

**JUDICIAL INTEGRITY NETWORK IN ASEAN
WEBINAR: “JUSTICE IN TIMES OF COVID-19”**

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I. Introduction

1. Good morning. Let me begin by thanking Nicholas and the Judicial Integrity Network in ASEAN for organising this webinar and for inviting me to join you this morning. In a time of unprecedented restrictions on international travel, I believe it is more important than ever that we keep our channels of communication open and candidly share our experiences through forums such as this webinar in addressing the common challenge that is COVID-19.

2. Because of its open borders and international workforce, Singapore was one of the first countries affected by COVID-19. In order to decisively break the chain of transmissions, the Government announced a series of stringent measures, which were likened to a “circuit breaker”, on 3 April 2020. This involved the closure of most workplaces, leaving only essential services and key economic sectors operational.¹ Originally planned for a month, the

¹ Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 3 April 2020” (3 April 2020): <pmo.gov.sg/Newsroom/PM-Lee-Hsien-Loong-on-the-COVID-19-situation-in-Singapore-on-3-April-2020>.

“circuit breaker” period was later extended to 1 June 2020.²

3. When the circuit breaker measures were announced, the first priority for the Judiciary was to ensure the health and safety of all judges, court staff, legal practitioners, the public and the media. We therefore announced on 5 April 2020 that we would hear only essential and urgent matters during the circuit breaker period. All other matters would be adjourned.³ Over the past seven weeks, we have implemented solutions to hear and manage cases without the need for any physical attendance in court. This has allowed us to keep the courts open for litigants with the most critical and time-sensitive justice needs.

4. For our Judiciary, the past few weeks have been as instructive and formative as they have been challenging and at times exhausting. This morning, I will share a few of the key lessons we have learnt and the upcoming challenges that we foresee. I will then end with three short reflections on the likely impact of the pandemic on the future of the courts and the legal profession.

² Prime Minister’s Office, Singapore, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 21 April 2020” (21 April 2020): <pmo.gov.sg/Newsroom/PM-Lee-Hsien-Loong-address-COVID-19-21-Apr>.

³ Supreme Court, Media Releases, “Supreme Court, State Courts and Family Justice Courts to hear only essential and urgent matters from 7 April to 4 May 2020” (5 April 2020): <supremecourt.gov.sg/news/media-releases/supreme-court—state-courts-and-family-justice-courts-to-hear-only-essential-and-urgent-matters-from-7-april-to-4-may-2020>.

II. Key lessons

5. Let me begin with a sketch of three essential learning points.

6. First, the pandemic has delivered a striking warning against any complacency in business continuity planning on the part of the courts. I mentioned earlier that our first priority was and is the protection of all who are involved in or concerned with the administration of justice. In order to achieve this objective while continuing to function at an essential level, we had to quickly and dramatically change our ways of working. That would have been a formidable task without a business continuity plan that was cogent, practical and well-tested. Fortunately, our court management team has had a fairly robust business continuity plan in place for a number of years, and that was the foundation on which we built our response to the pandemic.

7. Second, even the most carefully curated plans will be ineffective if they are not relayed clearly and in advance to those affected by them. In times of crisis, it is essential that courts convey their intentions as early as possible to stakeholders such as the Bar, the Attorney-General's Chambers and court users so as to permit feedback, establish common expectations, and offer as much reaction time as possible. To this end, at each stage of our planning process, we actively consulted the Law Society and the Attorney-General's Chambers. Their feedback and support were instrumental to our ability to respond coherently to the unfolding crisis.

8. Third, events of the nature and scale of COVID-19 are generational events that impose a major stress test on our justice system. They therefore represent valuable learning opportunities that we must maximise through careful review and reflection. The aim, in particular, is to identify those organisational weaknesses that might have quietly crept in over the years but which the stress of the crisis has now laid bare. For a pandemic of uncertain duration like COVID-19, it would have been foolhardy to defer that process of reflection till after the storm had passed. We had to learn our lessons as we lived these experiences in order to improve our subsequent responses to the ongoing crisis. And so a few days into the “circuit breaker” period, we formed a strategic planning group consisting of the leadership of each court. The group has been and will continue to carefully review the measures we are implementing, examine the challenges that our courts are likely to face in the coming months, and explore how we can build on the advances we have made during this period to further improve our justice system. COVID-19 must become the occasion to re-forged and refine our processes for administering justice.

