

Court Backlogs: Balancing Efficiency and Justice in Singapore

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Abstract

In attempting to eradicate a backlog, can a jurisdiction prioritise court efficiency without effecting substantive justice? This article engages with this question by considering the experiences of Singapore, a common law country in Southeast Asia that overcame a large backlog in the 1990's. The article investigates how efficiency and justice were conceptualised in relevant court reforms. In the beginning of backlog eradication, efficiency took centre stage, but it does not appear to have been considered in isolation. The introduction of business management principles, which could have boded ill for justice, in fact introduced a theme of consumer satisfaction that ultimately developed into a more robust approach to access to justice. Singapore's experience suggests that the connection between efficiency and justice is not a logically linear landscape, but rather an intertwined relationship in which efficiency and justice find a context-specific understanding.

Key words

Backlog; efficiency; justice; access to justice; Singapore

Resumen

Al intentar erradicar un atraso, ¿puede una jurisdicción priorizar la eficiencia judicial sin que esto afecte a la impartición de justicia? Este artículo se ocupa de esa cuestión, y para ello se fija en la experiencia de Singapur, país del Sudeste Asiático de derecho consuetudinario que en los años 90 solucionó un grave problema de acumulación de trabajo atrasado, investigando la forma en que reformas judiciales relevantes conceptualizaron la eficiencia y la justicia. Al principio, la eficiencia pasó a primer plano, pero parece que no se consideró de forma aislada. La introducción de principios de gestión empresarial, que podrían haber hecho augurar lo peor para la justicia, en realidad introdujeron la cuestión de la satisfacción del cliente, lo cual, más adelante, derivó en un abordaje más sólido al tema del acceso a la justicia. Esta experiencia hace pensar que la conexión entre eficiencia y justicia no es de una linealidad lógica, sino que ambas se entrelazan y se entienden en relación con su contexto.

Palabras clave

Acumulación de trabajo; eficiencia; justicia; acceso a la justicia; Singapur

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Table of contents

1. Introduction	881
2. Combating the Singapore Backlog: Reforming the Courts.....	881
3. Criticisms of Reform Strategies.....	884
4. Access to Justice in Singapore: Efficiency & Court Users	888
5. The Community and Individual Justice in Singapore	890
6. Conclusion	891
References.....	891

1. Introduction

Formal systems of dispute resolution are often characterised by delay, and undue delay interferes significantly with justice. In civil proceedings such as child or spouse abuse, the well-being of families and children goes unaddressed, and in criminal matters, an incarcerated defendant remains in custody regardless of guilt. The gist of this somewhat technical legal point is well known, as evidenced by the often-repeated maxim, “justice delayed is justice denied” (in Singapore see *Attorney-General v Au Wai Pang* 2015, para. 73). There is however the equally pithy ‘justice hurried is justice buried’, and the existence of these two maxims suggests a tension between efficiency and justice. Common English usage of these words also reflects this tension. Justice should be delivered efficiently, but justice should primarily be just. The phrase “efficient justice” seems strained.

The tension between efficiency and justice exists because while justice should be delivered in good time, justice requires time to develop properly (Chan 2009, para. 12).¹ At some level justice is antithetical to efficiency. At both ends of the efficiency-justice continuum - either inordinate delay or breath-taking rapidity - the problems if not the solutions are obvious. Once a system of dispute resolution moves away from these extremes, the proper balance between justice and efficiency becomes less clear. How should courts optimally structure their procedural frameworks to achieve justice and efficiency? Should substantive justice always take precedence over efficiency? If there is a backlog, should something be sacrificed, and to what degree?

Court delays take different forms, but a central theme in court reform has been backlogs (Dakolias 1999, p. 88). The term backlog usually refers to a large number pending cases awaiting trial or decision which exceeds court capacity. The issue of backlogs is an unusual one in the area of court reform, because unlike other deficiencies such as corruption or antiquated document systems, this problem occurs in developed and developing jurisdictions alike (see Hammergren 2014, pp. 88-128). One jurisdiction that has successfully addressed a backlog is Singapore, a common law jurisdiction in Southeast Asia. This article considers the questions raised by the need to balance justice and efficiency by evaluating the experience of Singapore in combating its backlog. The results of backlog eradication are considered, as well as the manner in which efficiency and justice were discussed in these efforts. In order to focus on how efficiency and justice were understood at the time, the article evaluates public discussions of court reforms, not the details of procedure and court structure, in the years surrounding the reforms. Analysis focuses primarily on extra-judicial statements of the Chief Justice in charge of the reforms, then Chief Justice Yong Pung How, supplemented with statements from other actors and academic scholarship. These materials suggest that efficiency took centre stage, particularly in the beginning of backlog eradication, but it does not appear to have been considered in isolation. In the Singapore court reforms, the introduction of business management principles could have sacrificed justice for efficiency, but they introduced a theme of consumer satisfaction that ultimately developed into a more robust approach to access to justice. Singapore’s experience suggests that the connection between efficiency and justice is not a conceptually logical landscape, but rather an intertwined relationship in which efficiency and justice find a context-specific understanding.

