, Professional Affairs Committee and Law Reform Committee.¹⁰

15. These working committees have made significant contributions toward the quality, integrity and sustainability of our justice system. The Law Reform Committee, for example, looks into reform of many various discrete areas of law. Due to its diverse representation, it is uniquely placed to consult widely and its recommendations have seen, amongst other things: (a) the conferring of power on the court to order financial relief after foreign divorces, (b) the introduction of a right to judicial review of negative jurisdictional rulings by arbitral tribunals, and (c) legal reforms relating to the admissibility of computer output as evidence and opinion evidence.¹¹

16. Another key aim of the SAL is the preparation of a future-ready legal profession to ensure that the quality of justice dispensed is *maintained* in the near future. There are two key initiatives which I wish to touch on. First, the

¹⁰ Singapore Academy of Law, “Senate & Committees” <<https://www.sal.org.sg/About-Us/Senate-Committees/Senate>>.

¹¹ Singapore Academy of Law, “Law Reform” <<https://www.sal.org.sg/Resources-Tools/Law-Reform>>.

Future Law Innovation Programme (“FLIP”) is our response to the rapid technology changes which threaten to disrupt our legal and judicial systems. The FLIP Steering Committee is headed by a judge of the Supreme Court, and it has, for example, partnered with our universities to commission studies into the use of legal technology around the world,¹² organise legal hackathons,¹³ and set up LegalTech accelerators to nurture the growing legal technology start-up scene.¹⁴ All of these programmes are aimed at positioning ourselves and our legal profession to ride the wave of opportunities that technology will bring, and not be drowned by it.

17. The second initiative is geared particularly at helping our younger members of the profession by recognising the need to provide opportunities to junior counsel to hone their advocacy skills at all stages of court proceedings. This initiative was spearheaded by the Young Members Chapter of the Professional Affairs Committee, endorsed by the managing partners of the leading firms of our Singapore Bar, and supported by the judiciary. In particular, we amended the Supreme Court’s Practice Directions to require lead counsel to inform the court early on in proceedings whether the advocacy tasks for a trial or hearing will be shared with junior counsel.¹⁵

IV. The Singapore International Commercial Court

The global trend towards international commercial courts

¹² Singapore Academy of Law, “2019: State of Legal Innovation Report – Asia Pacific” <<http://www.flip.org.sg/post/state-of-legal-innovation-in-asia-pacific-report>>.

¹³ Singapore Academy of Law, “Global Legal Hackathon 2019” <<https://www.flip.org.sg/events-1/global-legal-hackathon>>.

¹⁴ Asia Law Network, “New Accelerator for Legal Tech Launched: GLIDE by SAL” <<https://learn.asialawnetwork.com/2019/06/07/new-accelerator-legal-tech-launched-glide-sal/>>.

¹⁵ The Straits Times, “21 law firms vow to create more chances for young lawyers” <<https://www.straitstimes.com/singapore/21-law-firms-vow-to-create-more-chances-for-young-lawyers>>.

18. Finally, I turn to discuss the Singapore International Commercial Court. The SICC was officially launched on 5 January 2015, and I note that Kazakhstan has also recently launched the Astana International Financial Centre Courts, headed by Lord Woolf as Chief Justice.

19. The SICC is both a product and an example of the administrative and management best practices which I have just described. Setting up the SICC was a massive undertaking requiring resources over and above that allocated to the courts under our usual 5-year budget. Funding for the SICC therefore had to be obtained via the “above-the-block” system. We placed a bid, made our case, and were successful.¹⁶ Consultation and cooperation was also key to getting the project off the ground. Legislation had to be amended, procedural rules drafted, and buy-in from the legal profession secured. All of this has allowed us to make our mark on what is undoubtedly a growing global judicial trend – international commercial courts.

20. This trend can be traced to two related sources: First, the continued proliferation of cross-border trade, especially in Asia, has led to a concomitant rise in the number and value of cross-border commercial disputes. Such disputes tend not to lend themselves well to resolution in *municipal* civil courts due to, *inter alia*, concerns about the perceived competence or neutrality of national courts, the risk of fragmentation of the dispute across jurisdictions, and difficulties with enforcement of judgments abroad.¹⁷

21. While such conditions should ordinarily be a boon for international arbitration, there has been a growing sense in some quarters of disenchantment with arbitration as a mode of resolving cross-border disputes.