III. Challenges ahead

9. Let me turn to three of the major challenges that I think lie ahead for our courts, and likely also for many courts around the world.

A. Backlog and new work

10. As lockdowns ease and courts gradually reopen, the immediate challenge will be the disposal of accumulated and incoming cases. Accumulated cases are those that we were hearing or managing before our services were curtailed, as well as new cases filed during this period. Clearing this backlog will be a pressing concern for all courts.⁴ We should also be alive to the real prospect of a surge of new cases in the wake of the economic devastation caused by COVID-19, especially in areas such as insolvency and bankruptcy;⁵ claims for breach of contract which will encompass issues of *force majeure*;⁶ construction disputes;⁷ mortgagee actions; and family

⁴ For instance, in the UK, it has been projected that COVID-19 could lead to an “unprecedented” backlog, causing additional delays in the disposal of cases of up to six months and increasing waiting times by more than 70%: see Rajeev Syal, The Guardian, “Coronavirus could cause ‘unprecedented’ backlog of court cases” (29 April 2020) (“The Guardian (29 April 2020)”: <theguardian.com/law/2020/apr/29/coronavirus-could-cause-unprecedented-backlog-court-cases>. Similar fears have been expressed in relation to already overburdened courts in the US: see Cara Bayles, Law360, “COVID-19 Leaves Backlogged Courts With a Justice Pile-Up” (22 March 2020): <law360.com/articles/1255253/covid-19-leaves-backlogged-courts-with-a-justice-pile-up>. In Hong Kong, there are also concerns that the courts will face difficulties in coping with the backlog especially due to insufficient adoption of technology: see Janet Pang, Hong Kong Free Press, “Coronavirus closes Hong Kong courts, and reveals their neglect of technology” (1 March 2020): <hongkongfp.com/2020/03/01/coronavirus-closes-hong-kong-courts-reveals-neglect-technology/>.

⁵ For instance, judges in the US are preparing for a wave of bankruptcy filings that some project to be the largest that the US court system has ever experienced: see Steven Church, Bloomberg, “Bankruptcy Courts Gear Up, Dress Down With Filings Surge to Come” (14 April 2020): <bloomberg.com/news/articles/2020-04-14/bankruptcy-courts-gear-up-dress-down-with-filings-surge-to-come>; and Ben Iverson and Mark Roe, CNA, “Commentary: Get ready for the great American bankruptcy” (7 May 2020): <channelnewsasia.com/news/commentary/us-bankruptcy-companies-unemployment-jc-penney-12705360>.

⁶ See for instance VK Rajah and Goh Yihan, The Straits Times, “The Covid-19 pandemic and the imminent legal epidemic” (7 May 2020): <straitstimes.com/opinion/the-covid-19-pandemic-and-the-imminent-legal-epidemic>; and Jingzhou Tao, Financial Times, “Breaking contracts over coronavirus is harder than it sounds” (25 February 2020): <ft.com/content/8e644cbe-5719-11ea-abe5-8e03987b7b20>.

⁷ Ashurst, “COVID-19: Impact on the Construction Sector” (13 March 2020): <ashurst.com/en/news-and-insights/legal-updates/covid-19-impact-on-the-construction-sector/>.

disputes, in particular maintenance claims and domestic violence cases as the pandemic and lockdowns take their toll on family finances and fundamentally reshape our living environments.⁸

