

THE ONLINE COURT AND REMOTE HEARINGS

Enhancing the Administration of and Access to Justice in Singapore

It was predicted that remote hearings would be conducted less frequently after the COVID-19 pandemic, because such hearings did not allow witnesses to be confronted face-to-face, were perceived to be informal and made it difficult to observe body signals of witnesses. This article discusses why these reasons are not tenable. Further, it highlights the case law and relevant provisions in the Courts (Civil and Criminal Justice) Reform Act 2021 (Act 25 of 2021) pertaining to remote hearings and recommends procedural reforms to increase the use of video conferencing technology, to enhance the administration of, and access to, justice.

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I. Introduction

1 The experience in Singapore is that the “online court”² has the potential to enhance the administration of and access to justice by facilitating a quicker, cheaper and more efficient resolution of disputes. During the COVID-19 pandemic, the COVID-19 (Temporary Measures) Act 2020³ was passed to facilitate hearings conducted online using Zoom. During this time, the use of the online court was scaled up rapidly and

1 This article is written in the author’s personal capacity; the opinions expressed herein are the author’s alone and do not reflect the views or positions of her employer. The author is extremely grateful to Dr Colin Tan (retired District Judge, Family Justice Courts, and former Senior Director of the Centre for Leadership and Judgecraft, Singapore Judicial College (“SJC”)) for his guidance, Natalie Skead (Dean, SJC) for her detailed comments on an earlier draft of this article, and to District Judge Reuben Ong (Director, Curriculum, Pedagogy and Innovation and Director (Civil), Institute of Judicial Excellence – Judicial Competence, SJC) for his suggestions. All errors are the author’s alone.

2 For the purpose of this article, and to closely follow the language used in Singapore’s legislation, the “online court” refers to any judicial proceeding where a witness is heard via live video, live television and/or live audio link.

3 Act 14 of 2020.

its use continued even after lockdowns had ended and when physical hearings had resumed. The online court resulted in increased efficiencies for all court users: reduced time spent (and income lost) on travelling to court, and especially for lawyers and judges, saving more time between hearings to attend to other work responsibilities.

2 There is, however, an alternate view that the online court does not enhance the administration of, and access to, justice; this is mainly due to the reason that the quality of justice is negatively affected when hearings are conducted remotely instead of in person. In a 2020 article, Aaron Yoong suggested that the quality of justice will be affected as:

(a) cross-examining a party online to test credibility is less effective than doing so in the courtroom, as counsel are “unable to identify the body signals of witnesses”;⁴ and

(b) the “court attendees may treat the proceedings with less respect, even to the extent of lying on the stand”⁵ as not being in the physical courts may contribute to a sense of informality (during remote hearings, certain practices are done away with, *eg*, a buzzer sounding when the judge enters the courtroom, attendees not rising to their feet or bowing, and submissions being made with all parties seated).⁶

Yoong concluded that whilst the Singapore legal community was able to adapt quickly to the use of the online court during the COVID-19 pandemic, “it was anticipated that the use of such online platforms will continue, albeit on a reduced scale, even beyond the sunset clauses contained within the COVID-19 Act”.⁷

3 Currently, the Singapore courts conduct both physical and online hearings. Since the COVID-19 pandemic, trials, by default, are conducted in person and permission must be sought from the courts for an online hearing.⁸ While it is unclear whether trials have been heard online less frequently, pre-trial proceedings can be conducted online and for hearings before a registrar where there is no taking of oral evidence

4 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 49.

5 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 50.

6 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 53.

7 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 58.

8 This is suggested by s 62A of the Evidence Act 1893 (2020 Rev Ed), which is found in Pt 2 of the Act and concerns proof of facts.

(eg, a documents-only hearing), there is no requirement for permission to be sought from the courts for the hearing to be conducted online.

4 At the second reading of the Courts (Civil and Criminal Justice) Reform Bill⁹ (“CCCJR Bill”), Second Minister for Law Mr Edwin Tong highlighted the convenience and efficiency of the online court:¹⁰

In April 2020, we introduced a temporary remote hearing framework under the COVID-19 (Temporary Measures) Act to maintain access to justice amidst safe distancing measures. These measures have brought convenience to court users and also increased administrative efficiency. We are now looking to enact a *permanent* framework that will facilitate the use of technology in court proceedings.

Under the Bill, courts will be generally empowered to conduct hearings remotely, using appropriate electronic means such as video-link. For example, we may have hearings where one party is physically present before the Judge while the other party appears via video-link. We may also have hearings that take place entirely online.

[emphasis added]

The Courts (Civil and Criminal Justice) Reform Act 2021¹¹ (“CCCJRA 2021”) was passed by Parliament on 14 September 2021 and came into force on 1 April 2022. With the passage of the CCCJRA 2021, the online court, in particular remote hearings, will not merely be a permanent feature, but will be encouraged and facilitated where appropriate.

5 This article has two aims:

(a) firstly, to examine whether, and if so, how the online court enhances the administration of and access to justice, or whether it negatively affects the quality of justice administered; and

(b) secondly, if the quality of justice is not negatively affected in an online court, to look at how the law in Singapore can facilitate the use of the online court, noting the recent legislative changes.

9 Bill No 18 of 2021.

10 Singapore Parl Debates; Vol 95; [13 September 2021] (Mr Edwin Tong Chun Fai, Second Minister for Law).

11 Act 25 of 2021.

II. The online court

6 This article does not consider the concept of the online court as defined by Richard Susskind to include online judging¹² (or what is akin to “asynchronous hearings” in Singapore’s context) and the extended court.¹³ Instead, it examines the resolution of disputes by online platforms (eg, Zoom). The discussion in this article is limited to civil and family proceedings. The use of the online court for criminal matters and contempt of court proceedings are not considered because these are excluded under s 62A(1) of the Evidence Act 1893¹⁴ (“EA”) and involve additional considerations, with life and liberty at stake.

7 In his 2020 article, Yoong reviewed the use of video conferencing technology in “one of the first completely virtual trials in Singapore” presided by Lee Sei Kin J in July 2020.¹⁵ He outlined two main drawbacks to the use of the online court: firstly, the deficiencies in cross-examination;¹⁶ and, secondly, attendees tending to treat online court proceedings with less respect as such hearings are conducted in a relatively “comfortable” environment.¹⁷

A. Deficiencies in cross-examination

8 With respect to the first point about deficiencies in cross-examination, Yoong considered that because “frontal encounter” and “expressive advantage” are lost during virtual cross-examination, the online court makes for less adversarial proceedings.¹⁸ Further, video

12 See Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press, 2019) ch 5, at p 60, who argues that online judging occurs where evidence and argument are presented to the judge through an online platform and the judge subsequently delivers his or her decision via an online platform. No hearing is conducted and through an ongoing exchange of e-mails and attachments as the case progresses, the case is disposed of over a period of time.

13 See Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press, 2019) ch 5, at p 61, who states that the extended court includes technology that allows the court to provide a wider remit of services than the traditional court setting. These tools help users know and understand their rights, duties and the options available to them, and assist them to marshal their evidence, formulate arguments and facilitate settlement.

14 2020 Rev Ed.

15 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 4.

16 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at paras 42–43.

17 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 50.

18 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 43.

conferencing software is unreliable in the sense that there is over- or under-emphasising of details (eg, no control over the camera angle, unnecessary distractions in a panoramic shot or bodily features which cannot be seen¹⁹), “resulting in an inaccurate assessment of the *credibility of witnesses* during cross-examination”²⁰ [emphasis added]. That witness credibility is affected is a point explored later in this article. Nonetheless, Yoong acknowledged that these deficiencies in cross-examination can be significantly mitigated by the use of functions on the Zoom platform, eg, selecting the option to only display participants with their cameras turned on, or “spotlighting” the video of a specific participant so that the judge can get “up close and personal”, in high definition, to the participant.²¹

B. Online proceedings accorded less respect

9 The second point on court attendees treating online court proceedings with less respect has been a prevalent concern. In a video posted on the *Judiciaries Worldwide* website, where judges from common and civil law jurisdictions share their experiences on the use of the online court during the COVID-19 pandemic, a judge from Australia shared that a disadvantage was being unable to cast the spotlight on a witness, in order to get to the heart of the conflict. By being in a physical courtroom, the judge added, court attendees “can’t lay back in their chair ... They know that they are in the courtroom. They have gone to the court building that day. They have been through security ...”²²

10 Doron Menashe shared that a drawback was the lack of intimidation experienced by witnesses when they give sworn testimony in the online court.²³ The lack of “frontal encounter” and “expressive advantage” in the online court (as highlighted at para 8 above), and the importance therefore of having a physical hearing “with all the ceremonial characteristics of a trial”, are related to Menashe’s consideration of the

19 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at paras 43 and 48. See also Russell Kostelak, “Videoconference Technology and the Confrontation Clause” (2014) Cornell Law School JD Student Research Papers, Paper 33.

20 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 43.

21 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at paras 44–45.

