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Unrepresented litigants in Singapore: A prolegomenon to court typologies

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Abstract

Unrepresented parties in litigation struggle with legal doctrine and puzzle over procedure. Judges provide some assistance in court, but they must exercise restraint so as not to raise questions of bias or favouritism. How do judges manage these interactions in the decision-making process? This article examines sample cases from one common law jurisdiction, Singapore, to identify the litigant in person (LIP) typologies in court-LIP interactions. There are likely a number of typologies that guide a court's assessment and response to an LIP, but this article focuses on the typologies most relevant to judicial decision-making on legal issues, legal knowledge and credibility. Because legal knowledge and credibility typologies help courts evaluate LIPs, they assist courts to make decisions regarding unrepresented parties and allow cases to proceed to judgment. However, the typologies are not able to completely address the deficiencies LIPs bring to the dispute resolution process.

Key words

Unrepresented; litigant; typology

Resumen

Las partes sin representación en un litigio se enfrentan a la doctrina jurídica y a un procedimiento desconcertante. Los jueces ayudan en el juzgado, pero deben ejercitar la moderación para no levantar sospechas de parcialidad o favoritismo. ¿Cómo gestionan los jueces estas interacciones en el proceso de toma de decisión? Este artículo examina casos de muestra de una jurisdicción de derecho consuetudinario, Singapur,

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para identificar las tipologías de litigantes en persona en sus interacciones. A buen seguro hay algunas tipologías que guían la valoración y la respuesta del tribunal a un litigante en persona, pero este artículo se centra en las tipologías más relevantes en la toma de decisión judicial en temas jurídicos, conocimiento jurídico y credibilidad. Dado que las tipologías de conocimiento jurídico y credibilidad ayudan a los tribunales a evaluar a los litigantes en persona, permiten a los tribunales tomar decisiones sobre partes sin representación, y los casos progresan hacia un juicio. Sin embargo, las tipologías no acaban de responder a las deficiencias que los litigantes en persona traen al proceso de resolución de disputas.

Palabras clave

No representado; litigante; tipología

Table of contents

1. Introduction

Unrepresented parties have considerable difficulties in court proceedings. Litigants who appear without legal advice or representation ("litigant in person", or "LIP") enter a foreign world, complete with a different language and different expectations (Winkelmann 2014, p. 239, Toy-Cronin 2015, pp. 181, 184, 192, and 211–213), without guidance from a legally trained individual whose job is to assist them.

The decision to proceed without a lawyer can be based on a number of different concerns (Hunter *et al.* 2002, pp. 49–60, Kritzer 2008, p. 875, Trinder *et al*. 2014, pp. 12–23), but one of the main reasons LIPs appear without a lawyer is that they cannot afford one (Smith *et al*. 2009, p. 11, Judicial Council of California 2019, p. 3). Some LIPs, estimated to be relatively small in some jurisdictions (Judicial Council of California 2019, p. 3), could afford a lawyer but choose not to hire one. Per the Judicial Council of California's 2019 Benchguide, "finances often play a major part in this decision. Many attorneys report that they would not be able to afford themselves if they had a serious legal problem – even judges report that they could not afford many of the attorneys who appear before them" (Judicial Council of California 2019, p. 3). The inability to get legal assistance, and the lack of understanding experienced by many LIPs, leaves them "stressed and frustrated" (Smith *et al.* 2009, p. 12), particularly if the legal matter involves important matters such as criminal allegations, family arrangements, or money.

The adversarial system in common law countries poses especially difficult problems for LIPs, because the system is based on the assumption that parties will be represented by lawyers. In this system, the judge is understood to be a neutral decision-maker who does not take an active role in running the case, and tasks such as finding evidence or questioning witnesses are normally performed by lawyers. There are tribunals in common law jurisdictions where representation is either prohibited or not the norm, but most courts are not set up for unrepresented parties. For example, the UK is a common law adversarial system, and it had one of the most generous provisions of legal aid legal services in the world until deep cuts in the 2010's (UK Ministry of Justice 2019, p. 16, para. 84). Among the key points of a 2019 UK Ministry of Justice Report on the impact of these cuts in civil legal aid was the observation that "while efforts to simplify and streamline court processes were commendable, the system was not yet sufficiently capable of catering for those without legal representation" (UK Ministry of Justice 2019, p. 8, para. 23).

In Singapore, there is a civil Legal Aid Bureau (Legal Aid and Advice Act, 2014), government funded criminal representation for indigent persons in capital[1] and non-capital matters,[2] and significant pro bono activities (Law Society Pro Bono Services: www.lawsocprobono.org/Pages/default.aspx), but individuals still appear without counsel in civil and family matters, as well as some criminal matters. In criminal matters, Article 9(1) of the Singapore Constitution states that "No person shall be deprived of his life or personal liberty save in accordance with law" (Singapore Constitution (Rev. Ed. 1999), Article 9(1)), and Article 9(3) states that "Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult

[1] Regarding Singapore's Legal Assistance Scheme for Capital Offences, see Supreme Court of Singapore n.d.
[2] Regarding Singapore's Enhanced Criminal Legal Aid Scheme, see Singapore Ministry of Law 2015.

and be defended by a legal practitioner of his choice", but these Articles have been interpreted to mean that a defendant may have access to available counsel (*Balasubramanian*, 1996) within a reasonable amount of time after arrest (*James Raj s/o Arokiasamy*, 2014, Ho 2014), not that the state must provide counsel. As a matter of long term policy, all defendants in capital cases are entitled to state-funded representation via the Legal Assistance Scheme for Capital Offences (Yeo 1999, p. 561), and in non-capital cases, government funding for non-capital cases was expanded considerably in 2015 (Singapore Ministry of Law 2015), but this coverage is not universal and some defendants proceed without counsel.[3] Statistics regarding litigants in person in civil matters are not publicly available, although there are references to rising numbers of LIPs in civil matters (State Courts of Singapore 2013).