¹⁶ Sundaresh Menon CJ, speech at the 16th Conference of Chief Justices of Asia & The Pacific delivered on 8 November 2015 at para 22.

¹⁷ Steven Chong JA, speech at the Judicial Conference of the Supreme Courts of the G20, “Judicial Reform: Reshaping the Civil Justice System in Singapore” at paras 19–21.

Arbitration proceedings are becoming increasingly costly and protracted, and a key reason for this, ironically, is what is often seen as an attraction of arbitration – the finality of arbitration awards. The “one-shot” nature of arbitration has instead resulted in parties going “all in” when advancing their cases in arbitration, knowing that that is their only chance of obtaining a favourable outcome. Another major drawback of arbitration is that arbitral tribunals do not have the power to join related parties to a dispute unless they consent, potentially leading to the fragmentation of disputes across multiple fora. Ethical concerns have also been raised, many of which stem from the fact that arbitrators are appointed by the parties. And, taking a bird’s eye view of the matter, another concern is that arbitration, which does not typically result in published awards, would stunt the growth of a *lex mercatoria*, a body of jurisprudence governing commercial disputes.¹⁸

22. International commercial courts are therefore well-placed to bridge the gap between litigation and arbitration by providing a unique, hybrid process which combines some of the advantages and disadvantages of both, but with a particular focus on party autonomy.¹⁹ Let me elaborate.

The main features of the SICC

23. The SICC is a branch of our High Court, and is established by local legislation. The SICC does not constitute a *separate* jurisdiction from our local courts, as is the case for the Dubai International Financial Centre Courts, but is part of and of coordinate jurisdiction with our High Court. The jurisdiction of the SICC is based on the parties’ consent, though cases which are international

¹⁸ Steven Chong JA, speech at the Judicial Conference of the Supreme Courts of the G20, “Judicial Reform: Reshaping the Civil Justice System in Singapore” at para 21.

¹⁹ Steven Chong JA, speech at the British Maritime Law Association Lecture and Dinner, “The Singapore International Commercial Court: A New Opening in a Forked Path” at para 33.

and commercial in nature may be transferred from the non-SICC branch of the High Court to the SICC.²⁰

24. The international and commercial nature of the SICC is not just reflected in its jurisdiction but also its composition. The SICC bench comprises a stellar panel of eminent jurists in commercial law. They are – (a) from England: Justice Sir Jeremy Cooke, Justice Sir Henry Bernard Eder, Justice Lord Neuberger of Abbotsbury, Justice Sir Vivian Ramsey, Justice Sir Bernard Rix, Justice Simon Thorley and Justice Lord Jonathan Hugh Mance; (b) from Australia: Justice Patricia Bergin, Justice Robert French, Justice Roger Giles and Justice Dyson Heydon AC; (c) from the USA: Justice Carolyn Berger; (d) from Canada: Justice Beverley McLachlin PC; (e) from India: Justice Arjan Kumar Sikri; (f) from France: Justice Dominique Hascher; (g) from Japan: Justice Yasuhei Taniguchi; (h) from Hong Kong: Justice Anselmo Reyes.

25. I mentioned earlier that the SICC offers a unique mode of dispute resolution which combines certain aspects of arbitration and litigation. In some sense, it might be said that the SICC gives litigants the best of both worlds.

26. First, the SICC promises many benefits over litigation in municipal courts.²¹

- a. *Neutral venue*: The SICC offers a neutral venue where the municipal courts of the parties' domicile might otherwise be perceived as partisan.
- b. *Foreign law and foreign lawyers*: SICC procedure is particularly suited to international parties in two respects: (i) foreign law may be decided based on submissions without the need to laboriously

²⁰ Steven Chong JA, speech at the Judicial Conference of the Supreme Courts of the G20, "Judicial Reform: Reshaping the Civil Justice System in Singapore" at para 21.

²¹ Steven Chong JA, speech at the Judicial Conference of the Supreme Courts of the G20, "Judicial Reform: Reshaping the Civil Justice System in Singapore" at para 27.

prove foreign law through foreign law experts; and (ii) foreign lawyers may act in proceedings without the need for registration with the Singapore Bar, and parties who regularly instruct certain preferred lawyers will not need to separately instruct local counsel.