22 “Judiciaries Around the World: Responding to the Challenges of COVID-19, Part One” *Federal Judicial Centre* <<https://www.fjc.gov/content/353614/judiciaries-around-world-responding-challenges-covid-19>> (accessed 7 March 2025).

23 Doron Menashe, “A Critical Analysis of the Online Court” (2018) 39(4) *University of Pennsylvania Journal of International Law* 921 at 926.

expressive function of justice²⁴ where “justice functions by transmitting normative and value-based messages through ceremonies, symbols, declarations and ambiances ... it may also be required in order to generate an atmosphere where litigants act in an appropriate and desirable manner”.²⁵

11 Even though the online court cannot fulfil the expressive function of justice as well as a physical court, Menashe opined:²⁶

As long as the video cross-examination is possible, most of the advantages of confrontation are maintained. Consequently, the gap between video testimony and in-court testimony is not necessarily so vast as to justify sacrificing the loss of efficiency provided by the online court. In any case, even the epistemic interpretation of body language based on frontal observation is far from precise.

Yoong also acknowledged that it falls upon “lawyers, court personnel and judges to be the first line of defence in maintaining the majesty of the courts”²⁷ and “at the end of the day, it is incumbent on the members of the legal profession to continue upholding the high standards that have been set and upheld for decades and centuries past”.²⁸ Indeed, the majesty of the courts is upheld by judges and lawyers and is not – or should not – necessarily be dependent on the platform used to conduct the proceedings.

12 In connection with the deficiencies in cross-examination (as highlighted at para 8 above), Yoong identified counsel being unable to identify witnesses’ body signals as a short-term risk of using the online court.²⁹ This essentially boils down to concerns about assessing the witnesses’ demeanour. Though Yoong did not use the term “demeanour”, the reference to it is implied in his elaboration of the use of technology to view individual witnesses.³⁰

24 Doron Menashe, “A Critical Analysis of the Online Court” (2018) 39(4) *University of Pennsylvania Journal of International Law* 921 at 947.

25 Doron Menashe, “A Critical Analysis of the Online Court” (2018) 39(4) *University of Pennsylvania Journal of International Law* 921 at 948.

26 Doron Menashe, “A Critical Analysis of the Online Court” (2018) 39(4) *University of Pennsylvania Journal of International Law* 921 at 950.

27 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 54.

28 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 55.

29 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 49.

30 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at paras 44–47 and cited in *Wang Xiaopu v Koh Mui Lee* [2022] 5 SLR 324 at [27].

13 Conflating witness credibility with witness demeanour may well lead to the conclusion that using the online court to assess witness credibility is inadequate. An imprecise delineation between “credibility” and “demeanour” may lead to a perception that a witness in the online court is less credible because of the limitations in viewing the witness using video conferencing technology. These limitations may include: a panoramic or close headshot being overly distracting or obscuring important bodily features, distorting or over-emphasising non-verbal cues such as facial expressions, gazes, posture and gestures, and the technology not being able to accurately convey participants’ eye contact.³¹ Importantly, while demeanour may be of some assistance in assessing witness credibility, it is by no means the most important, or even a necessary, factor in such an assessment. Indeed, as will be discussed below, credibility taken to its furthest may be assessed independently of demeanour.

14 “Demeanour” has been defined by Lord Bingham as “the conduct, manner, bearing, behaviour, delivery, inflexion – anything that is the witness’s mode of giving evidence but which does not appear in a transcript”³² and summarised by the Singapore Court of Appeal in *Anil Singh Gurm v J S Yeh & Co*³³ (“*Anil Singh*”) as “behavioural patterns that are not reflected in the transcript”. It refers to the observable behaviour or mannerisms of a witness that are not transcribed. Credibility, on the other hand, is established based on the judicial process of assessing the oral evidence of a witness. Lord Bingham, citing Lord Pearce’s dissenting judgment in *Onassis v Vergottis*³⁴ drew a distinction between the two as follows:³⁵

‘Credibility’ involves wider problems than mere ‘demeanour’ which is mostly concerned with whether the witness *appears* to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly, and if so, has his memory correctly retained them?

31 Aaron Yoong, “Zooming into a New Age of Court Proceedings – Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 at para 48.

32 Tom Bingham, “The Judge as Juror: The Judicial Determination of Factual Issues” in *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2009) at p 8.

33 [2020] 1 SLR 555 at [71].

34 [1968] 2 Lloyd’s Rep 403 at 431.

35 Tom Bingham, “The Judge as Juror: The Judicial Determination of Factual Issues” in *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2009) at pp 5–6. For better textual analysis, Lord Pearce’s dissenting speech has been broken up into four paragraphs.

Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by overmuch discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist.

It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance.

And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability ...

[emphasis added]

15 In addition, Lord Bingham identified the following factors to be considered in assessing whether the witness is credible:³⁶

- (a) the consistency of the witness's evidence with what is agreed, or clearly shown by other evidence to have occurred;
- (b) the internal consistency of the witness' evidence;
- (c) consistency with what the witness has said or deposed on other occasions;
- (d) the credit of the witness in relation to matters not germane to the litigation;
- (e) the demeanour of the witness, which is 'his conduct, manner, bearing, behaviour, delivery, inflexion; in short, anything which characterises his mode of giving evidence but does not appear in a transcript of what he actually said.'³⁷

[reference added]

From the above, Lord Bingham considers demeanour to be one of the factors that may be considered in an overall assessment of the truthfulness of a witness's oral evidence. In a similar vein, in *Sakthivel*

36 Tom Bingham, "The Judge as Juror: The Judicial Determination of Factual Issues" in *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2009) at p 6.

37 Tom Bingham, "The Judge as Juror: The Judicial Determination of Factual Issues" in *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2009) at p 8.

Punithavathi v Public Prosecutor,³⁸ V K Rajah JA cautioned against a reliance on demeanour alone in assessing a witness's credibility and cited from *Public Prosecutor v Victor Rajoo*³⁹ that "it is equally important to test [the] evidence against some objective facts and independent evidence".⁴⁰

16 Taking this line of argument even further, in determining whether a witness is telling the truth, Lord Bingham expressed the view "on the whole to distrust the demeanour of a witness as a reliable pointer to his honesty",⁴¹ citing from three highly regarded trial judges:

(a) Lord Devlin who opined that to tell from a witness's demeanour whether he is telling the truth or otherwise is overrated, and that "[i]t is the tableau that constitutes the big advantage, the text with illustrations, rather than the demeanour of a particular witness".⁴²

(b) Justice MacKenna who said:⁴³

I doubt my own ability, and sometimes of other judges, to discern from a witness's demeanour, or the tone of his voice, whether he is telling the truth. He speaks hesitantly. Is it the mark of a cautious man, whose statements are for that reason to be respected, or is he taking time to fabricate? Is the emphatic witness putting on an act to deceive me, or is he speaking from the fullness of his heart, knowing that he is right? Is he likely to be more truthful if he looks me straight in the face than if he casts his eyes on the ground, perhaps from shyness or a natural timidity? For my part, I rely on these considerations as little as possible.

(c) Lord Justice Browne who stated that:⁴⁴

... the main job of the judge of first instance is to decide the facts. How does he do it? When there is conflict of evidence between

38 [2007] 2 SLR(R) 983 at [72].

39 [1995] 3 SLR(R) 189.

40 *Public Prosecutor v Victor Rajoo* [1995] 3 SLR(R) 189 at [47].

41 Tom Bingham, "The Judge as Juror: The Judicial Determination of Factual Issues" in *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2009) at p 9.

42 Tom Bingham, "The Judge as Juror: The Judicial Determination of Factual Issues" in *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2009) at p 9, citing Patrick Devlin, "The Judge in the Adversary System" in *The Judge* (Oxford University Press, 1979) ch 3, at p 63.

43 Tom Bingham, "The Judge as Juror: The Judicial Determination of Factual Issues" in *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2009) at p 9, citing Sir Brian MacKenna, "Discretion" (1974) IX *Irish Jurist* 1.

44 Tom Bingham, "The Judge as Juror: The Judicial Determination of Factual Issues" in *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2009) at p 9, citing Patrick Browne, "Judicial Reflections" (1982) 35(1) *Current Legal Problems* 1 at 5.

witnesses, some judges believe that they can tell whether a witness is telling the truth by looking at him and listening to him, I seldom believed that ...

17 Turning from English judges to Singapore case law, in *Anil Singh*, the Court of Appeal considered the respondent's submission as to whether the appellant's witnesses ought to be cross-examined in person. The respondent submitted that the court's determination of the key issues would turn on its assessment of the credibility of the witnesses, which would require it to assess the witnesses' demeanour in the courtroom.⁴⁵ The Court of Appeal held that that even though the trial judge's assessment of the witnesses' credibility would affect his decision, "a court's assessment of a witness's credibility would, and should, seldom hinge on that witness's demeanour on the stand".⁴⁶

18 If, as appears from the above analysis, demeanour does not determine the credibility of the witness, then arguably this drawback of the online court falls away.