There is a substantial literature on the problems encountered by LIPs and the challenges they raise for the justice system and other justice actors (Williams 2011, Richardson *et al.* 2012, Scottish Civil Justice Council 2014, OECD 2016, National Center for State Courts (NCSC) n.d.-a, n.d.-b). A 2009 New Zealand study reported that LIPs in both criminal summary and family jurisdictions experienced the same difficulty of not understanding court processes and procedures (Smith *et al.* 2009, p. 110), and this lack of knowledge led LIPs to make mistakes, such as "presenting irrelevant and excessive material, not being aware of their options when making pleas (criminal summary jurisdiction), and in the family jurisdiction, making errors when filing and writing documents", problems which mirror international findings (Smith *et al.* 2009, pp. 110–111). Key informants in the New Zealand study reported that LIPs' lack of understanding increased hearing times because lawyers, court staff and judges were required to guide LIPs through the process (Smith *et al.* 2009, p. 111). An English judge interviewed anonymously stated that "LIPs are a nightmare (…) 99.9% do not understand what is going on in court or outside court; they don't know a good point from a bad one; they don't understand the law; they don't understand what they have to prove and they don't know how to ask a question" (Hill 2018). Key informants in the New Zealand study observed that although judges did their best to "level the playing field", and that outcomes were fair overall, the result might have been more in the litigant's favour if they had been represented (Smith *et al.* 2009, p. 110). The LIP's lack of representation requires judges to assist LIPs to some degree, but judges must remain neutral decision-makers of the facts and the law, and to the extent that they assist one side, their neutrality can be called into question (Moorhead 2007, p. 405, Zorza 2009, p. 64). How do judges manage the challenges posed by LIPs? This article considers the main concerns posed when courts have to rule on LIP claims and requests for assistance, and uses these concerns to generate typologies that appear to be functioning in selected reported cases in Singapore.

[3] Based on statistics from the then Subordinate Courts, the Report of the 4th Committee on the Supply of Lawyers (May 2013), p. 9, stated that the number of litigants in person at the criminal pre-trial conference ("PTC") stage were 2,347 or 39% (2009), 2,104 or 37% (2010), and 1,692 or 37% (2011) in the Centralised PTC Court (Court 17), and 1,080 or 54% (2009), 874 or 54% (2010), and 854 or 62% (2011) in the Community Courts (Courts 19 and 20). The percentages of unrepresented parties in criminal matters have likely decreased with the implementation of additional government funding for the Enhanced Criminal Legal Aid Scheme, although comprehensive statistics are not available.

2. Methodology

2.1. Typology

The article uses the concept of typologies to analyse how courts interact and characterise LIPs in court-LIP interactions. "Typification" refers to an actor's development of a selective, persistent attitude toward the environment, and "typologies" refers to the resulting organised systems of types. The use of typologies is an "essential and intrinsic aspect of the basic orientation of actors to their situation" (McKinney 1969, p. 1), and typologies are a "well-established analytical tool in the social sciences" (Collier *et al.* 2012, p. 217). There are different kinds of typologies, and given the article's goal of identifying and describing judicial typologies for LIPs, the typologies used here can be designated as conceptual or descriptive (Collier *et al.* 2012, p. 218).

Why use judicial typologies to analyse how LIPs interact with the legal system? LIPs are certainly not all the same (Hunter *et al.* 2002, pp. 49–60, Trinder *et al*. 2014, pp. 11–34), but typologies appear to be a good tool to analyse LIP requests for procedural and other assistance, in part because of the general manner in which legal analysis transforms the details of facts into rule categories that allow rule application and legal conclusions. An example of a typology that directly relates to the substantive law is that of vexatious litigant, a repeat litigant who should be banned from continuing to pursue a legal issue which has already been decided (in Singapore, see Supreme Court of Judicature Act (Cap. 322, Sing. Rev Ed. 2007), ss 73A–74, *Attorney-General v Tham Yim Siong* (2017), and *Cheong Wei Chang v Lee Hsien Loong* (2018); see also Stauber 2009, pp. 11–17). This typology may influence how legal actors think of LIPs (Moorhead and Sefton 2005, pp. 79–82), even though the majority of LIPs cannot be characterised as vexatious (Trinder *et al*. 2014, pp. 32). Even if the question of how to categorise an LIP is not directly related to a pending legal issue, the creation of categories is a likely strategy when judges translate LIP needs and demands into legal issues and systemic concerns.

Without using the concept of typologies, Toy-Cronin (2015, pp. 17–18, 118), identifies two categories relied upon to understand why LIPs supposedly choose to proceed without a lawyer, regardless of the actual complexity in real life. Toy-Cronin observes that the unrepresented litigant "may confront the largely incorrect belief that a clear division exists, between LIPs who litigate in person because they cannot afford to do otherwise, and LIPs who 'choose' to represent themselves. Problems like these present LIPs with a disadvantage from the start" (Toy-Cronin 2015, p. 233). These typologies may create problems for the unrepresented litigant, because while the belief that they cannot afford a lawyer suggests that they should be assisted by the court and other legal actors, if they can afford a lawyer but choose to proceed without one, LIPs unnecessarily create difficulties for other actors. These typologies are related to Toy-Cronin's other observation that appearing without a lawyer may signal to the court and other actors that the case lacks merit (Toy-Cronin 2015, pp. 99, 104, 116).

Typologies have been used in research on unrepresented parties, although much of this research focuses on identifying the optimal typologies that different organisations can use to diagnose LIP deficits and provide targeted assistance (Genn 2013, p. 411, Toy-Cronin 2015, pp. 17–18). This article addresses the typologies reflected in the legal decision-making process, and although the context is different, some of this LIP typology

research is relevant. Conley and O'Barr, who investigated LIPs in U.S. small claims courts, suggested two categories of LIPs: "relational" litigants and "rule-oriented" litigants (Conley and O'Barr 1990, pp. 58–81). Rule-oriented litigants' representations of their case worked better, even in an informal court or tribunal, because they were consistent with most adjudicators' training and orientation to see the dispute in terms of generally applicable rules and principles. In contrast, relational litigants' representations were perceived as rambling and imprecise, because they focused on social status and social relationships instead of legal rules and principles (Conley and O'Barr 1990, pp. 58–61). Conley and O'Barr observed that both approaches are in fact governed by rules, but that the social rules followed relational litigants were not the legal rules which structured the legal decision (Conley and O'Barr 1990, p. 59). The relational and rule-oriented categories appear to reflect a fundamental judicial challenge posed by LIPs, their lack of legal knowledge. The degree to which judges need to assist LIPs is determined by their degree of legal knowledge, and to the extent they are less knowledgeable, more assistance is required. The lack of substantive and procedural knowledge may even be the singular defining characteristic of an unrepresented litigant, and because it is at the forefront of judicial challenges, LIP typologies should likely arise to categorise it.

Hunter and co-authors' 2002 study on unrepresented litigants in Australia's Family Court (Hunter *et al.* 2002) suggested a different set of categories, but some of them overlap with an LIP's lack of legal knowledge. This work identified three categories of LIPs in appeal cases: "vanquished", "procedurally challenged", and "serial" (Hunter *et al.* 2002, p. 103). Vanquished litigants "were in general overwhelmed" by the family court system, and were more likely to abandon their case or be struck out (Hunter *et al.* 2002, p. 103). Procedurally challenged LIPs had more success with their cases, but could be clearly identified as having "suffered because of procedural difficulties and lack of procedural knowledge and experience in their time at the Family Court" (Hunter *et al.* 2002, p. 105). The vanquished and procedurally challenged litigants were both "disadvantaged by their inability to comply with appeal procedures, particularly the preparation of appeal books" (Hunter *et al.* 2002, p. 105). The serial LIPs brought multiple applications, essentially appealing every ruling that went against them (Hunter *et al.* 2002, p. 104), and they created "significant difficulties for the court" (Hunter *et al.* 2002, p. 104). Here again, an LIP's lack of knowledge, or their ability to disrupt the system because they possessed a degree of knowledge, is prominent.