2. Combating the Singapore Backlog: Reforming the Courts

The Singapore courts are understood to be one of the most efficient in the world (Tan 2014, p. 237), but this was not always the case. The current efficient environment was created by a transformation brought about in the early 1990’s. Prior to that, Singapore experienced backlogs, the first of which were first reported in 1949, four years after the Japanese occupation ended (Hoo *et al.* 1996, p. 71). Remedial

¹ Then Chief Justice Chan Sek Keong stated in 2009 that due to “the very nature of the civil litigation process, cases take time to develop” (Chan 2009, para. 12).

measures were attempted in the 1970's but they were ineffective, because according to the 2007 Singapore World Bank Report, "they did not address the problems from a long-term perspective or satisfactorily target the basic constraints" (Malik 2007, p. xvi). As Singapore's economy and population grew, the number and complexity of disputes increased law-making to regulate business and individual activities which resulted in more disputes (Malik 2007, p. 16). By the 1990's, Singapore had a massive backlog of cases waiting to be disposed of (Tan 2015, p. 237). As described by Kevin Tan, there were over 10,000 inactive cases, some more than a decade old, and 2,000 cases set down for trial at the Supreme Court (Tan 2015, p. 237). 44% of cases took between five and ten years from commencement to disposal, and appeals took a further two to three years (Tan 2015, p. 237). The backlog had existed for many years, but it was not until Singapore began its growth toward a global hub for international business and engaged in a "breathless pace of economic development" (Hoo *et al.* 1996, p. 61) that the backlog took on sufficient significance to warrant concerted change (Malik 2007, pp. xvi-xvii).

A new Chief Justice, Yong Pung How, assumed his position on 28 September 1990, with the purpose of reforming the judiciary (Hoo *et al.* 1996, p. 5) and combating the backlog. The Chief Justice brought considerable non-judicial, business and senior management experience with him (Malik 2007, p. xvii). He qualified as a lawyer, and while he practiced law he concurrently held posts including Chairman of Malayan Airlines, Deputy Chairman of Malayan Banking Berhad, and external examiner at the National University of Singapore. He ceased legal practice after attending Harvard Business School in 1970 and thereafter held posts in private businesses and public organisations, including Chairman and CEO of the Oversea-Chinese Banking Corporation, member of the Singapore Securities Industry Council, Managing Director of the Monetary Authority of Singapore, Alternate Governor for Singapore of the International Monetary Fund, member of the Mass Rapid Transit Authority, and Deputy Chairman, Singapore Press Holdings (Hoo *et al.* 1996, pp. 3-5). This business and management experience lead the new Chief Justice to see the courts "as a private sector business that needed to be accessible, efficient, and delivering public value" (Malik 2007, p. 62).

Soon after he was appointed to the position, the Chief Justice initiated reforms, part of which addressed judicial manpower. Justice Judith Prakash has noted that "[o]ne of the causes of the backlog before the 1990s was the shortage of judicial manpower" (Prakash 2009, para. 21). The use of judicial law clerks also speeded up the decision-making process and the case disposal rate (Prakash 2009, para. 21).

The precise number of additional judicial appointments has not been noted in critiques of Singapore's court reforms. Malik noted that at the end of 1985 "there were 36 judicial officers. By the end of 1989, in addition to the Supreme Court judges, there were 53 judicial officers to deal with all the cases in the Supreme Court and the subordinate courts. In 1991 the number of judicial officers rose to 67. Since the end of 1997, the total has risen to 98" (Malik 2007, p. 18 n. 7). A seemingly easy task, attempting to count the number of judges quickly becomes a complex definitional task, so this article uses posts reflected in the Singapore Government Directory as one measure of persons acting in a judicial capacity. Actual titles are reflected in the Table below to provide more detail. In 1990 – 2000, the main years of and the years just preceding the reforms, the Directory was normally published in January and July. Taking figures from the latter month of July establishes the following numbers of judicial officers, understood broadly as persons with some authority to determine a portion of a pending dispute:

TABLE 1

Year	Supreme Court Judge ²	Supreme Court Judicial Commissioner	Supreme Court Registrar ³	Subordinate Court District Judge ⁴	Subordinate Court Magistrate	Subordinate Court Registrar ⁵	Small Claims Tribunal ⁶	Total
1990	9	2	13	22	15	2	2	65
1991	11	5	12	22	17	2	2	71
1992	11	10	13	23	19	2	2	80
1993	10	9	14	36	22	3	2	96
1994	13 ⁷	4	15	35	17	4	2	90
1995	14	4	14	33	15	3	2	85
1996	14	5	15	38	16	3	2	93
1997	14	6	16	44	18	13	3	114
1998	14	6	14	52	16	3	4	109
1999 ⁸	14	6	15	54	11	5	5 ⁹	110
2000	11	7	15	55	14	4	3	109
Change 1990, 2000	+2	+5	+2	+33	-1	+2	+1	44

Table 1. Singapore Judicial Officers.