19 This section of the article has sought to address Yoong's concerns about the loss of the expressive function of justice, and the effect of the online court on witness credibility. The above analysis serves to dispel Yoong's concerns about the use of the online court in Singapore. The next section will now examine Singapore law relating to the online court and the current practice in the Singapore courts for physical and online hearings.

III. Laws on online court

A. *Legislative framework*

20 Section 62A of the EA provides for the conduct of proceedings via the online court. The relevant subsections of s 62A(1) state:

Despite any other provisions of this Act, a person may, with permission of the court, give evidence through a live video or live television link in any proceedings, other than proceedings in a criminal matter or proceedings for contempt of court, if —

- (a) the witness is below 18 years of age;
- (b) it is expressly agreed between the parties to the proceedings that evidence may be so given;

45 *Anil Singh Gurm v J S Yeh & Co* [2020] 1 SLR 555 at [68(b)].

46 *Anil Singh Gurm v J S Yeh & Co* [2020] 1 SLR 555 at [71].

- (c) the witness is outside Singapore; or
- (d) the court is satisfied that it is expedient in the interests of justice to do so.

21 Section 62A(2) of the EA applies when a witness is overseas (see s 62A(1)(c)) and provides that, in considering whether to permit this witness to give evidence by live video or live television link, the court is to have regard to all the circumstances of the case, including the following:

...

- (a) the reasons for the witness being unable to give evidence in Singapore;
- (b) the administrative and technical facilities and arrangements made at the place where the witness is to give evidence;
- (c) whether any party to the proceedings would be unfairly prejudiced
- (d) any other matter prescribed by rules made under subsection (9).^[47]

[reference added]

22 Section 62A(3) of the EA lists the orders the court may make in granting permission under s 62A(1). In particular, s 62A(3)(h) grants the court the wide power to make any other order that it “considers necessary in the interests of justice”. The only stipulated limit to this power is s 62A(5) of the EA, where the court shall not grant permission for the online court under s 62A if doing so would be inconsistent with the court’s duty to ensure that proceedings are conducted fairly to the parties to the proceedings.

23 During the parliamentary debates on s 62A of the EA, then-Minister for Law, Prof S Jayakumar, stated:⁴⁸

This section is intended to create a *proper legislative framework* and to clarify and enlarge the court’s powers in relation to the evidence given by video and television links. ... *it does not mean that the court did not have jurisdiction to order the evidence of a witness to be taken by live video or television links in civil proceedings before the enactment of the amendment.* [emphasis added]

47 Section 62A(9) of the Evidence Act 1893 states:

The Rules Committee constituted under the Supreme Court of Judicature Act 1969, and the Family Justice Rules Committee constituted under the Family Justice Act 1914, may make such rules as appear to it to be necessary or expedient for the purpose of giving effect to this section and for prescribing anything which may be prescribed under this section.

48 Singapore Parl Debates; Vol 65; Col 454; [18 January 1996] (Professor S Jayakumar, Minister for Law).

24 Indeed, it was held in *Islam Mohammad Rakibul v Nib Point Construction*⁴⁹ (“*Islam Mohammad Rakibul*”) that the court’s power in connection with giving evidence by way of live video and live television links was not newly acquired and was in place before the enactment of s 62A of the EA. It follows that it is not only when the requirements of s 62A are satisfied that the court may grant permission for evidence to be given by video link. The court has the power to grant permission outside of s 62A.

25 Even though Internet connectivity was not as extensive in 1996, the Government recognised the need for a legislative framework to allow evidence to be given via live video or live television links.⁵⁰ The recent legislative amendments made under the CCCJRA 2021 have taken “a proper legislative framework” further to a “permanent framework” to facilitate the use of technology in court proceedings. Section 62A of the EA is further buttressed by a range of statutes (such as the recently-revised sections under the Supreme Court of Judicature Act 1969⁵¹ (“SCJA”) and the State Courts Act 1970⁵² (“SCA”)), practice directions and rules as will be outlined below.

B. Civil litigation

26 Section 8A(1) of the SCJA states:

Without limiting section 8, the court may conduct the hearing of any matter or proceeding (other than a matter or proceeding prescribed by the Rules of Court, the Family Justice Rules or the Criminal Procedure Rules) through a live video link, a live television link, a live audio link or any other electronic means of communication approved by the Chief Justice.

27 Section 8(1) of SCA is broadly similar to s 8A(1) of the SCJA and both s 8A(2) of the SCJA and s 8(2) of the SCA supplement the operation of s 62A of the EA.

28 Order 3 r 9 of the Rules of Court 2021 (“ROC 2021”) also provides for hearings to be conducted via the online court:

49 [2022] SGDC 174 at [11].

50 In 1996, the use of computers at home and in the office was already commonplace and it was envisaged that the linking of such computers to form vast networks that allowed information to be entered, stored, altered and retrieved by a host of users in a global environment would require legislative amendments to be made for the use of information technology in the Singapore courts. See Singapore Parl Debates; Vol 65; Col 450; [18 January 1996] (Professor S Jayakumar, Minister for Law).

51 2020 Rev Ed.

52 2020 Rev Ed.

Subject to any written law, the Court may conduct a case conference or any other hearing by using electronic, mechanical or any other means.

29 In addition, the State Courts and the Supreme Court Practice Directions 2021⁵³ (“PD 2021”) provide for video and telephone conferencing, although the introductory paragraphs and content for each differ. These differences are discussed at paras 78–82 below.

30 There may, however, be jurisdiction-specific restrictions imposed by certain countries for taking evidence via video or television link, which may require obtaining advice from a foreign lawyer. Order 15 r 5 of the ROC 2021 outlines the process for making an application for an online hearing, which includes issuing a letter of request to the authorities of the jurisdiction where the witness is located. Further requirements for this application are outlined under paras 77 and 59 of the Supreme Court and the State Courts Practice Directions 2021, respectively.

C. *Family Justice Courts*

31 Section 11(1) of the Family Justice Act 2014⁵⁴ (“FJA”) states:

Without limiting section 10, a Family Justice Court may conduct the hearing of any matter or proceeding (other than a matter or proceedings prescribed under the Criminal Procedure Rules or the Family Justice Rules) through a live video link, a live television link, a live audio link or any other electronic means of communication approved by the Chief Justice.

Section 11(2) of the FJA, similar to s 8A(2) of the SCJA and s 8(2) of the SCA, supplements the operation of s 62A of the EA.

32 Interestingly, P 1 r 13 of the Family Justice (General) Rules 2024 (“FJR 2024”), is worded similarly to O 3 r 9 of the ROC 2021, and permits matters to be heard by the online court as follows:

Subject to any written law, the Court may conduct a case conference or any other hearing by using electronic, mechanical or any other means.

33 Part 15 r 6 of the FJR 2024 also provides for an application to be made to seek permission from the General Division of the High Court (Family Division) (“Family Division”) to issue a letter of request to the authorities of the jurisdiction where the witness is located, for evidence to be given remotely. The rules are supplemented by paras 132 and 196

53 See para 13 of the Supreme Court Practice Directions 2021 and para 57 of the State Courts Practice Directions 2021.

54 2020 Rev Ed.

of the Family Justice Courts Practice Directions 2024 (“FJC PD 2024”) regarding restrictions imposed by certain countries for taking evidence via video or television link, and guidelines for the use of video or telephone conferencing for hearings, respectively.

D. Tribunals

34 Under the Community Justice and Tribunals System (“CJTS”), an online platform, parties may file and manage their cases online and the legislation for doing so are as follows:

(a) Small Claims Tribunals (“SCT”): Section 25(1) of the Small Claims Tribunal Act 1984⁵⁵ states that proceedings may be conducted by electronic means. The SCT is the only tribunal under the CJTS which explicitly provides for the online court in its main legislation.

(b) Employment Claims Tribunals (“ECT”) and Community Disputes Resolution Tribunals (“CDRT”): The Employment Claims Act 2016⁵⁶ and the Community Disputes Resolution Tribunals Rules 2015 do not explicitly provide for hearings to be conducted via electronic means. However, the ECT and CDRT allow hearings to be conducted in an informal manner pursuant to s 20(1) of the Employment Claims Act 2016⁵⁷ and r 12 of the Community Disputes Resolution Tribunals Rules 2015, respectively.⁵⁸ This begs the question as to whether an online court hearing can be considered a hearing conducted “in an informal manner”.

(c) Protection from Harassment Court (“PHC”): As provided by r 25 of the Supreme Court of Judicature (Protection from Harassment) Rules 2021, case management conferences or hearings may be conducted “by using electronic, mechanical or any other means”.

E. Case law

35 The foregoing discussion provides an overview of the current legislative framework governing online court hearings. The analysis of case law below outlines the guiding principles the courts have used

55 2020 Rev Ed.

56 2020 Rev Ed.

57 2020 Rev Ed.

58 Section 22 of the Small Claims Tribunal Act 1984 also provides for hearings to be conducted in an informal manner.

to determine whether to grant a witness permission to testify via an online court.