Trinder et al.'s 2014 study of private family law cases in the UK identified two groups of hearings involving LIPs, "working" hearings that appeared to be "relatively efficient, effective and fair", and "not working" hearings that appeared to be "inefficient, ineffective and/or unfair" (Trinder *et al*. 2014, p. 60). Within the two groups, Trinder et al. developed eight typologies of hearings, based on *inter alia* the LIP's level of legal advice and representation, the judicial approach, and the type of LIP (Trinder *et al*. 2014, pp. 60–66). The LIP typologies identified include "holding their own LIPs", more knowledgeable LIPs who were fairly active and able to respond to judicial questions (Trinder *et al*. 2014, p. 63, Table 4.3): "over-confident LIPs", who attempted to conduct their own hearings but with "limited understanding of procedure and especially of legal relevance" (Trinder *et al*. 2014, p. 64, Table 4.4); "out of their depth LIPs", who were "unable to understand what they needed to do either preparing for or during hearings

(…) [and] may have made major errors in preparation or failed to complete tasks essential for case progression" (Trinder *et al*. 2014, p. 65, Table 4.4); "unprotected LIPs", LIPs who were simply "unable to explore concerns/present case fully" (Trinder *et al*. 2014, pp. 65–66, Table 4.4); and "hot potato" hearings, "chaotic hearings where the judge tried and failed to impose order on disruptive LIPs" (Trinder *et al*. 2014, p. 64, Table 4.4). Four out of five typologies focus on an LIP's degree of knowledge, and all five address the LIP's ability to run a hearing on their own.

The research reviewed above suggests the existence of a judicial typology related to an LIP's legal knowledge, in addition to other typologies. The likely existence of this typology is also supported by a comparison of LIPs without legal training to LIPs with legal training, e.g. lawyers representing themselves. If an LIP is a lawyer, the situation for the court changes immediately, and although a legally trained LIP may well present other challenges such as emotionality or a lack of distance from the case, the court can assume that the lawyer knows basic law and procedure. A knowledge typology also arguably arises in judicial decision-making because of a recurring challenge for judges engaging with LIPs, the potential conflict between the judge's requirement to be a neutral decision maker who does not unduly favour or assist one side of the litigation, and the judge's responsibility to oversee the justice process which may prompt the judge to offer assistance to a needy LIP.[4] Judges cannot extent too much assistance, but the exact degree of assistance that can or should be offered is not necessarily clearly articulated, and it can be difficult to achieve in practice. This ever-present judicial conflict when engaging with LIPs suggests that a typology regarding an LIP's legal knowledge would be needed.

Another LIP category, one not addressed in the research noted above but arguably important to judicial decision-making, is credibility. An LIP may have limited legal knowledge, but if they misrepresent the difficulties they are having, then a question arises of whether they should be treated with more scepticism, and if so their requests for procedural variations may be denied. The credibility typology, unlike the legal knowledge typology, does not necessarily distinguish LIPs from lawyers. Judges must evaluate the credibility of all parties before the court, including witnesses, lawyers, and LIPs, to determine what kind of person they are dealing with. As reflected in age old understandings of rhetoric, when someone argues for or against a position, the persuasiveness is partly determined by the *ethos* of the speaker (Smith 2003, pp. 77–79, Aristotle 2004, pp. 81–99, Johansen 2006, pp. 980–981).

A credibility typology may interact with legal knowledge typology in different ways. For example, LIPs may think that they are successfully getting away with a trick or misrepresentation, but because they lack legal knowledge they may not realise the subterfuge is obvious to the judge. On the other hand, LIPs can gain points with the court because they are not using legal knowledge to game the system, either because they lack the relevant knowledge or they choose not to do so. A 2019 report by the U.S. California courts noted that occasionally judges reported that they "like handling cases with self-represented litigants because these litigants do not generally engage in legal gamesmanship. These judges find it easier to get quickly to the crux of a matter and to

[4] On role conflicts for judges, see Toy-Cronin 2015, p. 234, n 8.

craft creative problem-solving orders for litigants" (Judicial Council of California 2019, p. ix).

2.2. Singapore case studies

This article reviews selected jurisprudence in Singapore to explore the typologies courts use to engage and interact with LIPs in the context of reported cases. In Singapore, court filings are not available to the public, and court transcripts, if they exist, would normally require party agreement. This article therefore analyses case reports, focusing on a few reports that contain more detailed descriptions of trial proceedings and LIP interactions. The opinions utilise the judicial perspective and therefore provide a basis to analyse judicial typologies. The following three cases are analysed in detail:

- *Koh Young Lyndon v Masao Lim Zheng Xiong* [2010] SGDC 309: a criminal case involving allegations of criminal intimidation in which the defendant represented himself.
- *Ong Jane Rebecca v PricewaterhouseCoopers* [2012] SGHC 106: a civil case arising out of the plaintiff's allegations of professional negligence against the plaintiff's accountant and lawyer, in which the complainant represented herself but abandoned the trial before it was completed, and then moved to set aside the judgment entered against her.
- *Public Prosecutor v Tan Chor Jin* [2007] SGHC 77: a criminal case in which the defendant declined state counsel and voluntarily represented himself on a capital charge of using a firearm to cause injury.

Courts are likely to use multiple, overlapping typologies in court-LIP interactions, but based on these case studies, the article argues for the existence of two more important typologies, legal knowledge and credibility. The typologies result in different LIP characterisations and different outcomes, depending on case detail and typology interaction.