Comparing the years 1990 and 2000, most posts show an increase, with the primary increase reflected in Subordinate Court (now State Court) District Judges (see Singapore State Courts 2017b), from 22 to 55, for an increase of 33. This increase reflected a shift of jurisdiction from the Supreme Court to the Subordinate Courts, as well as the fact that the Subordinate Courts hear the majority of legal disputes in Singapore. In the Supreme Court, the Supreme Court Judicial Commissioners also reflected an increase, from two to five.

Singapore reform therefore included more judges as well as more courts (Malik 2007, p. 51). However, if temporary appointments are approached as a quick fix, this strategy normally does not produce good results (Hammergren 2014, p. 226). Judicial productivity and support are more important than numbers (Malik 2007, p. 49). In her classic study of judicial comparative court performance, Dakolias used the number of judges per 100,000 persons as one factor to compare countries. She noted that “while Singapore is among the countries with the fewest judges per 100,000 capita (0.64), it has one of the highest clearance rates of all the surveyed countries (ninety-four percent)” (Dakolias 1999, p. 104). Clearly the number of judges is only one factor in a country’s clearance rate.

Increasing the number of judges was one plank in a raft of reforms in Singapore. As described by Justice Judith Prakash, the Singapore strategy to combat the backlogs can be summarised as: (1) appointing more judges; (2) changing the rules of procedure to enable a more active case management system, which transferred the pacing of cases from lawyers to judges and the courts; (3) denying adjournments; (4) giving hearing dates to moribund cases; and (5) expanding the jurisdiction of the Subordinate Courts (Prakash 2009, para. 3). Mediation should also be added to this list (Blochlinger 2000, p. 613, Malik 2007, pp. xx, xxii).

Within three years of initiating reforms, the backlog was cleared in the Supreme Court (Tan 2015, p. 237). The Chief Justice then focused attention on the Subordinate Courts. He introduced the Court Workplan (Hoo *et al.* 1996, p. 63), a document which “set explicit markers for desired results and sharpened the judicial system’s institutional image” (Malik 2007, p. xviii), and which has become a yearly event (see

² Including Chief Justice, Senior Judge, and Judge.

³ Including Registrar, Senior Assistant Registrar, and Assistant Registrar.

⁴ Including Senior District Judge and District Judge.

⁵ Including Registrar and Deputy Registrar.

⁶ Including Registrar and Assistant Registrar.

⁷ From 1994, including Judges of Appeal.

⁸ Not including Primary Dispute Resolution Centre personnel.

⁹ Including Registrar, Referees, and Assistant Registrars.

Singapore State Courts 2017a). Similar reforms were successful in the Subordinate Courts, with 99% of their cases cleared since the 1990s (Tan 2015, p. 238). In 2000, Karen Blochlinger reviewed the considerable progress Singapore made in eradicating the backlog, noting that Singapore had achieved the highest case clearance rate of any country in the world at that time (Blochlinger 2000, p. 591).

3. Criticisms of Reform Strategies

The Singapore reforms were characterised by a high degree of compliance with court scheduled deadlines. Maria Dakolias's 1999 article on comparative court performance stated that the Singapore system recognises that citizens require access to a dispute resolution mechanism but that this "service" is available on "strictly limited terms, with high standards for timeliness, cost, and appropriate procedure" (Dakolias 1999, p. 132). She noted that empirical data supports Singapore's reputation for strict adherence to case management schemes (Dakolias 1999, pp. 132-133).

The most serious potential criticism of efficiency in the Singapore legal process is arguably the suggestion that death penalty procedures resulted in executions that were carried out too quickly. Michael Hor has noted that after Singapore abolished jury trials for capital cases, two High Court judges were assigned to hear the case, and if they disagreed, the benefit of the doubt accrued to the accused (Hor 2004, p. 115). Faced with a "huge backlog" of capital trials, primarily from drug trafficking cases, the Judiciary proposed to assign one judge, a change that was accepted by the Parliament (Hor 2004, pp. 115-116). An additional prosecutor and defense counsel were inserted into the process (Hor 2004, p. 116). In a 2004 report, Amnesty International highlighted increases in executions in the 1990's: 1991, 6 persons were executed, in 1992, 21 persons, and in 1993, 7 persons, followed by the extraordinary years of 1994, in which 76 persons were executed, and 1995, in which 73 persons were executed (Amnesty International 2004, Table p. 6). The time frame in which capital cases were tried was also the subject of commentary by the Chief Justice. He noted in 1994 that the "solitary exception" to the eradicated Supreme Court backlog had been capital cases, but it had been resolved as of January 1994 (Hoo *et al.* 1996, p. 99). In 1995, the Chief Justice stated:

In the course of 1994, the Supreme Court embarked on a study of the total time taken to complete criminal cases, involving the length of remand of an accused person before trial, and the times taken for various steps before final disposal. In particular, attention was focused on the cases of persons charged with the main capital cases of murder and drug trafficking which are heard in the High Court. In these cases, it is clearly desirable not only that the charges against them should be heard without undue delay, but also that, if they are not acquitted at some intermediate stage of the whole proceeding, all the subsequent steps should be concluded as quickly as possible.