36 It is useful to note two preliminary points before analysing the case law:

(a) Firstly, the guiding principles are applied in the context of the prevailing default position (under s 62A of the EA) that oral evidence is to be given during a physical hearing.

(b) The cases discussed below all concern s 62A(1)(c) of the EA, *ie*, seeking permission from the court to allow a witness situated overseas to give evidence during an online hearing. The other subsections of s 62A(1), *eg*, where parties agree to an online hearing under s 62A(1)(b), to date have not been contentious.

F. “The right to adduce all evidence relevant to one’s case”

37 In *Anil Singh*, the appellant, Anil, purchased a house as his cousin’s (*ie*, Sekhon) nominee. This was not permitted under the Residential Property Act⁵⁹ (“RPA”) as Sekhon was a foreigner. Subsequently, Anil was charged under s 23 of the RPA. He sued his lawyers, claiming that he had purchased the property on their advice. Anil wanted Sekhon to give evidence but Sekhon declined to be physically present at the trial in Singapore to avoid possible prosecution. Permission was sought from the court for Sekhon to testify via video link. The High Court dismissed the application, reasoning that granting the permission sought would have brought the administration of justice into disrepute as Sekhon would remain beyond the reach of Singapore law enforcement.⁶⁰ This decision was reversed by the Court of Appeal.

38 The Court of Appeal held that the circumstances of each case had to be holistically assessed in deciding whether to allow a witness to testify in an online court.⁶¹ Ultimately, the Court of Appeal permitted Sekhon to testify from overseas, reasoning that Anil, like every litigant, is “has a right to adduce all evidence relevant to his case” at trial to prevent the grave consequences that may follow from wrongful exclusion of evidence.⁶² In this regard, the Court of Appeal emphasised s 62A(2)(c) of the EA (which provides for any party being unfairly prejudiced, *ie*, facing prejudice “of a kind that cannot be compensated by an appropriate order for costs”) and s 62A(5) of the EA (which states that the court has a duty

59 Cap 274, 2009 Rev Ed.

60 *Anil Singh Gurm v J S Yeh & Co* [2018] SGHC 221 at [44] and [47].

61 *Anil Singh Gurm v J S Yeh & Co* [2020] 1 SLR 555 at [41]–[42].

62 *Anil Singh Gurm v J S Yeh & Co* [2020] 1 SLR 555 at [1], [64], [67], and [84].

to ensure fairness⁶³). Although there were other relevant considerations, the unfair prejudice to Anil if an online hearing was denied was an overriding consideration.⁶⁴

39 The Court of Appeal accorded less weight to the public policy consideration of the court assisting a person to evade justice than to the consideration that Anil was entitled to “his right of *access to justice* ... his entitlement to put forward his best possible case and the relevant evidence in support thereof”⁶⁵ [emphasis added].

G. “Not only must justice be done but parties see that it has been done”

40 In *Wang Xiaopu v Koh Mui Lee*⁶⁶ (“*Wang Xiaopu*”), the claimant obtained a judgment debt against Dr Goh Seng Heng (“Dr Goh”) and sued his family members, alleging that Dr Goh had transferred various assets into their names. The claimant sought permission to testify via video link in Guangzhou, the People’s Republic of China.

41 The High Court considered the Court of Appeal’s reasoning in *Anil Singh*, when considering unfair prejudice as an overriding consideration in determining whether permission should be granted for an online hearing under s 62A(2)(c) of the EA.⁶⁷ It distinguished the facts of *Anil Singh*, where the request was made for the appellant’s witness to testify remotely, whereas the request in *Wang Xiaopu* to give evidence remotely was made by and for the claimant.⁶⁸ The High Court noted the Court of Appeal’s reasoning in *Anil Singh* that there was no difference in the court’s assessment of the witnesses’ credibility whether the evidence was given remotely or in person (given that the court’s assessment of a witness’s credibility seldom hinges on his demeanour).⁶⁹ However, it was “not only important that justice be done, but that the litigants themselves see that justice has indeed been done”:⁷⁰

It was ... more important that the defendants be allowed to confront [the claimant] in person, and be allowed to put questions to her physically in cross-examination. Depriving them of the opportunity to do so could leave them,

63 *Anil Singh Gurm v J S Yeh & Co* [2020] 1 SLR 555 at [64].

64 *Anil Singh Gurm v J S Yeh & Co* [2020] 1 SLR 555 at [64] and [67].

65 *Anil Singh Gurm v J S Yeh & Co* [2020] 1 SLR 555 at [83]–[89].

66 [2022] 5 SLR 324.

67 *Wang Xiaopu v Koh Mui Lee* [2022] 5 SLR 324 at [22].

68 *Wang Xiaopu v Koh Mui Lee* [2022] 5 SLR 324 at [25].

69 *Wang Xiaopu v Koh Mui Lee* [2022] 5 SLR 324 at [27].

70 *Wang Xiaopu v Koh Mui Lee* [2022] 5 SLR 324 at [29] and [32].

and a neutral observer, with the impression that they were not fairly treated compared to the plaintiff.

42 The emphasis was on the expressive function of justice, and therefore, the court did not permit the claimant to give evidence in Guangzhou. It bears noting that *Anil Singh* and *Wang Xiaopu* were decided before the CCCJRA 2021 came into force.

H. Principle of “promoting access to justice”

43 Even though the court’s decision in *Islam Mohammad Rakibul* was made after the enactment of the CCCJRA 2021, the changes made in the said Act were not elaborated on in the judgment. Rather, the District Court endorsed the following propositions in *Anil Singh*:

- (a) the general position is that a witness must physically be in court to testify;⁷¹ and
- (b) the question of unfair prejudice is an overriding consideration in determining whether permission should be granted for an online hearing under s 62A(2)(c) of the EA.⁷²

44 In *Islam Mohammad Rakibul*, the claimant was a construction worker from Bangladesh who was injured as a result of an accident at a worksite. He filed his claims for workplace injuries and returned to Bangladesh as he did not hold a Singapore work or visitor pass. The claimant then asked the court for permission to give evidence by video link from Bangladesh. Whilst the district judge (“DJ”) was mindful not to revert to the pre-pandemic state of affairs where the online court was the exception; and guarding against abandoning the online court and losing the advantages of efficiency, convenience and costs savings,⁷³ he did not permit the claimant to testify from Bangladesh via video link.

45 The DJ considered the status of the witness as the claimant in these proceedings and attached significant weight to the claimant being in Singapore to testify since he had chosen to bring the proceedings in Singapore.⁷⁴ This was a similar point to that raised in *Wang Xiaopu* – a claimant who files proceedings in Singapore and who is located overseas is generally required to attend proceedings in person in Singapore.⁷⁵ Under

71 *Islam Mohammad Rakibul v Nib Point Construction* [2022] SGDC 174 at [8].

72 *Islam Mohammad Rakibul v Nib Point Construction* [2022] SGDC 174 at [23] and [36].

73 *Islam Mohammad Rakibul v Nib Point Construction* [2022] SGDC 174 at [2].

74 *Islam Mohammad Rakibul v Nib Point Construction* [2022] SGDC 174 at [35].

75 *Wang Xiaopu v Koh Mui Lee* [2022] 5 SLR 324 at [18]–[19].

s 62A of the EA, the DJ held that the defendants would be prejudiced if permission was given for the claimant to give evidence via video link. This prejudice could not be compensated for by an appropriate costs order.⁷⁶

46 Whilst considerations of justice may not have been as clear in *Islam Mohammad Rakibul* as they were in *Anil Singh* and *Wang Xiaopu*, the promotion of access to justice was compelling. The claimant argued that while he was willing to do so, he could not afford to travel to Singapore to testify.⁷⁷ The claimant's counsel, however, did not provide reasons to substantiate the position that it would be cheaper for the claimant to give evidence via video link than it would be to travel to Singapore from Bangladesh to attend the trial in person.⁷⁸ If the claimant had done so, the court would have taken that into consideration. The DJ held that:⁷⁹

... a significant proportion of the actions filed in the State Courts are claims for damages arising from personal injuries, including injuries sustained in industrial accidents. The claimants in these cases would naturally desire the earliest determination of their claims, and such cases would benefit from expeditious adjudication ... A common situation would be where the claimant having suffered injuries from an industrial accident, and is unable to work for his employer in Singapore, and has returned to his home country ... One such situation would be where there is evidence of prohibitive costs attendant to the claimant travelling to Singapore to testify, and where remote hearing is the affordable alternative. Remote hearings thus have a role in promoting *access to justice*, by improving accessibility to court hearing. [emphasis added]

47 *Anil Singh*, *Wang Xiaopu* and *Islam Mohammad Rakibul* were adjudicated under s 62A(1)(c) of the EA. In all three cases, the courts considered s 62A(2) of the EA, having regard to all the circumstances of the cases in deciding whether the witnesses were permitted to give evidence from overseas. This is a fact-centric exercise and is consistent with the Legislature's intention to "clarify and enlarge the court's powers in relation to the evidence given by video and television links".⁸⁰

I. Analysis from case law and findings from empirical research

48 The above analysis of case law demonstrates that the online court does not always enhance the administration of, and access to, justice. This is because the enduring principle that "justice must not just be done but

76 *Islam Mohammad Rakibul v Nib Point Construction* [2022] SGDC 174 at [36].