Koh Young Lyndon v Masao Lim Zheng Xiong

The Koh case involved allegations that the defendant Lim had intentionally insulted and threatened the complainant Koh as well as Koh's fiancé.[5] Koh owed an apparel store, and he had provided sponsorship to the defendant for skateboarding apparel from 1997–2000, but when Koh moved his store to a prime shopping area, the store rent increased and he could no longer afford the sponsorship (*Koh Young Lyndon*, 2010, para. 8). There was no contact between Koh and the defendant until seven years later in 2007 (*Koh Young Lyndon,* 2010, para. 8). According to Koh, the defendant appeared outside of Koh's store *Koh Young Lyndon*, 2010, para. 9), although the defendant asserted that he had come to the area to visit his cousin, who worked in a store opposite Koh's store (*Koh Young Lyndon,* 2010, para. 19). Per the testimony of Koh (*Koh Young Lyndon*, 2010, paras. 8–13) and Koh's partner (*Koh Young Lyndon,* 2010, para. 14–17), the defendant engaged in threatening behaviour. On the night of the first incident, 16 February 2007, Koh, his fiancé who worked in the store, and another employee, were attending to customers

[5] The charges included sections 352, 504 and 506 of the Singapore Penal Code (Cap. 224), section 13A of the Miscellaneous Offenses Act (Public Order and Nuisance) Act (Cap 184), *Koh Young Lyndon v Masao Lim Zheng Xiong* [2010] SGDC 309, para. 1.

when the defendant and two other persons stood opposite the store, making obscene gestures and challenging Koh to a fight. The three then walked to the front of the store, at which point Koh called the police. The defendant entered the store with a lighted cigarette, used obscenity against Koh, and pushed Koh, who stumbled and fell. Koh testified that he felt threatened, intimidated, and feared for his safety. Koh's fiancé then ran out from behind the cashier counter and told the group that the police were on their way and they should leave. The defendant aimed the lighted cigarette at the fiancé, and used obscenities against her in a Chinese dialect, Hokkien. When the fiancé reminded him the police were coming, he said "I'll be back for you."

After the first incident, Koh filed a Magistrate's Complaint, and the defendant signed an Apology and Undertaking, in which he apologised for the actions of 16 February 2007; undertook not to harass Koh, Koh's fiancé, and Koh's employees; paid S$4,000 in compensation; and agreed that if he did not comply with the Apology and Undertaking, it would be presumed in court that he admitted guilt to the relevant charges (*Koh Young Lyndon*, 2010, para. 3). The defendant, who was 24 years old at this time, was accompanied by his parents and represented by counsel (*Koh Young Lyndon,* 2010, para. 3).

Despite this agreement, the first incident was followed by three similar incidents, on 4 March 2007, 10 July 2008, and 22 August 2008. On 4 March, Koh was on his way from his store to the bathroom when he heard the same vulgarities (*Koh Young Lyndon*, 2010, para. 10). He saw the defendant, who continued shouting vulgarities and making obscene gestures. After this second incident, Koh engaged a lawyer, who made representations to the police, urging them to investigate. After the lawyer's letter, there was a "short respite" in the defendant's actions, but when they resumed the encounters became more intense (*Koh Young Lyndon*, 2010, para. 11). More than a year later, on 10 July 2008, the defendant again appeared outside of Koh's store. This time the oral abuse was worse, and included vulgar obscenities about Koh's mother. The defendant again challenged Koh to a fight, and after entering the store, shouted that he would murder Koh, and find out where his family stayed and murder them as well. Koh felt very threatened by this behaviour, and he filed a police report. However, the police indicated that they would not take action against the defendant (*Koh Young Lyndon*, 2010, para. 12).

The fourth and final incident occurred on 22 August 2008, just a few weeks later (*Koh Young Lyndon*, 2010, para. 12). The defendant shouted vulgarities and made obscene hand gestures outside of Koh's store, but this time when he yelled "I am going to murder you", he "brandished a long black object which appeared…to look like a sword encased in a sheath" (*Koh Young Lyndon*, 2010, para. 12). After this incident, Koh filed another police report and a fresh Magistrate's complaint. As the police did not take action against the defendant, Koh used a lawyer to bring a private prosecution (*Koh Young Lyndon*, 2010, para. 1).

After a trial, the defendant was convicted of all charges (*Koh Young Lyndon,* 2010, para. 5). The defendant was not represented at trial, and when evaluating the evidence and the law, the court noted the multiple ways in which the defense was limited or flawed. The defendant engaged in some cross-examination of Koh, but in the court's view, he "tried unsuccessfully to get the complainant to agree that he should feel less fearful after the compensation that was paid as part of the Apology and Undertaking and that the

motive the complainant had in pursuing prosecution was to "put him in prison". Given that the defendant continued threatening Koh, and the threats increased in intensity, this line of reasoning did not make sense and was resisted by Koh. The defendant also "tried" to cross-examine Koh's fiancé, suggesting that he did not speak the Hokkien dialect heard by Koh and the fiancé, and asking why the incident was not reported to the Management Office for the store building, to which the fiancé responded that the relevant authority for the defendant's offense was the police (*Koh Young Lyndon*, 2010, para. 17).

In terms of defendant errors, the court noted that even though the defendant agreed in the Apology and Undertaking that if he did not comply he would be taken to have pled guilty to the relevant charges, the defendant still claimed trial on those charges (*Koh Young Lyndon*, 2010, para. 4). The court also noted that although the 2007 letter written by Koh's lawyer urging the police to investigate was hearsay, the defendant had not objected when the letter was introduced at trial (*Koh Young Lyndon*, 2010, para. 10, 22). When determining how to address this issue, the court noted the defendant's less knowledgeable LIP status, stating that "I was well aware that the respondent was a litigant in person and might not have been familiar with the hearsay rule" (*Koh Young Lyndon*, 2010, para. 22). The hearsay status of the letter however did not ultimately hurt the defendant, because the court "did not find it necessary to rely on this letter to support the conviction of the respondent as there was direct evidence from the witnesses who took the stand" (*Koh Young Lyndon*, 2010, para. 22). Another defendant error compensated for by the court was that potential legal defences were not raised, but the court considered them anyway. The court determined that in response to the charge for shouting obscenities under section 13A of the Miscellaneous Offences (Public Order and Nuisance) Act, the defence of reasonable conduct did not apply, because that conduct could not be said to be reasonable (*Koh Young Lyndon*, 2010, paras. 37–38). There was some evidence that the defendant was inebriated during the first incident, and the defense of intoxication could have been but was not raised. The court considered the defense *sua sponte*, noting that defence would require proof beyond a balance of the probabilities, and that the defendant "was clearly still alert enough to leave the store to avoid police arrest when the complainant reminded him that the police was about to arrive" (*Koh Young Lyndon*, 2010, para. 39). Finally the court noted that the defendant "had nothing to say in mitigation", i.e. factors that would lessen a sentence if convicted, but the court expressly considered the issue of mitigation, saying that "I found hardly any mitigating factors in the respondent's favour" (*Koh Young Lyndon*, 2010, paras. 41–42).

On all these points, the court considered and ruled on potentially relevant matters not raised by the defendant. The court expressly noted the defendant's status on an LIP, and appears to have taken this approach because the defendant lacked knowledge of the law and procedure. The court can be understood to have applied the typology of less knowledgeable LIP to the defendant, thereby justifying the extension of considerable assistance. The court took this approach even though as reviewed below, the defendant's testimony on certain points when he took the stand as a witness appeared less than truthful, thereby accepting the defendant's apparent lack of knowledge but ultimately rejected his factual assertions.