- c. *Enforceability of judgments*: Further, SICC judgments are readily enforceable in common law jurisdictions and in 30 other jurisdictions by virtue of the Hague Convention on Choice of Court Agreements, including all EU jurisdictions.

27. Second, the SICC also possesses many of the traditional advantages of litigation which would otherwise be unavailable in arbitration:²²

- a. *Joinder of third parties*: The first is the ability to join third parties to a dispute even without their consent. This minimises the fragmentation of disputes and reduces the risk of inconsistent findings; particularly important in construction, shipping and insurance disputes which often arise out of chain contracts and involve multiple parties, not all of whom may be party to an arbitration clause.
- b. *Right of appeal*: Second, parties have by default a right of appeal. This ameliorates somewhat parties' tendency in an arbitration to take an over-inclusive approach towards evidence and submissions. There is also provision for expedited appeals.
- c. *Public proceedings*: Third, by default, the SICC's proceedings are held in open court, with all the attendant benefits of transparency. Further, SICC judgments are published, and will hopefully contribute to the development of a body of

²² Steven Chong JA, speech at the Judicial Conference of the Supreme Courts of the G20, "Judicial Reform: Reshaping the Civil Justice System in Singapore" at para 26.

jurisprudence that will give guidance to the international business community.

28. Of course, some of these advantages are in truth double-edged. The right to appeal, for example, ensures the quality of decisions but detracts from a swift and final resolution of the matter. Likewise, the publication of decisions promotes open justice, but at the cost of confidentiality, if that is a key consideration of the parties. To mitigate this, a core theme of flexibility runs through the SICC's procedure. This allows parties to tailor its procedure to fit their concerns and needs. For example, parties may by agreement exclude the right of appeal by agreement, or agree to have the case heard *in camera* where confidentiality is a concern. Parties may also agree to exclude Singapore rules of evidence and apply other rules instead.²³

Our progress thus far

29. Since its launch in 5 January 2015, the SICC has achieved several milestones. Its caseload has increased year on year. In the past year alone, the SICC has issued several landmark decisions dealing with: (a) the question of whether cryptocurrencies can be considered as property which is capable of being held on trust;²⁴ (b) the issue of whether a SWIFT message sent to initiate a transfer of funds gives rise to an implied contract obliging the sending bank to reimburse the receiving bank for the transfer,²⁵ and (c) the application of Chinese law in relation to a dispute over a joint venture between Singaporean, Chinese and Russian parties to develop an integrated winter resort in Shanghai.²⁶

²³ Steven Chong JA, speech at the Judicial Conference of the Supreme Courts of the G20, "Judicial Reform: Reshaping the Civil Justice System in Singapore" at para 28.

²⁴ *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 3.

²⁵ *Malayan Banking Berhad v Barclays Bank PLC* [2019] SGHC(I) 4.

²⁶ *Bachmeer Capital Limited v Ong Chih Ching* [2019] SGHC(I) 7.

30. The SICC has also made significant strides in enhancing the enforceability of its judgments. Beyond the aforementioned Hague Convention, we have also last year concluded a Memorandum of Guidance on the enforcement of money judgments with the Supreme People's Court of the People's Republic of China. The Memorandum provides clarity on the procedure for having money judgments from a Singapore court recognised and enforced in China, and is a development of note for parties and potential parties who have commercial dealings in China, especially in light of the Belt & Road Initiative.²⁷

31. In sum, the SICC is an important addition to the menu of dispute resolution options that Singapore offers to litigants and parties. It provides a *via media* between traditional municipal litigation and international arbitration, and gives a significant boost to the overall quality of our jurisdiction as a hub for the fair and just resolution of disputes.

V. Conclusion

32. To conclude, allow me to emphasise once more the critical importance of court administration and management. The invisible work of those in the back of the house is essential to the work of judges, who sit in the front. It is therefore crucial that we continue to develop discourse and share best practices in these areas.

33. I had begun my speech by noting how important, and yet how critically under-researched and under-developed the subject of court administration is. But conferences such as these – which place administration and management issues in the spotlight – give us reason to take heart. It has been an absolute

²⁷ SICC News, "Singapore and Chinese Judiciaries Meet and Affirm Relationship with Landmark Memorandum", Issue No 14 (October 2018).

privilege to have had the opportunity to share some of the lessons and challenges Singapore has faced in this area. Thank you.