77 *Islam Mohammad Rakibul v Nib Point Construction* [2022] SGDC 174 at [21].

78 *Islam Mohammad Rakibul v Nib Point Construction* [2022] SGDC 174 at [22].

79 *Islam Mohammad Rakibul v Nib Point Construction* [2022] SGDC 174 at [42].

80 Singapore Parl Debates; Vol 65; [18 January 1996] (Professor S Jayakumar, Minister for Law).

seen to be done” illustrated in *Wang Xiaopu* which values the expressive function of justice, elevates the importance of a physical hearing.

49 Further, empirical research has found that the online hearings involving a large number of participants are more difficult to manage, especially where there is conflicting evidence given on material issues, where assessment of witness credibility is critical to establish the facts, and where self-represented persons (“SRPs”) are involved and there is a lot of animosity between the parties.⁸¹ The same research has pointed to the need to further study the situations “in which the human element demands the physical closeness provided by in-person hearings, or the formality and dignity of the actual courtroom”.⁸² Pending further research on what types of platforms are most suitable for different types of hearings, it may be prudent to continue with the default position of physical hearings provided for under s 62A(1) of the EA.

50 While it is argued that “if it ain’t broke, don’t fix it”, this may be “counterbalanced” by the compelling consideration of access to justice as illustrated in *Anil Singh* and in *Islam Mohammad Rakibul* – both cases supporting the use of the online court.

51 Further, the analysis of Yoong’s concerns about the use of the online court at paras 7–19 above demonstrated that its use does not have significant detrimental effects on the administration of, and access to, justice. Parliamentary debates have also indicated that the online court will be a permanent feature in the Singapore legal system. While the current framework of the default physical hearing (with online hearings held on a case-by-case basis) allows for the optimal use of the online court in appropriate circumstances, it is arguable that it foreshadows a time when the online court may become the default.

52 Even though there is no positive conclusion that the online court enhances the administration of, and access to justice in Singapore, given its permanence in the legal system and the possibility that its use may become more pervasive, it is useful to examine the legal reforms needed to prepare for a future where the online court becomes the norm – or even the default. Indeed, now that the world is gradually recovering from the COVID-19 pandemic, it is timely to consider the possible reforms.

81 Elizabeth G Thornburg, “Observing Online Courts: Lessons from the Pandemic” (22 September 2020) Southern Methodist University Dedman School of Law Legal Studies Research Paper No 486 at p 223.

82 Elizabeth G Thornburg, “Observing Online Courts: Lessons from the Pandemic” (22 September 2020) Southern Methodist University Dedman School of Law Legal Studies Research Paper No 486 at p 224.

IV. Reviewing section 62A EA: procedural reform, further legislative amendments or uniform practice directions?

53 Unlike other jurisdictions in which Internet access may be unevenly distributed because of geographical disparities, Singapore has achieved almost 100% Internet connectivity, with 99% of resident households connected to the Internet and 97% of residents owning smartphones.⁸³ It has been said that “the internet is now so crucial to modern life that providing public wi-fi access should be as standard as providing roads.”⁸⁴ Given the level of Internet connectivity, the use of video conferencing technology can be more fully harnessed in the online court. However, Internet connectivity is not the only reason for increasing the use of the online court. Research has shown that even with high Internet connectivity, consideration needs to be given as to how to support public access to the appropriate technologies and the impact of limiting non-electronic alternatives on access to justice.⁸⁵

54 With these in mind, against the backdrop of s 62A of the EA and the recent legislative amendments to facilitate the use of the online court under the CCCJRA 2021, this article proposes three reforms to support increase in use of the online court in Singapore:

- (a) A “radical” procedural reform approach in which an Online Procedural Rule Committee (“OPRC”) is set up to develop Online Procedural Rules (“OPRs”) with a single generic code or a uniform set of procedural rules to be used for tribunal, civil and family proceedings. The UK’s effort in this area provides a useful point of reference.
- (b) Further amendments to the CCCJRA 2021 and s 62A of the EA so that the online court is the default mode for all hearings.
- (c) A “pragmatic” approach that entails developing a uniform set of practice directions for the Singapore courts.

In evaluating the above proposals, procedural theory is used to recommend the appropriate reform to be implemented.

83 Infocomm Media Development Authority, “Singapore Digital Society Report 2023” at p 1 <<https://www.imda.gov.sg/about-imda/research-and-statistics/singapore-digital-society-report>> (accessed 7 March 2025).

84 Elizabeth G Thornburg, “Observing Online Courts: Lessons from the Pandemic” (22 September 2020) Southern Methodist University Dedman School of Law Legal Studies Research Paper No 486 at p 222.

85 Catrina Denvir & Amanda Darshini Selvarajah, “Safeguarding Access to Justice in the Age of the Online Court” (2022) 85(1) *Modern Law Review* 25 at 39 and 63–64.

A. *Procedural reform: OPRC to develop online procedure rules*

55 With respect to setting up an OPRC to develop uniform OPRs, the UK Parliament has moved a Bill for online procedures in the civil and family courts,⁸⁶ First-tier Tribunal,⁸⁷ Upper Tribunal,⁸⁸ Employment Tribunals⁸⁹ and Employment Appeal Tribunal.⁹⁰ The Bill is titled the “Courts and Tribunals (Online Procedure) Bill” (“UK Bill”) and provides a useful case study for Singapore to assess whether to enact similar uniform rules for the online court.

56 In the Singapore Academy of Law Annual Lecture 2016, Lord Thomas of Cwmgiedd⁹¹ spoke about the aims of procedural reform to eliminate unnecessary delay, excessive cost and procedural complexity, and to enable the courts to secure a just and speedy decision upon the merits at the lowest practicable cost.⁹² Although procedural law may appear to be less important than substantive law, it “affects access to justice, the cost of obtaining justice, the time proceedings take, their complexity, the enforceability of judgments, jurisdiction and incidental matters, such as the employment of lawyers”.⁹³

86 “Courts and Tribunals (Online Procedure) Bill (HL)” *UK Parliament* <<https://bills.parliament.uk/bills/2397>> (accessed 7 March 2025).

87 “First-tier Tribunal” *Courts and Tribunals Judiciary* <<https://www.judiciary.uk/courts-and-tribunals/tribunals/first-tier-tribunal/>> (accessed 7 March 2025). It is stated that “[t]he seven Chambers of the First-tier Tribunal deal with disputes in a number of diverse areas of the law including Tax, Immigration and Asylum and Health, Education and Social Care”.

88 “Upper Tribunal” *Courts and Tribunals Judiciary* <<https://www.judiciary.uk/courts-and-tribunals/tribunals/upper-tribunal/>> (accessed 7 March 2025). It is stated that “[t]he Upper Tribunal primarily, but not exclusively, reviews and decides appeals arising from the First-tier Tribunal”.

89 “Employment Tribunals” *Courts and Tribunals Judiciary* <<https://www.judiciary.uk/courts-and-tribunals/tribunals/employment-tribunal/>> (accessed 7 March 2025). It is stated that “[t]he Employment Tribunals are the judicial bodies with responsibility for workplace justice, being the main forum for deciding disputes between workers and employers”.

90 “Employment Appeal Tribunal” *Courts and Tribunals Judiciary* <<https://www.judiciary.uk/courts-and-tribunals/tribunals/employment-appeal-tribunal/>> (accessed 7 March 2025). It is stated that this is “[a]n independent tribunal which determines legal disputes relating to employment law throughout Great Britain”.

91 Then-Lord Chief Justice of England and Wales.

92 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at paras 4–5, citing Edmund Morgan, “Judicial Regulation of Court Procedure” (1917) 2 Minn L Rev 81 at 83.

93 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at paras 2–3.

57 The UK Bill was proposed in the context of introducing digital services that will “strip away the complexity and confusion that can get in the way of accessing [the] courts and tribunal systems” and as part of a £1b transformation program to introduce online courts and tribunals across the civil, family and administrative jurisdictions.⁹⁴ The UK Bill defines the OPRC’s power to make OPRs, the membership rules and appointment process for the OPRC, and the conferment of regulation-making powers on the Minister who can approve certain types of court and tribunal proceedings to be conducted by electronic means.⁹⁵ In Singapore, this would entail a consolidation of a consistent set of procedural rules for civil proceedings, the Family Justice Courts (“FJC”) and the CJTS.