When it came to the defendant's presentation of evidence for his defense, the court noted that it was "brief", "devoid of many pertinent details and consisting mainly of mere denials" (*Koh Young Lyndon*, 2010, para. 19). The defendant admitted some of the accusations, such as using vulgarities and challenging Koh to a fight (*Koh Young Lyndon*, 2010, para. 19). The defendant however alleged that Koh had been staring at him from inside the store, and he denied pushing Koh. After the Apology and Undertaking, the defendant said he did make efforts to avoid Koh. In the second incident, the defendant agreed that he had seen Koh but denied he had used insulting words. In the third incident, the defendant admitted being at the location but denied having any incident with Koh. In the fourth incident, the defendant said he was holding a black shopping trolley, which he intended to return to a friend. In closing his evidence, the defendant stated he "cannot really remember" (*Koh Young Lyndon*, 2010, para. 19). The defendant's testimony on these points indicated that his credibility was questionable.

During cross-examination of the defendant by Koh's counsel, the defendant asserted that Koh suspected that the defendant had broken into his store and held a grudge against him, which prompted Koh's rude actions against him and his friends prior to the four incidents (*Koh Young Lyndon*, 2010, para. 20). He agreed with Koh's counsel that he had actually admitted the accusations regarding the first incident, in the Apology and Undertaking, and pursuant to that agreement, he was asked whether he did push Koh; at first the defendant said he could not remember, but upon further questions he conceded that he did push Koh, but asserted that Koh did not fall. Contrary to his cross-examination of Koh's fiancé, the defendant admitted under cross-examination that he did speak the Hokkien dialect. Regarding Koh, the defendant stated that he had "unfinished business until now" with Koh and his fiancé, and that he was carrying a black object during the fourth incident (*Koh Young Lyndon*, 2010, para. 20).

In assessing the evidence, the court observed that the issue was essentially a factual one of whether the defendant had committed the acts alleged, and the "outcome depended largely on the credibility of the witnesses" (*Koh Young Lyndon*, 2010, para. 21). The court found Koh to be a truthful witness who gave clear details about the incidents (*Koh Young Lyndon*, 2010, para. 21). The court also observed that it did not make sense, as the defendant asserted, that Koh would deliberately provoke the defendant at Koh's store, "causing himself loss of business and much embarrassment in front of his customers" (*Koh Young Lyndon*, 2010, para. 22). In contrast, the defendant "did not impress the court as a reliable witness. His recollection of events were riddled with inconsistencies. He evaded mentioning details and gave scant details in his evidence in chief. His reason was he "cannot really remember". However, under cross-examination, he reversed his stance and conceded that he remembered more than he had initially led on about the third incident" (*Koh Young Lyndon*, 2010, para. 29). Regarding the first incident, the defendant "gave the court three conflicting versions of what happened" (*Koh Young Lyndon*, 2010, para. 30).

Overall, the defendant in this case fell into the less knowledgeable LIP typology, which prompted the court to assist the defendant on many points of law and procedure. The court also applied the less knowledgeable typology even though the defendant was not entirely truthful, as reflected in the court's review of the contradictions in the defendant's testimony. In this case, the lack of knowledge typology was not tainted by

the LIP's lack of credibility, perhaps because the credibility issues arose from the LIP's testimony on the stand. The irrelevance of incredible testimony to court decisions regarding legal and procedural assistance may arise from the fact that any witness or party may exaggerate or lie on the stand. Credibility regarding factual matters is not necessarily related to LIP status, and may be considered a separate matter, depending on the context. Also, a witness who exaggerates or lies does not generate role difficulties for judges in the way that providing legal support and assistance to an LIP does. In fact, discerning the degree that a witness is telling the truth, exaggerating, or lying is an unfortunate but somewhat commonplace task for courts. Because the lack of credibility applied to the LIP's role as a witness testifying about events, and not to the LIP's self-advocacy regarding substantive or procedural matters, the knowledge and credibility typologies did not interact, and the court assisted the less knowledgeable defendant on legal issues but held against him on factual matters.

Ong Jane Rebecca v PricewaterhouseCoopers

This case involves two claims, an earlier claim in which the claimant was represented by counsel, and a second claim where the claimant represented herself. In the earlier claim (the "estate claim"), the plaintiff Ms. Ong asserted an interest in her then estranged husband's share of his father's estate. In the second claim (the "negligence claim"), Ms. Ong alleged her counsel and expert witnesses in the estate claim had provided their services negligently. The negligence claim was "another episode in the litigation saga" that Ms. Ong commenced 21 years earlier, when she sued her then estranged husband and then mother-in-law in the estate claim, seeking a share of the husband's father's estate, as they father had died a wealthy man (*Ong Jane Rebecca*, 2012, para. 2). Ms. Ong "emerged victorious" in the estate claim, where the court held that she was entitled to a one-twelfth share of the estate (*Ong Jane Rebecca*, 2012, para. 4), but when the amount due to Ms. Ong was set off by the payments already made to her, the net sum due was only $37,493.67 (*Ong Jane Rebecca*, 2012, para. 6). Ms. Ong appealed against this award, but the appeal was dismissed (*Ong Jane Rebecca*, 2012, para. 7). The small amount actually recovered in the estate claim left Ms. Ong unable to pay her debts, and she made an individual voluntary arrangement with her creditors (*Ong Jane Rebecca*, 2012, para. 8). She also "appeared to have received third part funding" (*Ong Jane Rebecca*, 2012, para. 8), i.e., funding provided by a company or individual which required repayment with some element of profit for the funder.

The dismissal of Ms. Ong's appeal of the estate claim at the Singapore Court of Appeal was the basis of the negligence claim, the lawsuit against her experts and counsel (*Ong Jane Rebecca*, 2012, para. 9). The court noted that in this negligence claim, Ms. Ong's statement of claim "totalled 229 pages and exceeded 182 paragraphs" (*Ong Jane Rebecca*, 2012, para. 9). The plaintiff did nothing after filing this writ, which was only served on the defendants more than a year later, after the court directed her to (*Ong Jane Rebecca*, 2012, para. 9).