As result of the action which we have taken in the matter, we have now reached a stage when criminal cases can be disposed of by the High Court in about six months from the time the accused are arrested and first charged in court, criminal appeals are disposed of by the Court of Appeal in about six months from the conclusion of the trials, and condemned prisoners can be disposed of by the prison authorities in about six months from the disposal of the appeals. In other words, the whole process of trial, appeal, consideration of the petition for clemency, and eventual execution can be concluded in about 18 months" (Chief Justice, cited in Hoo *et al.* 1996, pp. 123-124).

The timing of the larger number of executions coincides roughly with the years in which reforms were implemented by Chief Justice Yong, but authors have noted that the reasons for the overall rise in executions are somewhat unclear, and if calculated from the 1980's could be due to reporting changes, or more likely the overall aggressive drug enforcement policy (Johnson and Zimring 2009, p. 414). Chan has argued that if the increases in executions were caused by the procedural change from two judges to one, that change was in effect from 18 April 1992, so the number of

executions should have risen immediately after the change in procedure, or stayed at the same level as the preceding year until the changes had filtered through the system (Chan 2016, p. 187). Also, once the backlog had cleared, executions should then have stabilised at earlier levels. Instead, executions went down, from 21 in 1992 to seven in 1993, then rose dramatically in 1994 and 1995, and since then have been on a downward trend relative to the population (Chan 2016, p. 187).

Court reforms raised other potential issues regarding justice. Karen Blochlinger (2000, pp. 612-614) has noted three potentially problematic areas: adequate time for lawyer preparation, restrictions on the right to appeal, and cost. In terms of lawyers, the reforms greatly impacted smaller law firms. Lawyers from these firms had previously gained continuances in one matter if they were engaged in another matter in court, but after the reforms continuances were no longer granted as a matter of course. At a speech delivered at the Admission of Advocates and Solicitors in 1991, the Chief Justice acknowledged that one result of the court reorganisation, which eliminated delays and included the electronic filing of documents, would be that “the one-man law firm or the small firm of two or three lawyers will be at a tremendous disadvantage in coping with its work” (Hoo *et al.* 1996, p. 40). The Chief Justice recommended that graduates “form partnerships or associations of at least half a dozen or so”, which would entail some “considerable sacrifices of personality and freedom” (Hoo *et al.* 1996, p. 40). The Chief Justice returned to the role of the small law firm in court delays in 1992, and issued a clear warning:

(...) a situation has been [reached] in all our courts, in which the majority of the relatively small pool of lawyers who do court work cannot easily handle more work....we are beginning to hear with ever increasing frequency that lawyers are unable to accept dates of hearing because they are already engaged in other hearings on the same days (...). The real reason for all this is simply that there are not enough lawyers doing court work, which leads to some of these lawyers hogging the cases, and having to take more cases than they can handle. We have therefore issued directions recently that (...) lawyers will just have to take the hearing dates which are offered, and will not be allowed to hog cases. If a lawyer who is offered hearing dates is already engaged in a trial or hearing in another court, he will be given the choice of either taking the hearing dates given and making alternative arrangements for his other case, or dropping the immediate case and asking for a discharge. This move by us will immediately result in opportunities for a larger pool of court lawyers to share the available court work. (Chief Justice, cited in Hoo *et al.* 1996, p. 58)

Blochlinger noted a 1999 survey of more than 100 law firms, in which 7 out of 10 lawyers said they faced problems preparing for civil court hearings that had been brought forward, but she questioned the legitimacy of the problems asserted by lawyers because “lawyers have a strong financial incentive in protracting cases” (Blochlinger 2000, p. 613). However, in a 2002 article regarding the future of small law firms, a local lawyer noted that substantial investments were needed to comply with the electronic filing system, and that there were ordinary Singaporeans whose interests may still need to be protected (Raman 2002). The need to maintain smaller law firms is related to access to justice in Singapore because historically smaller firms provided the majority of pro bono to indigent clients, as they engaged in the court practice, including family and criminal law, that poor clients needed (Chen and Whalen-Bridge 2016, para 9.34). Singapore continues to address the issue of imbalance in criminal and family law providers, and has recently launched a law school designed to produce community law practitioners, Singapore’s third law school in a relatively small market (see Singapore Ministry of Law 2013, pp. 5-15, Singapore Ministry of Law 2016 and Seow 2016).

Blochlinger also noted concerns regarding restrictions on the right to appeal. Members of Parliament feared that if the minimum value for taking an appeal was raised, it would appear to restrict public access to justice and “give the impression that justice was reserved for the wealthy” (Blochlinger 2000, p. 613, n. 205). In response, the Chief Justice noted that the raised limits were intended to discourage non-serious appeals, and that it was possible to apply for special permission to

proceed if the amount was lower than the prescribed minimum, although that procedure would also incur fees for a party that might be less able to afford it (Blochlinger 2000, pp. 613-614).