58 Lord Thomas outlined that this “more radical reform of procedure” is driven by five factors:⁹⁶

- (a) The need for a rationed approach to procedure. Rationed because of the acceptance that the State’s resources are limited and that individual litigants, though entitled to access to justice, have no right to an unlimited claim upon them in the pursuit of justice.
- (b) The need for a measured approach because those limited resources must be distributed equitably across all litigants according to the nature of their claims ...
- (c) The need to use technology in the most effective manner possible ... [I]n an increasingly technological age, [States] will need to consider (i) how best to strike the right balance between uniform processes across each of their justice systems and the need to match procedure to the type and needs of the case; (ii) what factors should properly shape their procedures; and (iii) how to effect the necessary cultural change to ensure that reforms meet their purpose rather than undermine it.
- (d) The need to fashion technology to hasten the trend of convergence of procedural law on a national level.
- (e) The need to promote convergence on an international level. As our national substantive laws are becoming ever closer in a number of specific areas related to international business, there is an increasing need for our national procedural systems to be brought closer together also. Process cannot lag behind substantive law ...

94 Catrina Denvir & Amanda Darshini Selvarajah, “Safeguarding Access to Justice in the Age of the Online Court” (2022) 85(1) *Modern Law Review* 25 at 26. Also see “Fact sheet” at <<https://www.gov.uk/government/publications/courts-and-tribunals-online-procedure-bill>> (accessed 7 March 2025).

95 Catrina Denvir & Amanda Darshini Selvarajah, “Safeguarding Access to Justice in the Age of the Online Court” (2022) 85(1) *Modern Law Review* 25 at 34.

96 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 8.

59 In light of the above factors, Lord Thomas emphasised that “[p]rocedural reform must be premised on digital technology”.⁹⁷ In England and Wales, it was recommended that this took the form of the standalone online court and full digitalisation of procedures.⁹⁸ To support these endeavours, “a single generic code applicable to all cases whether civil, family or administrative and possibly, criminal”⁹⁹ was proposed.

60 The single generic code has been drafted in the form of the UK Bill, which excludes criminal matters. It appears that there are two main concerns with the UK Bill in relation to providing users access to non-electronic alternatives and supporting users. These are elaborated as follows:

(a) With respect to providing access to non-electronic alternatives, cl 1(6) of the UK Bill states as follows:

Where Online Procedure Rules require a person to initiate, conduct, progress or participate in proceedings by electronic means, Online Procedures Rules must also provide that a person may instead choose to do so by non-electronic means.

It has, however, been suggested that:¹⁰⁰

Problematically, the *wording of this clause* offers no limits on the imposition of additional rules or policy that restrict an individual’s right to choose non-electronic means in certain circumstances, nor does it restrict policy practices that make it difficult to exercise this choice in practice. [emphasis added]

The use of the term “non-electronic means” in cl 1(6) has been interpreted as providing for a scan and print service (*ie*, paper documents are scanned into the online case file and thereafter accessed online).¹⁰¹ While scanning and printing may overcome the challenge of filing the claims, a user without electronic access may be unable to participate in the later stage of the proceedings where the dispute is resolved online and where further

97 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 10.

98 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 10.

99 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 14.

100 Catrina Denvir & Amanda Darshini Selvarajah, “Safeguarding Access to Justice in the Age of the Online Court” (2022) 85(1) *Modern Law Review* 25 at 35.

101 Catrina Denvir & Amanda Darshini Selvarajah, “Safeguarding Access to Justice in the Age of the Online Court” (2022) 85(1) *Modern Law Review* 25 at 35.

information may be sought from the parties electronically and asynchronously, without taking oral evidence.¹⁰² Further, it appears that under cl 1(1), 1(2) and 5(1) of the UK Bill,¹⁰³ only the OPRC is empowered to determine the mode of hearing and cl 1(6) may not allow the court to exercise its discretion to transfer the case out of the simplified procedure under the OPRs and proceed under the ordinary civil procedure rules.

(b) With respect to supporting users, the wording of cl 4 of the UK Bill “leaves the scope and extent of the support to be provided and the conditions that will govern access to it, unclear”.¹⁰⁴ Clause 4 states that:

The Lord Chancellor must arrange for the provision of such support as the Lord Chancellor considers to be appropriate and proportionate, for the purpose of assisting persons to initiate, conduct, progress or participate in proceedings by electronic means, in accordance with Online Procedure Rules.

What is “appropriate and proportionate” is imprecise. Assistance to court users could be limited to helping those without online access, utilise services they are entitled to or could be widened to include assisting users who may struggle to use the online services.¹⁰⁵ Further, courts would continue to tread a fine line in providing procedural assistance as opposed to offering legal advice. The difficulty of distinguishing between giving “procedural support” and “legal advice” may lead to no advice being given to avoid mistakenly giving legal advice.¹⁰⁶

61 In Singapore, setting up an OPRC to make OPRs, to consolidate and streamline the procedural rules used in civil, FJC and tribunal proceedings, and to eventually have a uniform procedural system based on a single platform, would be ideal. The term “trans-substantive” has been used to describe the process in which the same procedural rules

102 Catrina Denvir & Amanda Darshini Selvarajah, “Safeguarding Access to Justice in the Age of the Online Court” (2022) 85(1) *Modern Law Review* 25 at 35.

103 “Courts and Tribunals (Online Procedure) Bill (HL)” *UK Parliament* <<https://bills.parliament.uk/bills/2397>> (accessed 7 March 2025). To refer to the clauses, see “Bill 430 2017-19 (as amended in Public Bill Committee)” dated 24 July 2019.

104 Catrina Denvir & Amanda Darshini Selvarajah, “Safeguarding Access to Justice in the Age of the Online Court” (2022) 85(1) *Modern Law Review* 25 at 37.

105 Catrina Denvir & Amanda Darshini Selvarajah, “Safeguarding Access to Justice in the Age of the Online Court” (2022) 85(1) *Modern Law Review* 25 at 38.

106 Catrina Denvir & Amanda Darshini Selvarajah, “Safeguarding Access to Justice in the Age of the Online Court” (2022) 85(1) *Modern Law Review* 25 at 39.

are used for different types of cases regardless of the substantive law or jurisdictional limits that are applied.¹⁰⁷

62 Lord Thomas suggested that the guiding principles for creating a single procedural code to be used for all online court proceedings should be as follows:¹⁰⁸

- (a) It should be value-neutral or ... apolitical. In this it stands in contrast to substantive law.
- (b) It should have a singular aim – securing through a fair process, the proper application and enforcement of substantive law.
- (c) It should be written in plain language and easy to use without the need for lawyers in low value disputes.
- (d) Although providing a core common procedure, it should allow for guides or practice directions to help the code operate in particular settings.
- (e) It should not itself affect the substantive rights of parties, although we can all envisage procedures that do have such effects. As a general rule, procedure should not be used to effect political choices; those are the province of substantive law.

63 Despite the appeal of the simplicity and clarity of radical procedural reform, this article does not recommend this approach at this juncture for several reasons. Firstly, based on the factors for radical reform proposed by Lord Thomas in para 58 above, it is unnecessary to set up an OPRC to introduce uniform OPRs as:

- (a) There is no critical need for a “rationed” approach to procedure in Singapore given that there is a minimal hearing backlog or court congestion, which would indicate that the State lacks resources to meet the needs of litigants.¹⁰⁹
- (b) There is currently “measured-ness” in court proceedings, with resources distributed equitably across litigants according to the nature and value of their claims. For example, SRPs can

107 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 17.

108 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 18.

109 Foo Chee Hock, Eunice Chua & Louis Ng, “Civil Case Management in Singapore: Of Models, Measures and Justice” (2014) *ASEAN Law Journal* 1. The article states the Singapore Judiciary is lauded for its efficiency and technological sophistication and has earned the confidence of businesses and its people. Singapore has also been ranked first by the World Economic Forum for its efficient legal framework for settling disputes.

file SCT claims if the value does not exceed \$20,000. For these claims, lawyers are not permitted and hearings are conducted via Zoom.

(c) Video conferencing technology is currently used effectively with Zoom continuing to be used post-COVID-19 for pre-trial matters, including for SCT hearings. The courts have also sought to achieve the right balance between the use of the online court and physical hearings under s 62A of the EA, in light of the recent enactment of the CCCJRA 2021 which emphasises the online court.

(d) It is not necessary to develop new technology or existing technology which is currently being used for court hearings (*ie*, Zoom), to hasten the convergence of procedural law, given that this technology is still fit for purpose as evidenced by its continued use post-COVID-19.

(e) For disputes involving offshore parties, it may not be necessary to promote convergence given that the Singapore legal system is already flexible. As indicated above, the District Court was willing to consider using video conferencing technology for taking evidence of foreign workers in *Islam Mohammad Rakibul*.

To undertake radical procedural reform by enacting a single generic code to make the online court as a default position for hearings may be akin to “killing a chicken using a knife meant to kill an ox”,¹¹⁰ a Chinese idiom which in the current context refers to implementing radical procedural reform to achieve the simple outcome of promoting the use of the online court. Reform should not be conducted for its own sake.