11. Our courts' immediate response to the anticipated backlog and new work will likely involve a three-pronged approach: first, optimising court hearing days and judicial resources; second, developing processes to expedite the disposal of cases and adopting a more active approach to case management; and third, encouraging mediation and settlement. For example, active case management might involve prioritising the hearing of interlocutory applications upon which the progress of a case is critically dependent, and exploring documents-only hearings where parties consent to dispense with oral evidence. Yet, even as we turn our attention to addressing the problems left by the pandemic, it is critical that we commit to safeguarding the health and wellness of our judges, staff and the profession as they will have to cope with heavier workloads and adapt to new working conditions and processes. It would be false economy to focus on clearing the backlog at all costs without ensuring that whatever measures we take are going to be sustainable.⁹

⁸ See, for instance, CNA, "22% increase in family violence reports since start of circuit breaker period: SPF" (14 May 2020): <channelnewsasia.com/news/singapore/family-violence-domestic-abuse-police-reports-circuit-breaker-12731056>; and CNA, "COVID-19: MSF keeping 'close watch' on domestic abuse cases as more reach out for help over circuit breaker period" (23 April 2020): <channelnewsasia.com/news/singapore/covid-19-msf-domestic-abuse-violence-cases-circuit-breaker-12671330>.

⁹ To take an example, it seems inevitable, at least in the medium term, that some of our efforts will have to be undertaken in the context of continuing work-from-home arrangements and video-conferencing. We must

B. New processes and methods of work

12. This leads me to my next point, which is that the challenges we face will be compounded by the fact that COVID-19 is expected to persist as a threat in most societies, and thus some restrictions on movement will likely be a reality for some time to come. This presents a considerable obstacle to many longstanding practices of the courts and the profession, such as the liberal use of hard copies, the filing of multiple applications and documents, and the tendency towards lengthy oral submissions. These practices seem woefully obsolete, unrealistic, and even dangerous in the new paradigm of safe distancing and crowd controls.

13. I suggest that the solution to the growing caseload cannot consist solely of hard work using conventional tools. Instead, this is the time for us to think boldly and innovatively about how we hear and manage our cases. We should explore ways to simplify, streamline and even completely transform processes that are too slow, laborious and expensive. Among the ideas we are exploring are, for instance, the use of fast track procedures, paper hearings, shorter form judgments, specialised lists, simplified discovery, and template forms and affidavits.

remain deeply conscious of the fact that remote working carries its own set of stresses and difficulties and we must therefore calibrate our responses appropriately in this light.

C. Transformation through technology

14. In addition, the pandemic has been a watershed in the partnership between justice and technology, particularly in light of the dramatic rise in the use of video conferencing technology. The pace of the technology revolution in justice over just the past few weeks has been nothing short of astounding. As Professor Richard Susskind has noted, “Until a few weeks ago, most judges and lawyers rejected the idea of non-physical courts, denying that remote hearings could be fair or even technically feasible. ... Then the virus came, courts closed, and it only took a fortnight.”¹⁰ In all of this, necessity has truly been the mother of invention. But I suggest that courts must harness this momentum to contemplate even more fundamental ways in which court services can be reshaped by technology, such as asynchronous hearings¹¹ and the provision of remote assistive services to court users.

15. At the same time, while we continue to integrate technology into court processes, we must remain aware of the special needs of litigants-in-person, or “LIPs”. LIPs are often legally untrained and therefore unfamiliar with the legal system and its processes. This challenge can be exacerbated by the fact that many also lack the equipment or knowhow to use the courts’ electronic

¹⁰ Richard Susskind, Financial Times, “Covid-19 shutdown shows virtual courts work better” (7 May 2020): <[ft.com/content/fb955fb0-8f79-11ea-bc44-db6756c871a](https://www.ft.com/content/fb955fb0-8f79-11ea-bc44-db6756c871a)>.