When assessing the impact of court reforms on access to justice, increased fees of most kinds would raise concerns (Tan 2015, p. 244, citing Chan 2008, p. 607-609). In his public discussions regarding the court reforms, the Chief Justice himself raised the issue of the high costs of litigation, and the costs associated with court proceedings that were protracted in different ways (Hoo *et al.* 1996, p. 213). Blochlinger addresses this point briefly, arguing that increased costs for parties were ameliorated by reduced court time, and that the majority of cases were settled by free mediation in the courts so most litigants probably experienced lowered costs despite an increase in trial costs (Blochlinger 2000, p. 613). It is now acknowledged that there are potential issues of access to justice with alternative methods of dispute resolution (Hammergren 2014, pp. 156-157). Also, again there is little relevant empirical evidence for Blochlinger's conclusion, and Blochlinger does not address the impact of increased fees on indigent parties. In Singapore, a legally aided person proceeding under the Legal Aid Act would have court fees waived; parties not qualifying for legal aid would not be entitled to fee waivers, although waivers could be requested. Many Singaporeans who did not qualify for legal aid at this time still could not afford legal and other fees (Pereira 1994), and the cut-off for legal aid in Singapore left many "sandwich class" persons unable to effectively engage in civil litigation (Legal Aid Review Committee of the Law Society of Singapore 2006, copy on file with author, pp. 21-30). A 2006 Report from the Legal Aid Review Committee of the Law Society of Singapore noted that in general civil legal aid was limited to the bottom 10% of the population, and that citizens in the 11th – 30th percentile were "cash-poor" (Legal Aid Review Committee of the Law Society of Singapore 2006, copy on file with author, pp. 28-30) and would have considerable difficulty affording legal representation or other costs associated with litigation.

During the court reforms, the imposition of court hearing fees gave rise to an exchange involving the Chief Justice and the Law Society of Singapore. At the Opening of the Legal Year 1993, the Chief Justice drew attention to what he characterised as a glaring problem, the lengthy hearings required in some cases in the High Court and to a lesser extent the Subordinate Courts. The Chief Justice noted that over the previous two years,

(...) 81 percent of the cases in the High Court were completed within one day, and another 10 percent within two days, with less than 10 percent exceeding two days. Unfortunately, the few High Court cases in the last category which exceeded two days highlighted the problem in a rather stark way: one case went on for 55 days before it was settled, and several other cases went on for more than 30 to 40 days before they could be concluded.

While it may well be that the parties in these cases and their legal advisers consider the time spend to be well justified, the fact remains that our legal system was never intended to cater for such excesses. The repeated requests after each session for yet more court days cause disruptions and distortions in the court calendar with which the court administration should not have to cope.

The present total liberty allowed to litigants in such cases amounts in fact to an abuse of our legal system. Nobody should be denied access to our civil courts, but court time is a scarce resource, and others should not be denied early access just because a minority hog to themselves a wholly disproportionate share of the available court time. A litigant's right to his day in court does not mean that this can be extended as of right into interminable days and days in court. (Chief Justice, cited in Hoo *et al.* 1996, pp. 76-77)

The Chief Justice noted that after considering measures taken in other jurisdictions, the Courts would impose graduated hearing fees for each day in court beyond the first day (Hoo *et al.* 1996, p. 77). The first day would be free at both the High Court and the Court of Appeal (Pereira 1993). In the Court of Appeal, there would be a flat

rate of S\$3,000 (US\$2,127)¹⁰ from the second day onward (Pereira 1993). For the High Court, the rate would be S\$1,500 (US\$1,063) from the second to the fifth day, S\$2,000 (US\$1,418) for the sixth to 10th day, and S\$3,000 (US\$2,127) for any day after that (Pereira 1993). Fees would not be imposed for exempted cases, which included: criminal cases initiated by the State; disciplinary hearings against lawyers, doctors and other professionals; cases involving damages for death or personal injuries; family law matters; and applications for habeas corpus (Fong 1993). Cases exempted from court fees would generally include matters normally involving unrepresented and/or indigent persons, such as family law, criminal matters and habeas corpus, but income levels at this time suggest that a majority of persons would not be able to afford litigation if they were involved in a non-exempt case. 1995 statistics from the Singapore Department of Statistics (Singapore Department of Statistics 1996, p. 17) state that 61.5% of households earned S\$3,999 (US\$2,914)¹¹ or less per month, so if the court costs of \$1,500 (US\$1,063) for a second day of trial is used, it is difficult to see how a large percentage of the population could afford it. Initially imposed during the court reform years, court hearing fees continue to be assessed in Singapore, via amended fee schedules (Supreme Court of Judicature Act 2014, Order 90A, Bull *et al.* 2015, Supreme Court of Singapore 2015).¹²

When court hearing fees were introduced, the Chief Justice noted that they constituted only a fraction of the actual cost to the taxpayer for court hearings, that they would be a small portion of the overall cost to the litigants which were primarily comprised of lawyer fees, and that the fees would help to control the use of court time (Hoo *et al.* 1996, p. 77).