64 Secondly, this radical procedural reform requires significant resources. As earlier stated, there was an investment of £1b by the UK Government to transform the courts and tribunal services by increasing the use of technology to enhance the accessibility, convenience and efficiency of the justice system.¹¹¹ This £1b investment conceptualised the online court as being “akin to a decision made on the papers, with a judge reaching a decision on the basis of further information solicited from the parties electronically and asynchronously, without the aid of oral

110 This is written as “杀鸡焉用牛刀” in Chinese.

111 “Policy Paper: Courts and Tribunals (Online Procedure) Bill” GOV.UK <<https://www.gov.uk/government/publications/courts-and-tribunals-online-procedure-bill>> (accessed 7 March 2025) see “Fact sheet”.

evidence”.¹¹² This is not unlike online judging, one of the two concepts of the online court defined by Richard Susskind.¹¹³

65 The notion of “online judging” is similar to “asynchronous hearings” mentioned during Mr Edwin Tong SC’s speech during the parliamentary debate on CCCJR Bill.¹¹⁴ However this is not the definition of “online court” adopted in this article, and neither is this article suggesting that an equivalent £1b investment is required. Nevertheless, consolidating the procedural rules used in civil proceedings, the FJC and the CJTS via the establishment of an OPRC to make OPRs would require immense time and effort. Although the UK Bill is a useful point of reference, this is not an endeavour that can be easily, quickly and cheaply accomplished.

66 Lastly, even though there is close to 100% Internet connectivity in Singapore, parties must be allowed to have a genuine choice in having proceedings conducted via non-electronic means, and court users must be provided the support needed to participate fully in online hearings. The concerns with the UK Bill have highlighted that whilst there is efficiency to be gained from an online hearing, and OPRs may be proposed as a simplified procedure, access to justice remains an issue because court users who prefer and are more comfortable with traditional non-electronic judicial services may be hampered by the online court system. SRPs, in particular, may not get the help they need unless there is greater clarity about the type and level of assistance that can be provided by the courts to its users. These were illustrated above in relation to the interpretation of cl 1(6) and 4 of the UK Bill. The difficulty with these clauses demonstrates that the parliamentary intent when drafting the single generic code must not tilt the balance in favour of time, convenience, efficiency and cost savings, whilst sacrificing access to justice, which is access to a physical courtroom before a judge.

67 To reflect a true union of the physical and online hearings that preserves the rights of disputants, there must be a choice to opt out from an entirely online court process so that if and when online hearings are made the default mode, a physical hearing before the judge in a courtroom is accommodated.

112 Catrina Denvir & Amanda Darshini Selvarajah, “Safeguarding Access to Justice in the Age of the Online Court” (2022) 85(1) *Modern Law Review* 25 at 35.

113 Richard Susskind, “Physical, Virtual, Online” in *Online Courts and the Future of Justice* (Oxford University Press, 2019) ch 5, at p 60.

114 Singapore Parl Debates; Vol 95; [13 September 2021] (Mr Edwin Tong Chun Fai, Second Minister for Law).

68 The above arguments do not mean that the proposal of an OPRC to make OPRs for the online court in Singapore should not be contemplated. They simply mean that it is not an immediate priority. Nonetheless, should the need for radical procedural reform arise (due, eg, to court congestion, rising costs and delays substantiated by empirical data), the proposal may be revisited. At that point in time, any procedural rules drafted would have to accommodate the needs of all court users accessing the online court and allow the exercise of judicial discretion to permit a court user to opt out from the online court process.

B. Amendments to recently enacted CCCJRA 2021 and section 62A EA

69 Before exploring the option of further amending the recently enacted CCCJRA 2021, it is useful to note the overarching objectives of the CCCJRA 2021.

70 As stated in Hansard, the purpose of the amendments was not to promote or increase the use of the online court but simply that “the Courts will be generally empowered to conduct hearings remotely, using appropriate electronic means such as video-link”.¹¹⁵ The amendments also sought to grant the courts statutory powers to exclude certain matters from the online court platform, and to enhance the safeguards for its use. As stated by Second Minister for Law Mr Edwin Tong:¹¹⁶

... the Court’s overriding duty in each case will be to ensure that proceedings are conducted fairly to all parties. There will also be statutory powers to exclude certain types of matters from being heard remotely, should this be necessary. Where witness testimony is concerned, the Courts have existing powers under the Evidence Act to allow witnesses to give evidence remotely in civil matters. The Bill amended the Evidence Act to enhance safeguards relating to remote testimony.

71 In relation to the CCCJRA 2021, it does not seem to promote or seek to increase the use of the online court for the following reasons:

(a) The court’s permission must still be obtained for a witness to testify via live video or live television links under O 15 r 5 of the ROC 2021.¹¹⁷

115 Singapore Parl Debates; Vol 95; [13 September 2021] (Mr Edwin Tong Chun Fai, Second Minister for Law).

116 Singapore Parl Debates; Vol 95; [13 September 2021] (Mr Edwin Tong Chun Fai, Second Minister for Law).

117 *Singapore Rules of Court: A Practice Guide (2023 Edition)* (Chua Lee Ming editor-in-chief & Paul Quan gen ed) (Academy Publishing, 2022) ch 15, at para 15.064.

(b) The judge continues to exercise his or her discretion as to whether the hearing is to be conducted in person or remotely based on the ordinary meaning of the headings of s 8A of the SCJA, s 8 of the SCA and s 11 of the FJA, which state that the “Court *may* conduct hearing through electronic means of communication” [emphasis added].

(c) The default position of a physical hearing remains which is consistent with the Court of Appeal’s decision in *Anil Singh*¹¹⁸ and endorsed in *Islam Mohammad Rakibul*,¹¹⁹ a decision made after the CCCJRA 2021 was enacted.

72 The procedural changes introduced by the CCCJRA 2021 are incremental compared to the radical procedural reform outlined above for a single generic code. Notably, they are not trans-substantive, *ie*, there are two procedural rules, namely the ROC 2021 and FJR 2014. In the parliamentary debate on the CCCJR Bill on 13 September 2021, Mr Louis Ng, Member of Parliament for Nee Soon Group Representative Constituency (“GRC”) requested that the way in which video link hearings were conducted be “standardise[d]”.¹²⁰ By “standardise”, it appears that Mr Ng was referring to the “issues from testing of the video link to the arrangements that should be in place for witnesses to give evidence remotely”.¹²¹ This may arguably imply a single generic code that applies across the Singapore courts. In response, Minister for Law Mr K Shanmugam said that:¹²²

[t]he specific ways for participation in remote hearings are published in the Registrar’s circulars and set out on the Courts’ websites. The specific protocol that applies may vary, depending, *eg*, on the *type of case and the litigants involved*. [emphasis added].

73 The issue of whether to adopt a “trans-substantive” process to facilitate the online court is usefully explored by considering the interplay between substantive law and procedural rules. One argument is that substantive law has no role to play in developing or justifying procedural rules, that procedural rules merely reflect the process by which substantive law is applied and justice is served, rather than being political choices about whether to impose liability or not, which is the

118 *Anil Singh Gurm v J S Yeh & Co* [2020] 1 SLR 55 at [33].

119 *Islam Mohammad Rakibul v Nib Point Construction* [2022] SGDC 174 at [8].

120 Singapore Parl Debates; Vol 95; [13 September 2021] (Mr Louis Ng Kok Kwang, Member of Parliament for Nee Soon Group Representative Constituency).

121 Singapore Parl Debates; Vol 95; [13 September 2021] (Mr Louis Ng Kok Kwang, Member of Parliament for Nee Soon Group Representative Constituency).

122 Singapore Parl Debates; Vol 95; [13 September 2021] (Mr K Shanmugam, Minister for Law).

province of substantive law.¹²³ Drawing reference from the drafting of the US Federal Rules of Civil Procedure, “[t]he 1938 Federal Rule drafters thought that substance had little, if any, role to play; in their view most procedural rules could be justified by process values without referring to substance at all”.¹²⁴ It follows that if substantive law and procedural rules are mutually exclusive, a single, universal generic code can be developed.

74 On the other hand, the counter argument is that procedural rules and substantive law are interrelated; procedural rules that are used to enforce a legal right are said to enforce the policies that underlie that right.¹²⁵ The cost of procedures that reduce the risk of an error is said to invariably be balanced with the benefit of the error reduction and the substantive policy value that the error impairs.¹²⁶ Given that vastly different policy values undergird various civil and family disputes, arguably, it is not possible to implement a single code that would apply to all proceedings. Besides, a “Rolls Royce procedure to all cases, without consideration of the cost to the parties of doing so or the time that that might engender” had been considered a central flaw in civil procedure reforms in England and Wales.¹²⁷ “Trans-substantivity” reflected in a single generic procedural code, as proposed by Lord Thomas,¹²⁸ where procedure is separate from substance may not work for all contexts.¹²⁹

75 It would appear that the argument that procedural rules and substantive law are interrelated and that this acts as a barrier to a single

123 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 18(e).

124 Robert G Bone, “Making Effective Rules: The Need for Procedure Theory” (2008) 61 Okla L Rev 319 at 329.

125 Robert G Bone, “Making Effective Rules: The Need for Procedure Theory” (2008) 61 Okla L Rev 319 at 332.

126 Robert G Bone, “Making Effective Rules: The Need for Procedure Theory” (2008) 61 Okla L Rev 319 at 332.

127 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 19, where in 1979 Prof Subrin, drawing on his experience of the US Federal Rules, made clear that “applying the rules to all cases, big and small has proved disastrous”. Lord Woolf also arrived at the same conclusion in the mid-1990s.