The substance of negligent claim was that two expert witnesses and one legal counsel in the estate claim had avised Ms. Ong negligently. To prepare for the estate claim, the plaintiff first discussed the need for expert testimony regarding valuation with the second defendant expert, who felt it was better for the first defendant expert, PriceWaterhouseCoopers, to be the expert in the estate claim because they were located

in Singapore (*Ong Jane Rebecca*, 2012, para. 12). The first defendant was then instructed to value the estate. Ms. Ong engaged the first defendant to render these services, and they produce a report for the court in the estate claim, stating her damages (*Ong Jane Rebecca*, 2012, para. 13). In the negligence claim, Ms. Ong alleged that theses defendants did not properly advise her regarding the scope of damages, because they jointly included one type of legal claim that was irrelevant, i.e, breach of trust by the mother-in-law; she also alleged that the report produced by the second defendant PWC was wrongfully based on this irrelevant legal claim (*Ong Jane Rebecca*, 2012, para. 14). The complaint further alleged that the judge in the estate claim found the expert's report to be unreliable and portrayed her as a "greedy woman" (*Ong Jane Rebecca,* 2012, para. 14). Ms. Ong asserted that her expert did not put the requisite documents before the judge or rely on all the documents she provided, resulting in a valuation of the estate at S$27 million, when it should have been valued at S$309 million. Regarding the negligence of counsel in the estate claim, Ms. Ong alleged that he failed to amend her pleadings to reflect the correct basis for the claim or give proper legal advice (*Ong Jane Rebecca*, 2012, para. 15). The defendants denied the claim, and the two defendants who acted for Ms. Ong submitted substantial counter claims for fees for unpaid services (*Ong Jane Rebecca*, 2012, para. 16).

In the lead up to the trial of the negligence claim, Ms. Ong appointed three different firms of solicitors, but she also acted as her own representative at times. Trial dates had been assigned by the court in July 2009, but those were vacated and the court ordered Ms. Ong to pay the defendants' costs (*Ong Jane Rebecca*, 2012, para. 17). Trial dates were then fixed for 26 September–22 October 2011. Ms. Ong was acting as an LIP as of 29 September, and the starting trial date was delayed several times, with a final start date of 13 October (*Ong Jane Rebecca*, 2012, paras. 18–19). The day before, the parties appeared before the court to hear the plaintiff's request for an extension of time to file trial documents, which was granted (*Ong Jane Rebecca*, 2012, para. 19).

When the trial commenced, 90 volumes of documents had been submitted by the joint parties. Ms. Ong testified, during which she was assisted by Litigation Edge, a company who did not provide legal advice but helped her bring up documents on a viewing platform during proceedings (*Ong Jane Rebecca*, 2012, paras. 21–22). The plaintiff was cross-examined, and was on the stand for a total of five days (*Ong Jane Rebecca*, 2012, para. 22). The plaintiff also called her son to testify, although this testimony and cross-examination were brief. After this the plaintiff asked for a one-day recess to review the transcripts of her testimony prior to her re-examination, which was granted.

On the day the trial was set to resume, the plaintiff requested to see the judge in chambers, and he agreed. She complained that she had just received the order of witnesses, and she "claimed" that she did not realise the witnesses for second defendant would be testifying before the witnesses for the first defendant, which meant that she was unprepared to question the witnesses who were about to take the stand (*Ong Jane Rebecca*, 2012, para. 23). The plaintiff explained how she had come to be acting for herself, and she asserted that she could not continue with the trial at all because of the late receipt of the list of witnesses.

The court observed that it is up to defense counsel, who was representing both the first and second defendants, to determine the order of witnesses, but that in addition to that,

there was considerable evidence that the plaintiff had known that one witness in particular would be questioned on this date, because that witness was to be questioned via video link which had to be conducted in the Technology Court (*Ong Jane Rebecca*, 2012, paras. 24–25). The witnesses had blocked their calendars to accommodate the first dates, which had already been shifted, and defense counsel argued that they should now be allowed to testify without further delay (*Ong Jane Rebecca*, 2012, para. 25). The court held that one of the witnesses would testify on that date, at which point the plaintiff asked if she could recall that witness after she had questioned another witness because she might need further input (*Ong Jane Rebecca*, 2012, para. 26). The court stated that the witness could be recalled but that the plaintiff may have to pay the costs involved.

Despite the accommodations made by the court, the plaintiff informed the court and counsel that she could not continue with the trial and had to stop. As relayed by the court, the plaintiff "did not feel capable or emotionally capable of continuing, adding that she had been told that if at any time she could not carry on, she must inform the court. She felt she had no choice. The plaintiff said she did not want to waste the court's time and continue with the trial" (*Ong Jane Rebecca*, 2012, para. 27). The judge encouraged the plaintiff to continue, noting that accommodations could be made, and warned the plaintiff that she would have to pay the costs wasted. The court stated: "I made it clear to the plaintiff that if she failed to continue with the trial, I would be left with no alternative but to dismiss her case against the three defendants with costs" (*Ong Jane Rebecca*, 2012, para. 28). The court suggested that her own re-examination could be postponed until after she was able to go through the relevant documents regarding the witness' evidence, to which defense counsel also agreed. Court proceedings were then stood down until later that morning, but when court resumed, the plaintiff was absent (*Ong Jane Rebecca*, 2012, paras. 28–29). The plaintiff's assistants from Litigation Edge informed the court that the plaintiff had left the courthouse and told them that she would not be returning (*Ong Jane Rebecca*, 2012, para. 29).

The court granted the defendants' motions to dismiss the plaintiff's claims and grant their counterclaims (*Ong Jane Rebecca*, 2012, paras. 30–31). In addition to having asserted that she did not have to pay the counterclaims because of the defendants' negligence, the plaintiff had raised a legal argument against the counterclaims arising out of her individual voluntary arrangement with creditors, but the court found for the defendants on that point (*Ong Jane Rebecca,* 2012, paras. 30–31). As noted by the judge, counsel for defendants were entitled to their costs, but counsel asked for indemnity costs which would be higher than standard costs. The court did not think it would be "fair" to award higher costs to the defendants without hearing from the plaintiff, so the court wrote to the plaintiff with a summary of events and set a date for reply submissions (*Ong Jane Rebecca*, 2012, para. 32). The plaintiff submitted a timely reply, which did not disagree with the events narrated by the court, and which "showed that she appreciated the difference between the two types of costs" (*Ong Jane Rebecca*, 2012, para. 33). The court set a hearing to determine costs, but that turned out to be unnecessary (*Ong Jane Rebecca*, 2012, para. 35). Ultimately the defendants agreed to seek only standard costs, and an order to that effect was given (*Ong Jane Rebecca*, 2012, paras. 35, 37–38).

Ms. Ong later applied to the trial court to set aside the judgment for defendants, and she was represented in these proceedings. The trial court denied Ms. Ong's application to

set aside the judgment dismissing her claim and granting of the defendants' counterclaims against her, observing that it is "not unreasonable to conclude based on her litigation history (…) that the plaintiff is undoubtedly a savvy/seasoned litigator notwithstanding her denials to the contrary" (*Ong Jane Rebecca*, 2012, para. 40). The court noted that the plaintiff "acquitted herself admirably as a litigant in person when she faced two senior lawyers…both lawyers subsequently became senior counsel" (*Ong Jane Rebecca*, 2012, para. 40).