In response to the proposed fees, the Law Society of Singapore raised concerns (Law Society of Singapore 1993; copy of document on file with author). The Law Society noted that the fees were not necessary to eradicate the backlog, as this had already been accomplished, which meant that cases were already being decided expeditiously. The Law Society also pointed out that the fees would “disadvantage further those lower down the economic ladder and thereby restrict access to justice” (Law Society of Singapore 1993, copy on file with author, p. 1; Pereira 1993). The fact that other cost burdens to justice already existed for indigent persons did not mean that additional barriers were justified (Fong 1993). The Chief Justice disagreed that the hearing fees would restrict access. He referred to court studies showing that litigants in cases of more than two days were not unable to pay the fees, although the report does not appear to have been made public.

Other difficulties with the proposed hearing fees can be noted. Presumably cases that entailed a longer trial had gone through Singapore case management system, had been pruned in terms of issues left to try and evidence deemed necessary, and were prepared to go to trial without delay. If this was the case, it is difficult to see how a small number of cases that required a considerably longer trial constituted an abuse of the system. It seems likely that given the variety of cases to be tried, there will necessarily be a few cases that are considerably longer than the average (Fong 1993).

The imposition of fees to penalise lengthier cases could also affect less wealthy parties by giving more bargaining power to parties with the funds to afford a longer

¹⁰ All rates of exchange in the article between Singapore and U.S. dollars are rounded up the dollar and calculated using average yearly exchange rates from Canadian Foreign Exchange Services, which for 1996 was 0.709233 (Canadian Forex n.d.).

¹¹ All rates of exchange in the article between Singapore and U.S. dollars are rounded up the dollar and calculated using average yearly exchange rates from Canadian Foreign Exchange Services, which for 1995 was 0.728802 (Canadian Forex n.d.).

¹² For current fees, see Supreme Court of Judicature Act 2014, Cap. 322, s 80, Rev. Sing/Ed. 2014; Supreme Court of Judicature Act 2014, Rules of Court, Rule 5, G.N. No. S 71/1996 (Rev. Ed. 2014); Supreme Court of Judicature Act 2014, Order 90A, Hearing Fees and Court ADR Fees; see also Bull *et al.* 2015 and Supreme Court of Singapore 2015.

trial. Because they have a disparate impact on indigent parties, it is difficult to justify the use of additional fees in the context of court reform. The Chief Justice pointed out that the scheme incorporated the discretion to reduce, waive or defer hearing fees "in genuine cases of hardship" (Hoo *et al.* 1996, p. 77). This discretion means that judges could waive fees based on ability to pay, although it is not clear why the relatively high bar of hardship is appropriate. In 1994, the Chief Justice also noted that there had been no application for waivers (Hoo *et al.* 1996, p. 102), although the significance of this information is not apparent. The lack of waiver applications could mean that no one needed the waiver, but it could also mean that persons so lacked the financial capability to pursue litigation that they did not pursue a claim or seek a waiver.

4. Access to Justice in Singapore: Efficiency and Court Users

The foregoing criticisms of court reform suggest that Singapore prioritised efficiency over justice, but while it is clear that the weight of the backlog was keenly felt, efficiency was not addressed in isolation (Blochlinger 2000, p. 597). In discussing the court reforms, the Chief Justice noted that the courts also needed to address judicial "productivity" and case disposal time overall (Hoo *et al.* 1996, p. 33). The reforms were not characterised only as backlog reduction, but rather as more fundamental reform. The other aspect of the Singapore reforms that emerges strongly from the speeches delivered by the Chief Justice, as well as the 2007 Singapore World Bank Report, is the relevance of principles of organisation and management from the business field (Hoo *et al.* 1996, pp. 183 and 187, Malik 2007). In the Chief Justice's first public speech, he stated that a change in leadership "necessarily leads to change in management style" (Hoo *et al.* 1996, p. 25). In 1995, he noted more specifically that "customer satisfaction" is important in the marketplace, and that the judiciary is no exception to the governmental trend of "incorporating quality improvement principles and customer-driven practices" (Hoo *et al.* 1996, pp. 172-173). Efficiency does not sit easily with justice, but when business principles are thrown into the mix, they could create an even more troubling mission of efficient profit. Certain public functions may not turn a profit, but they should be offered, invested in and developed with care, for the good of the community (in the field of education, see Kirpaug 2014, United Nations Office of the High Commissioner for Human Rights 2017). However, business management includes a focus on the customer, and in Singapore it appears as though introduction of a customer focus supported a more prominent role for justice in the court reforms, particularly access to justice, educating the public, and working with community members (Malik 2007, pp. 41-45). A key element of the court reforms was understood to be public understanding and awareness of law and how the courts functioned. This goal was achieved by public relations programmes, including a public awareness campaign and court visits (Blochlinger 2000, p. 606). Videos were made available to introduce the court to potential users, as well as instructional pamphlets in different languages (Blochlinger 2000, p. 606). In 2000, the Chief Justice offered a \$30,000 (US\$21,276) prize for the most innovative suggestion for court improvement from the public (Blochlinger 2000, p. 606).