128 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 18.

129 His Lordship’s point, however, is not that there are no policy choices in procedures but that each of these choices is “subject to the overarching aim of securing right judgment and enforcement”. See The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 18(e).

generic procedural code has prevailed in Singapore given that there are different procedural rules and practice directions for the use of online court platforms in each court and tribunal.

76 Regardless, it is unlikely that further legislative amendments will be made to promote or increase the use of the online court. The most recent changes were implemented on 1 April 2022 following careful and fulsome parliamentary deliberation.¹³⁰ The result of these legislative amendments are the new s 8A of the SCJA, s 8 of the SCA and s 11 of the FJA, which provide consistency in terms of having similar provisions (content-wise) for the online court across the Supreme Court, the State Courts and the FJC. Notwithstanding this similarity in content, which arguably points towards the possibility of consolidation into a single statute, the exercise of judicial discretion and non-“trans-substantivity” means that the new laws “in effect leave the hard questions for trial judges to resolve”¹³¹ in each case.

77 Even if further amendments could be made to the existing SCJA, SCA, FJA and the EA to make the online court the default position, the same concerns raised earlier about radical procedural reform remain; namely, the court users’ access to justice if denied a physical hearing, and the overuse of the heavy hand of legislative amendment to effect a simple outcome of promoting the use of the online court.

130 In the parliamentary debate on the Courts (Civil and Criminal Justice) Reform Bill on 13 September 2021, Mr Murali Pillai, Member of Parliament (“MP”) for the Bukit Batok Single Member Constituency, whilst expressing his support for the enactment of a permanent framework to empower the court to conduct remote hearings, nevertheless highlighted his concern to ensure that self-represented persons who are unfamiliar with or do not have access to video conferencing technology or have concerns expressing themselves in writing, are not disadvantaged by remote hearings: see Singapore Parl Debates; Vol 95; [13 September 2021]. In the subsequent parliamentary debate held on 14 September 2021, Ms Hany Soh, MP for the Marsiling-Yew Tee Group Representative Constituency shared about the workforce being familiar with working from home and lawyers having more flexibility in terms of daily work schedules while managing other personal obligations. To enhance access to justice, she emphasised on the three “hows” – how to make the law easier to understand for the layperson, how to simplify the work process to avoid unnecessary wastage of time and resources and how to achieve cost efficiency, as this was a paramount consideration for litigants in deciding whether to further pursue a matter: see Singapore Parl Debates; Vol 95; [14 September 2021].

131 Robert G Bone, “Making Effective Rules: The Need for Procedure Theory” (2008) 61 Okla L Rev 319 at 326.

C. *Developing common set of practice directions for online court*

78 Practice directions (“PD”) serve an administrative purpose and are “issued by the courts to supplement the Rules of Court by regulating court practice and procedure”¹³² and “are intended to be no more than a direction for administrative purposes”.¹³³ It is noted under para 2(2) of the State Courts PD 2021 that the said PD does not apply to tribunal proceedings in the CJTS. If the intent is to develop a common set of PD for the online court (for court and tribunal proceedings), then it can be expressly provided for under the State Courts PD 2021.

79 In the main, there are three differences in the PD used for the online court:

(a) Paragraph 196(1) of the FJC PD 2024 states that “[t]hese directions apply to hearings to be conducted by video or telephone conferencing, *as directed* by the Court” [emphasis added]. Paragraph 13 of the Supreme Court PD 2021 states that “[s]elected hearings in the Supreme Court will be conducted by video conferencing or where appropriate, telephone conferencing” [emphasis added], and “[t]he Court retains full discretion to decide (a) whether to conduct any hearing by video conferencing or telephone conferencing”¹³⁴, which is broadly similar to paras 196(4) and 196(5) of the FJC PD 2024. (Also refer to para 197 of the FJC PD 2024 on the use of video conference facilities and the Mobile Infocomm Technology Facilities for proceedings in the Family Division.) The State Courts PD 2021, however, does not specify “as directed by the Court”, or for “selected hearings”. Rather, at para 57(2), it is stated that the conduct of hearings by video conferencing or telephone conferencing is “[s]ubject to the provisions of any written law”, which arguably may not promote the online court since a physical hearing is the default position under s 62A of the EA.

(b) For a person outside of Singapore giving evidence, para 59 of the State Courts PD 2021 provides for evidence by live audio link but this is absent in both the Supreme Court PD 2021¹³⁵ and the FJC PD 2024.¹³⁶

132 “Supreme Court Practice Directions 2013” *SG Courts* (1 July 2024) <<https://epd2013-supremecourt.judiciary.gov.sg/>> (accessed 7 March 2025).

133 *South East Enterprises (Singapore) Pte Ltd v Hean Nereng Holdings Pte Ltd* [2012] 3 SLR 864 at [61], citing *Jayasankaran v Public Prosecutor* [1983] 1 MLJ 379.

134 Supreme Court Practice Directions 2021 para 13.

135 Supreme Court Practice Directions 2021 para 77.

136 Family Justice Courts Practice Directions 2024 para 132.

(c) Paragraph 77 of the Supreme Court PD 2021 states that an application for a person outside of Singapore giving evidence via live video link or live television link is to be made no later than eight weeks before the start of trial. Paragraph 59(1) of the State Courts PD 2021 and para 132 of the FJC PD 2024 stipulate that it is four weeks before trial but if a letter of request is required from the General Division of the High Court or Family Division, applications for permission need to be made not later than eight weeks before trial commences; this reflects an eight-week requirement for any such applications made to the High Court. It is worth noting that para 59(1) of the State Courts PD 2021 referred to s 62A of the EA, whereas s 62A is not mentioned in paras 77(1) and 132(1) of the Supreme Court PD 2021 and the FJC PD 2024, respectively.

80 Amending and developing a common set of PD for video conferencing, telephone conferencing or live audio link may not necessarily increase or promote the use of the online court. It remains to be seen whether amendments in the State Courts PD 2021 to provide for the online court in “as directed by the Court” or “selected hearings” would increase the frequency in use of the online court. Nevertheless, with s 8A of the SCJA, s 8 of the SCA and s 11 of the FJA being broadly similar and facilitating the use of online court, developing a common set of PD would align with the aforementioned legislation and lead to less ambiguity during execution. In fact, the relevant wordings for the ROC 2021 and FJR 2024 are, in the main, similar.¹³⁷ All the more, there is no reason for the PD supplementing the rules to differ.

81 Amending and developing a common set of PD to promote the adoption of the online court would not require excessive effort or resources. One of the principles in creating a single procedural code is that guides or practices help implement and operationalise the code, save that there should not be a proliferation of such guides.¹³⁸ Having a consistent set of PD (instead of various paragraphs in different PD¹³⁹) or, at the very least, having such provisions similarly worded, would facilitate the administration of, and access to justice. This is because the processes

137 Order 3 r 9 of the Rules of Court 2021 is similar to P 1 r 13 of the Family Justice (General) Rules 2024. Order 15 r 5 of the Rules of Court 2021 is also similar to P 15 r 6 of the Family Justice (General) Rules 2024.

138 The Right Honourable the Lord Thomas of Cwmgiedd, “Singapore Academy of Law Annual Lecture 2016 – ‘Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions’” (2017) 29 SAclJ 1 at para 18(d).

139 This refers to paras 13 and 77 of the Supreme Court Practice Directions 2021, paras 57 and 59 of the State Courts Practice Directions 2021 and paras 132 and 196 of the Family Justice Courts Practice Directions 2024.

and guidelines would be commonly understood and applied to promote and increase the use of the online court.

82 A common set of PD is not an attempt to circumvent the default position for a physical hearing under s 62A of the EA. Rather, as stated in *Hansard* (at paras 23–24 above), the Singapore courts have the power to go beyond s 62A of the EA. Having dispelled the misconception that an online court may have a negative effect on assessing witness credibility, procedures and processes can be put in place to strengthen the new legislation in s 8A of the SCJA, s 8 of the SCA and s 11 of the FJA, thereby promoting and increasing the use of the online court where appropriate. Besides aligning with the new legislative provisions, which as earlier pointed out are broadly similar, consistency in the PD to promote the use of the online court is a first step in developing a common procedure based on a single platform, if that is contemplated in the future.

V. Conclusion

83 The online court is foreseeably here for the long haul given that there appears to be no major impediment to its use.

84 Worldwide, judges and lawyers have expressed reservations about the use of the online court. Whilst the expressive function of justice may be lost to some extent, we will miss the forest for the trees if we mourn too much over this loss. An inflection point may have been reached in Singapore where technology has already been and will continue to be leveraged by people to access justice, whether by desktop, laptop or mobile phone, at home or in the office.

85 We can and must imagine that there will come a time when more levels of the Singapore courts may be viewed as accessible and connecting fora for all who seek justice, wherever they are situated, unconstrained by physical space.