The combined court proceedings in this case reflect judicial application of the legal knowledge and credibility typologies, although the LIP's placement within the typologies varied. For most of the procedural requests Ms. Ong made during trial, the trial court treated her as a less knowledgeable LIP, and even when it ruled against her when she exited the trial, the court took pains to ensure her interests were addressed. But when Ms. Ong sought to overturn the judgment against her, the trial court found that Ms. Ong was not a less knowledgeable LIP; here the court noted that she held her own against two experienced lawyers. As observed by the court, "there was another side to the plaintiff's character that surfaced over the years she was embroiled in litigation; the plaintiff repeatedly failed to comply with timelines whether consensual or court imposed, and with innumerable directions made by the court. This was a frequent complaint by counsel for the defendants" (*Ong Jane Rebecca*, 2012, para. 40). After noting that the plaintiff was more than up to the process of litigation, and thus not a less knowledgeable LIP, the discussion shifted to credibility. The court noted another judge's observations when the plaintiff's request to change the trial dates was rejected, that the plaintiff "had abused her position as a lay litigant and her need to obtain funding for legal representation (…). Her explanations were not bona fide" (*Ong Jane Rebecca,* 2012, para. 41).

The court noted other matters related to credibility, e.g. when the plaintiff told the court that another judge had informed her to tell the court if she could not continue the trial, the plaintiff left out key portions of what the earlier judge's order had said: "If the plaintiff is of the view that it is pointless for her to attempt to meet any of the above orders, she or her solicitors are to notify the solicitors of all the defendants immediately in writing, whereupon her claim against each and every Defendant is struck out and the plaintiff is to pay the costs of her action to the Defendants to be agreed or taxed [emphasis added]" (*Ong Jane Rebecca*, 2012, para. 42). Essentially the plaintiff selectively advised the court that she was obliged to say if she couldn't continue, but "deliberately and wilfully omitted" to mention that the result of this was acknowledged to be a striking out of her claims and payment of costs by the plaintiff to the defendants (*Ong Jane Rebecca*, 2012, para. 42). The plaintiff was therefore fully aware of what would happen if she did not resume trial, but nonetheless asked the trial court to overturn its decision to do this (*Ong Jane Rebecca*, 2012, para. 42). The court found this position "unreasonable" and "totally unacceptable" (*Ong Jane Rebecca*, 2012, para. 42).

The court also applied a more knowledgeable LIP typology to other grounds of appeal. The plaintiff had argued that she should have been granted at least a day's adjournment to prepare the cross-examination, but in fact she had said she couldn't carry on with trial at all, not just for a day (*Ong Jane Rebecca*, 2012, paras. 45–46). Also, notwithstanding her "extremely distressed and upset state", the plaintiff was still able to write to the Registry

immediately to request a refund of her hearing fees, which also contradicted the plaintiff's argument that she had only sought a short adjournment (*Ong Jane Rebecca*, 2012, para. 47). The court stated that it was "very clear to me that the plaintiff was looking for an excuse not to continue with the trial. I would not wish to speculate on the plaintiff's reason for doing so although counsel for the defendants seemed to think (on hindsight after she filed her first affidavit in support of the appeal application) that it was the plaintiff's way of obtaining the adjournment of the trial dates that she sought earlier but which was denied."

This plaintiff qualified as a less knowledgeable LIP at trial, but in post-trial proceedings, the typology changed to more knowledgeable and less credible, and the combination of the two typologies lead the court to dismiss the application to overturn the judgement against the plaintiff. LIP typologies can therefore change over the course of proceedings and regarding different issues. There may also be a starting presumption that LIPs are properly understood as less knowledgeable LIPs, at least until proceedings show otherwise, a point arguably reflected in Ms. Ong's case.

PP v Tan Chor Jin

It is important for courts to determine how knowledgeable and credible LIPs are, but there are likely occasions when these evaluations are difficult, and the criminal case of *PP v Tan Chor Jin* illustrates one variation of the difficulties courts may encounter. The defendant was accused of a capital charge under the Arms and Offenses Act, and the prosecution alleged that he discharged 6 rounds into the victim, who later died (Tan *Chor Jin*, 2007, para. 2). The court's opinion strongly suggests that the defendant was understood to be a less knowledgeable LIP, at least initially. He spoke "mainly in Mandarin but would switch to simple (and often unstructured) English every now and then" (*Tan Chor Jin*, 2007, para. 1). He had been represented prior to trial, but had discharged that counsel and refused the free counsel offered to him as was facing capital charges" (*Tan Chor Jin*, 2007, para. 1).

The prosecution introduced 47 witnesses (*Tan Chor Jin*, 2007, para. 5). The prosecution alleged that the defendant had been the head of secret society. Three years prior to the shooting, the defendant and the victim had been involved in illegal betting. The defendant alleged that the victim owed him a substantial amount of money but was unwilling to pay up, and told the defendant that he would send someone to settle with him. The defendant purchased a gun, purportedly for self-defense (*Tan Chor Jin*, 2008, para. 5). On the night of the shooting, the defendant went out for drinks late at night with friends (*Tan Chor Jin* (2008), para. 6). He was driven to the victim's flat, which he claimed was for the purpose of resolving their differences. The victim was so taken aback that the defendant knew where he lived that he refused to see him. The defendant returned a few hours later and this time managed to gain entrance. Threatening the family with a knife and a gun, the defendant tied up the victim, as well as the victim's wife, daughter and maid, and put them in different rooms (*Tan Chor Jin*, 2008, para. 7). The defendant confronted the victim alone, in an incident witnessed by the maid, who had managed to approach the study room and peek inside even though her hands and legs were tied (*Tan Chor Jin*, 2008, para. 7). The defendant, holding the gun close to the victim's face, fired a single shot, which caused the victim to fall backwards against his chair. The maid immediately went to another room, and heard 5 more gunshots. The

defendant left the home quickly, warning the family not to call the police. After disposing of the gun, the defendant fled to Malaysia, where he was extradited to Singapore for trial (*Tan Chor Jin*, 2008, paras. 7–8).

The defendant testified in his own defense, and the court noted that his evidence was "brief" (*Tan Chor Jin*, 2007, para. 66). The defendant asserted that he had gone to the apartment just to talk, and carried a weapon because otherwise the victim would not talk to him, but decided to rob the victim when he was rude (*Tan Chor Jin*, 2007, para. 68). The defendant maintained that he accidently pulled the trigger (*Tan Chor Jin*, 2007, para. 70), and that the defendant's gun misfired when the victim used his chair to attack him (*Tan Chor Jin*, 2007, para. 66). The defendant also said that he had drunk a lot of alcohol (*Tan Chor Jin*, 2007, para. 69).