¹¹ See, for example, the State Courts’ protocol on asynchronous court dispute resolution hearings by email (aCDR) for case management lists at the State Courts Centre for Dispute Resolution, that was introduced on 5 March 2020: <statecourts.gov.sg/cws/Resources/Documents/RC%20of%202020.pdf>.

services. This means that while the courts pursue digital transformation, they must also support these LIPs to ensure their effective access to justice.¹² This was a particular focus for our Family Justice Courts (“FJC”) during the circuit breaker period, since many of their users are LIPs. Concerned that LIPs might be unable to use video conferencing technology such as Zoom without assistance, the FJC undertook to train users in the use of Zoom, and even issued a technical guide on how to use it. The FJC also established 14 “Zoom rooms” in two locations,¹³ each with a Zoom connection to the relevant family judge, so that LIPs unable to set up a call on their own could visit these rooms to attend hearings. About 30-40% of the FJC’s users attended hearings from Zoom rooms during the circuit breaker period. This enabled the FJC to hear about 33% of their caseload – or more than 2,400 cases – during the circuit breaker period in spite of the movement restrictions.

IV. Reflections

16. Let me conclude with three short reflections on how COVID-19 is likely to transform, perhaps irrevocably, the approach of the courts to the delivery of justice.

¹² Sundaresh Menon CJ, Negotiation and Conflict Management Group (NCMG) ADR Conference 2019, “Technology and the Changing Face of Justice” (14 November 2019) (“NCMG Lecture”) at para 32: <supremecourt.gov.sg/docs/default-source/default-document-library/ncmg---keynote-lecture.pdf>.

¹³ The first site is at the FJC’s premises in Havelock Square, and the second at the Ministry of National Development (MND) Complex at Maxwell Road.

17. First, I join the growing chorus of predictions¹⁴ that the conduct of hearings by way of remote communications technology is likely to become commonplace, and perhaps even the default modality for most hearings. This technology has proven its worth during court closures, particularly for short hearings and case management conferences.¹⁵ As courts further explore the use of remote hearings, they will also need to improve electronic filing and case management systems, and perhaps work towards the laudable goal of an entirely paperless environment. They must also navigate a raft of new issues, including safeguards for the taking of evidence in remote hearings, concerns regarding the use of remote hearings for criminal matters,¹⁶ issues of cybersecurity, and the need to sustain open justice by ensuring reasonable access to remote hearings for the public and the media.

18. Second, in their search for solutions, courts must also bear in mind that they are operating within a radically different external environment. Public

¹⁴ See, for instance, Nick Hilborne, Legal Futures, “Burnett: ‘No going back’ on remote court hearings” (14 May 2020): <legalfutures.co.uk/latest-news/burnett-no-going-back-on-remote-court-hearings>; Caroline Hill, Legal IT Insider, “‘The technology barriers have been surmounted’: Richard Susskind discusses the COVID-19 driven leap to remote court hearings” (8 April 2020): <legaltechnology.com/the-technology-barriers-have-been-surmounted-richard-susskind-discusses-the-covid-19-driven-leap-to-remote-court-hearings/>; and Mark A. Cohen, Forbes, “COVID-19 And The Reformation Of Legal Culture” (14 April 2020): <forbes.com/sites/markcohen1/2020/04/14/covid-19-and-the-reformation-of-legal-culture/#5773cba3171d>.

¹⁵ For instance, since the shutdown of state courts in New York, judges have used phone and video conferences to work out settlements and plea agreements with parties, resulting in the successful disposal of about 13,000 cases over the past month: see Patricia Hurtado, Bloomberg Quint, “Closed Courts No Barrier to New York Easing Its Case Backlog” (14 May 2020): <bloombergquint.com/onweb/closed-courts-no-barrier-to-n-y-easing-case-backlog-from-virus>.