As described in the 2007 Singapore World Bank Report, increasing access to justice was one of eight main strategies used in the Singapore court reform process. Access was intended not only for the commercial and business disputes which were central to the initiation of the backlog eradication, but for all kinds of court users, defined broadly:

Users of the justice system include both direct, active users and indirect, passive users. Active users include people with direct interests in the outcome of a case, such as the parties to a case and their family members and court support groups (for example, civil society organizations). They may also include people with a public duty to ensure that cases are disposed of in accordance with the law (state agencies responsible for investigation, law enforcement, prosecution, and rehabilitation) as

well as others involved in the case (pro bono lawyers, volunteer counsellors, and social workers).

More indirect, passive users are members of the public, including those who attend open court to witness judicial proceedings and those who never enter a courthouse. They also include all those who benefit from effective judicial systems. If the system functions well and upholds the rule of law, all citizens are afforded adequate protection and can go about their daily pursuits without fear. The needs of these silent users must be accounted for, since a fair, efficient, and responsive legal system provides an important public good. To users of juvenile and family justice systems, justice is viewed more as a social good. Civil and commercial litigants value civil justice more as a private good, while the users of the criminal justice system (general population and criminal defendants) see justice as a public good. (Malik 2007, p. 41)

When addressing the backlog in the lower tier of courts, the Chief Justice noted a number of times that these were the courts where the vast majority of people had their first encounter with the courts, and where the concept of rule of law took on practical meaning (Hoo *et al.* 1996, pp. 36, 63, 88, 127, 187).

Innovations in the Subordinate Courts supported access to justice by a variety of court users, including the introduction of night court (Hoo *et al.* 1996, p. 133) and the installation of kiosks for the payment of fines (Hoo *et al.* 1996, pp. 143, 230). At times the improvements focused more on efficiency, such as when the Chief Justice reviewed waiting times experienced by the public (Hoo *et al.* 1996, pp. 143, 224). At other times, concerns other than efficiency were noted. The Chief Justice was instrumental in establishing the Family Court, which he stated should be “kept simple and convenient for those seeking legal redress” (Hoo *et al.* 1996, p. 144). When reviewing the IT improvements made by the courts, the Chief Justice noted computerisation had made court processes more efficient and user-friendly for litigants and their lawyers (Hoo *et al.* 1996, pp. 154, 190), but stated “we must be careful not to allow the substitution of technology where a human presence is more helpful” (Hoo *et al.* 1996, p. 174).

Discussions addressing the needs of court users did not always note the presence of indigent court users, and at times the public is characterised as “taxpayers” (Hoo *et al.* 1996, p. 185). However, issues of affordability for indigent users was a recurring theme for the Chief Justice, e.g. in changes to the Small Claims Tribunal (Hoo *et al.* 1996, p. 143). After the backlog had been eradicated, the Chief Justice focused discussion in the courts’ core values, and he noted in 1995 that

the complexities and time taken for the trial process coupled with its high costs often result in the court not being accessible to those who require legal redress; often only the rich and well-heeled individuals and corporations are able to open the court’s doors. But it is not a rigid system. It lies within our hands to shape it into a model of excellence, by which justice is administered according to law based upon a set of clear principles or values. (Chief Justice, cited in Hoo *et al.* 1996, p. 137)

When discussing the Family Court in 1995, the Chief Justice noted that many parties

are not represented as they cannot afford proper legal representation. When they do appear in court, they are usually unfamiliar with the court and legal processes. For its part, the court should therefore try to make its processes and procedures as simple and as convenient as possible. (Chief Justice, cited in Hoo *et al.* 1996, p. 132)

The Chief Justice noted the establishment of a Family Court Clinic for applicants who could not afford legal advice (Hoo *et al.* 1996, pp. 143, 227), although it is not clear how that clinic coordinated with the larger scheme of legal aid in Singapore. The Chief Justice also noted the availability of alternative sources of support and representation in Juvenile Court for juveniles who were not legally represented (Hoo *et al.* 1996, pp. 196-197).

5. The Community and Individual Justice in Singapore

Other developments in the jurisprudence of Singapore suggest that Singapore did not prioritise individual justice. Singapore is understood not to have developed a rights culture, and the Singapore government is insistent that it must have sufficient power to govern. Under this approach, the Constitution is not an instrument of limitation, but a charter of state authority and power which does not fetter the Government's ability to govern. Courts do not "see themselves as natural adversaries of the executive, waiting to pounce on the government at the slightest prompting", but rather an impartial referee, ensuring that the government stays on the correct side of the law (Tan 2015, pp. 257-258). While the "ideal of human rights as a means to promote human dignity and social welfare is accepted, the scope of substantive obligations this entails and the mode of interpreting and implementing human rights is qualified by reference to economic development, historical particularity, and pseudo-cultural invocations of 'Asian values' or Neo-Confucianism" (Thio 2005, p. 159).