The defendant wanted to call an expert to testify about the effects of alcohol on a person's judgment, and the interactions regarding this issue illustrates a less knowledgeable LIP. The defendant's first wife had located an expert witness but had difficulty contacting him, and the defendant did not know of any other experts (*Tan Chor Jin*, 2007, para. 72). The court directed the prosecution to help the accused locate some government experts, advising the defendant that he could continue to look for his own expert. The accused's wife informed the court that she had located an expert, Dr. Lim, and the prosecution identified another expert. The defendant proceeded with Dr. Lim, and proceedings were adjourned to allow Dr. Lim to produce a report. After Dr. Lim's report was given to the defendant, the defendant decided that he did not want to use Dr. Lim, and the defendant ultimately chose one of the experts suggested by the prosecution, Dr. Winslow (*Tan Chor Jin*, 2007, para. 74). Dr. Winslow produced a 2-page report which noted that the defendant started drinking at a young age, to the point of intoxication with reported blackouts, and that he reported drinking heavily on the night of the shooting (*Tan Chor Jin*, 2007, para. 75). However, Dr. Winslow opined that the defendant was not of unsound mind on the night of the shooting based on alcohol consumption. The defendant cross-examined the doctor, asking him about a conversation in which Dr. Winslow said that he could help the defendant get the charge reduced to manslaughter (*Tan Chor Jin*, 2007, para. 78). Dr. Winslow explained that he had said that "there was a possibility that if it was a murder charge and he were highly intoxicated, he could be eligible for the defence of diminished responsibility" (*Tan Chor Jin*, 2007, para. 78).

At the close of the evidence, the defendant was provided with the relevant materials and given a number of weeks to make submissions on the evidence (*Tan Chor Jin*, 2007, para. 50). The defendant requested that Dr. Winslow be required to testify again. This was quite an unusual request, and the court's granting of the request suggests the continuing typology of less knowledgeable, although the court observed that the evidence was "a rehash of much of the earlier testimony" (*Tan Chor Jin*, 2007, para. 80).

The court convicted the defendant, rejecting the defense of intoxication (*Tan Chor Jin*, 2007, para. 91). The court found that the defendant had no lawful excuse for bringing a loaded weapon into the victim's house (*Tan Chor Jin*, 2007, para. 93). When rejecting the defense of accidental shooting, the court applied the credibility typology to the defendant's testimony as a witness, similar to the defendant in Koh. In the court's view, the evidence showed that "it would require a force of some 12 lbs to pull the trigger of a pistol whose hammer is not cocked. Pulling the trigger of a pistol in this manner is far

removed from touch-typing on a computer keyboard or even on the stiff keys of an old typewriter. It requires strength and a firm grip. Pulling the trigger once or twice is hard enough. Pulling it six times consecutively definitely demands determined deliberateness" (*Tan Chor Jin*, 2007, para. 94). In direct language, the court stated that "the claim that he accidentally 'misfired' six rounds (…) in the course of a fight is nothing more than laughable fantasy" (*Tan Chor Jin*, 2007, para. 94). The defendant's attempted defense "of accidental shooting or "misfire" could therefore never succeed in fact or in law" (*Tan Chor Jin*, 2007, para. 95).

The defendant appealed the verdict, and on appeal the defendant was represented by counsel, who inter alia raised the question of whether the defendant should have had counsel at the trial (*Tan Chor Jin*, 2008, paras. 48–73). The Court of Appeal noted that Tan had confirmed at least twice before the trial that he did not want a lawyer, and he confirmed this again twice on the first day of the trial, and Tan had chosen to discharge his counsel before the preliminary inquiry as he claimed that counsel would be unable to assist him (*Tan Chor Jin*, 2008, para. 49). However, after this rejection of counsel by the defendant, and after the prosecution and the defendant had completed examining witnesses, the defendant said he would have difficulty writing submissions about the evidence, and asked a question: "If I say I need a lawyer how?" (*Tan Chor Jin*, 2008, para. 50)

The Court of Appeal determined that the defendant was not clearly or seriously asking for a lawyer, and that the judge did not expressly reject any request (*Tan Chor Jin*, 2008, para. 51). However, the Court of Appeal expressed concern about the ambiguity of the defendant's statement. The Court of Appeal noted that

> … we think it will be helpful to the legal community if greater clarity is brought to the issue of whether the right to counsel can ever be considered to have been waived by an accused, or to be in some way subordinated to competing interests. It is, after all, not entirely fanciful to suggest that there will be accused persons who persistently refuse legal representation in good faith, only to discover, after all is said and done, that trials are complex proceedings in respect of which legal assistance is required. Can there ever be a situation where it would not be unfair to refuse an accused who is voluntarily unrepresented access to counsel, knowing full well that the absence of counsel in relation to an accused charged with a capital crime will very often be a severe handicap? (*Tan Chor Jin*, 2008, para. 51)

It would be a knowledgeable LIP indeed, as well as an LIP with doubtful credibility, who rejected counsel and then ambiguously asked for counsel to help with closing submissions, on order to inject a potential basis for appeal and reversal (*Tan Chor Jin*, 2008, para. 53). The Court of Appeal did not interpret the defendant's request in this way, and instead confirmed that it was entirely possible that an LIP asking for counsel at the last minute could be making a credible request in good faith. The Court of Appeal therefore ultimately applied the less knowledgeable and credible LIP typologies. However, this legal issue illustrates a problematic limitation of typologies in general, and the legal knowledgeable typology in particular. The legal knowledge typology identifies a party as worthy of legal assistance and procedural variations from the court if the LIP is evaluated as less knowledgeable, but even if the correct typology is applied and the court provides assistance, LIPs are still bound by the decisions they make about their case. These decisions are based on less and sometimes inadequate knowledge and

experience, leading them to be wrong about fundamental issues that the court may not be able to address.

3. Conclusion

Courts overseeing litigation need to provide reasonable assistance and procedural variation to LIPs in order to support the development of the factual record and ensure that justice is achieved. To accomplish these tasks, typologies can and should be used to determine whether LIPs lack legal knowledge and whether their submissions are credible. However, typologies in this context have an inherent drawback. LIP decisions are based on less and sometimes inadequate knowledge and experience, leading LIPs to sometimes make the wrong decisions about fundamental issues that the court may not be able to address. Typologies are necessary as they allow the justice system to proceed, but they are not able to completely address the deficiencies LIPs bring to the legal process.

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