¹⁶ Paul Magrath, Transparency Project, “Is Criminal Justice Under Lockdown Remotely Possible?” (11 May 2020): <transparencyproject.org.uk/is-criminal-justice-under-lockdown-remotely-possible>.

funds are likely to be under pressure for some time, as governments devote their resources to containing the pandemic while keeping the economy afloat.¹⁷ This will call for efficiency, proportionality and fiscal prudence in the delivery of court services. In addition, conditions for the legal profession will likely be vastly different after the pandemic. Clients are likely to be cash-strapped and far more inclined to renegotiate contracts than to be entangled in costly and protracted court proceedings. This could place downward pressure on legal fees, and in turn, affect the sustainability of law firms and their willingness and ability to engage in *pro bono* work.¹⁸

19. While society's demand for legal *services* might decrease during this period, the same may not be true of the volume of its legal *needs*. In particular, we may see growing legal needs in the segments of society that are least able to pay for legal services, such as families in distress who need relief from the courts, small businesses that need help to raise finance or restructure their loans, and individuals in dire financial straits who turn to crime and must then

¹⁷ For example, it has been estimated that the UK government will need to spend an additional £55m-110m each year for two years in order to allow extra trials to take place for the purpose of resolving the backlog: see The Guardian (29 April 2020).

¹⁸ For instance, in a recent survey of about 400 practitioners and in-house counsel in Singapore, 83% of practitioners reported a decrease in new cases and revenue as a result of COVID-19: see Singapore Academy of Law, "Singapore Academy of Law rolls out \$1.9 million support package to help members amid COVID-19" (7 May 2020): <sal.org.sg/node/1116>. Similarly, in April this year, the legal industry in the US cut 64,000 jobs, or about 5.5% of its workforce, to reach a nearly 20-year low in terms of total employment: see Caroline Spiezio, Thomson Reuters, "Legal sector headcount dropped 5.5% in April to nearly 20 year low" (8 May 2020): <blogs.thomsonreuters.com/answeron/legal-sector-headcount-dropped-5-5-in-april-to-nearly-20-year-low/>. For a more nuanced report on how COVID-19 is likely to affect the business of law, see McKinsey & Company, "COVID-19: Implications for law firms" (4 May 2020): <mckinsey.com/industries/financial-services/our-insights/covid-19-implications-for-law-firms>.

face the consequences. The gulf between society's legal *needs*, on the one hand, and its ability to pay for the required services, on the other, coupled with law firms' reduced ability to help bridge that gap through *pro bono* work is a real concern. I believe it is incumbent on courts to lead the discussions on how we can secure and promote the administration of justice in these conditions, and that this must begin with courts re-examining their role and function in a society altered by the pandemic. More specifically, I suggest that it will not be enough for us to maintain our traditionally *reactive* role in engaging with court users and those with legal needs;¹⁹ rather, we must be far more *proactive* in providing information and assistive tools to help court users understand their options, guide them through the court process, and promote amicable settlement.²⁰ In the post-pandemic world, this could prove to be an important way for us to help nurse our ailing societies back to health.

20. My third and final point concerns the need for courts to augment their efforts to promote the amicable resolution of disputes, which I have just alluded to. Judges should actively encourage parties to consider settlement, especially in situations where litigation would be wasteful, destructive, or

¹⁹ Sundaresh Menon CJ, Ceremonies to launch *Practitioners' Guide on Damages Awarded for Defamation Cases in Singapore* and *Law and Practice of Tribunals in Singapore* & for signing of Memoranda of Understanding for Clinical Clerkship Programmes (4 November 2019) at para 6: <supremecourt.gov.sg/docs/default-source/module-document/speech/state-courts-book-launches-and-mou-signing---cj-opening-address.pdf>; and Sundaresh Menon CJ, Response at the Opening of Legal Year 2020 (6 January 2020) at para 47: <[supremecourt.gov.sg/docs/default-source/module-document/speech/oly-2020---speech-by-cj-\(checked-against-delivery\).pdf](https://supremecourt.gov.sg/docs/default-source/module-document/speech/oly-2020---speech-by-cj-(checked-against-delivery).pdf)>.

²⁰ NCMG Lecture at para 41.

otherwise do more harm than good. This would of course help in the clearance of backlogs. But more importantly, mediation is often a swifter and more cost-efficient means of resolving disputes. It also offers the possibility of more varied and creative solutions than court remedies; and perhaps most valuably, it promotes reconciliation and the preservation of relationships that can be worth more than any legal remedy.

21. Thank you very much.