Development of the law under Chief Justice Yong Pung How was consistent with this approach. For example, the Chief Justice adopted the "four walls" doctrine of constitutional interpretation, which requires the constitution to be interpreted within its four walls and not with reference to other constitutions, a doctrine that coincided with the "aggressive" pursuit of an 'Asian values' foreign policy and communitarian domestic agenda (Thiruvengadam 2009, p. 121). Addressing the question of whether a scheduled execution carried out more than 5 years after conviction violated Article 9(1)'s prohibition on depriving a person of life or personal liberty save in accordance with law, the Chief Justice held in *Jabar v Public Prosecutor* (1995) that any law which provides "for the deprivation of a person's life or personal liberty, is valid and binding so long as it is validly passed by Parliament. The court is not concerned with whether it is also fair, just and reasonable as well" (*Jabar v PP* [1995] 1 SLR 617 at 631B para. 53, discussed in Neo and Yvonne 2009, p. 179).

Deference to Parliament regarding individual rights emerged during the Chief Justice's tenure, but while abstract constitutional discourse on the right of access to justice and the associated rights of legal representation and legal aid are "virtually absent" in Singapore, the Singapore judiciary's overall efforts to support access to justice for indigent persons is "fairly comprehensive and pro-active" (Chan 2008, p. 596). The argument in this article, that efficiency was tempered by access to justice in court reforms, is further supported by the fact that access to justice discourse in Singapore appears to have originated with the judiciary. The first mention of access to justice in the main Singapore newspaper *The Straits Times* was in the context of the court system, not lawyers (Whalen-Bridge 2014, p. 135). Throughout the 1990's, access to justice was associated with the courts in newspaper reports, discussed in connection with issues such as the administration of justice, the role of IT, mediation, and whether appeal limits adversely affected access to justice (Whalen-Bridge 2014, p. 136). In 1995, the Chief Justice noted that no fees were charged litigants participating in settlement conferences known as Court Dispute Resolution (Hoo *et al.* 1996, p. 179). It was under Chief Justice Yong's tenure that access to justice was introduced into the Court's own vocabulary and made part of the Court's core values (Pereira 1995). The court reform efforts under the Chief Justice included substantial investment in public awareness and legal information, and represent an orientation which continues today.¹³

The recurring presence of access to courts in court reforms, and the steady development of access to justice subsequently into what has been characterised as

¹³ See at Singapore State Courts n.d., *If you are self-represented in a criminal matter, If you are self-represented in a civil matter, Filing a claim at the Small Claims Tribunals, Attending a court hearing, Filing a claim against your neighbour, Filing for protection against harassment, Filing a claim at the Employment Claims Tribunals*; and see Community Justice Centre (n.d.), an independent charity initiated by and based in the State Courts.

a more people-centred justice (Cheah 2012), is difficult to reconcile with Singapore's approach to constitutional interpretation and individual rights. It is however consistent with the court reform focus on the customer, i.e. the court user, a principle which arose out of application of business principles to court organisation and procedures. The combination of judicial efficiency with business-oriented management does not necessarily bode well for justice, but in the case of Singapore it provided a solid foundation for the access to justice to develop.

Access to justice arguably developed more fully under the next Chief Justice, Chan Sek Keong, who for example publicly identified the percentages of unrepresented litigants in the Subordinate Courts (Speech of Chan Sek Keong, in Chan 2007, para. 41; see also Rajah and Thiruvengadam 2014). In 2006, this Chief Justice acknowledged the work done to eradicate the backlog and started to articulate judicial goals in a different way:

[T]he fearsome backlog of cases which was the driving force behind the relentless waves of court reforms has been eliminated more than 10 years ago. Efficiency is vital in court administration but it should not be pursued to the point when it starts to yield diminishing returns in the dispensation of justice. The Judiciary must always give priority to upholding the fundamental values of the legal system, such as due process or procedural fairness, equal protection of the law, consistency and proportionality in sentencing, and rationality in decision-making. We should now be confident enough to give greater emphasis to the basics of judicial decision-making without the recurrent fear of a resurgent backlog. (Chan Sek Keong CJ's Response during his Welcome Reference in 2006, cited in Tan 2009).

Court developments after the backlog reduction was accomplished do not pose the same issues as balancing efficiency and justice in the midst of a backlog. In an environment with a substantial backlog, the need to achieve an acceptable level of efficiency creates pressure to minimise or disregard justice. The interesting lesson to come out of the Singapore experience is that when improvements in efficiency were required, efficiency was achieved in part by the adoption of principles of business organisation, which encouraged a focus on the court user and ultimately promoted access to justice.

6. Conclusion

Efficiency in court reform suggests a judicial economy at odds with what justice seems to require, and backlogs pose challenges that appear to place justice and efficiency even more directly into conflict. The experience of Singapore however suggests that the relationship between efficiency and justice is not straightforward. In Singapore, strict compliance with efficiency reforms was coupled with business-orientated principles of management that included prioritising the importance of court users, which over time supported a more robust approach to access to justice. Singapore's experience in eradicating backlogs suggests that the connection between efficiency and justice is not a conceptually logical landscape in which efficiency and justice inevitably conflict. Efficiency and justice are better understood as an intertwined relationship which produces a context-specific understanding. The nature of this relationship suggests that while lessons from Singapore's impressive backlog eradication can be extracted, their relevance to other jurisdictions is limited.

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