(2019) 31 SAcLJ 987
(Published on e-First 13 September 2019)

THE IDEALS IN THE PROPOSED RULES OF COURT

This article offers a preliminary examination of "the Ideals" in the proposed Rules of Court which were submitted for public consultation towards the end of 2018. These Ideals introduce a new procedural culture by requiring the court, the parties and lawyers to adhere to set standards or criteria in the conduct of civil litigation.

Jeffrey **PINSLER** SC*
LLB (Liverpool), LLM (Cambridge), LLD (Liverpool);
Barrister (Middle Temple); Advocate and Solicitor (Singapore);
Geoffrey Bartholomew Professor, Faculty of Law,
National University of Singapore.

I. Introduction

1 The paper entitled "Public Consultation on Civil Justice Reforms", which contains the recommendations of the Civil Justice Review Committee and the Civil Justice Commission concerning the proposed Rules of Court ("the proposed RoC"), was issued on 26 October 2018 ("Public Consultation on Civil Justice Reforms paper"). This article focuses on a single but fundamental component of the proposed RoC, namely, "the Ideals" in Ch 1 rr 3(2)(*a*)–3(2)(*e*) and the related provisions in rr 3(1), 3(3) and 3(4):

> (1) These Rules are to be given a purposive interpretation.
>
> (2) These Rules seek to achieve the following Ideals in civil procedure:
>
> (*a*) Fair access to justice;
>
> (*b*) Expeditious proceedings;
>
> (*c*) Cost-effective work proportionate to —
>
> (i) the nature and importance of the action;
>
> (ii) the complexity of the claim as well as the difficulty or novelty of the issues and questions it raises; and
>
> (iii) the amount or value of the claim;

* Although the author is a member of the Civil Justice Commission which, together with the Civil Justice Review Committee, submitted the recommendations, this article represents the author's own personal views and interpretation of the Ideals and related rules.

(*d*) Efficient use of court resources; and

(*e*) Fair and practical results suited to the needs of the parties.

(3) The Court shall seek to achieve the Ideals in all its orders or directions.

(4) All parties have the duty to assist the Court and to conduct their cases in a manner which will help to achieve the Ideals.

2 The Ideals listed in Ch 1 rr 3(2)(*a*)–3(2)(*e*) of the proposed RoC are objectives. The current Rules of Court[1] ("the RoC 2014") does not include such a list. However, O 34A r 1(1) of the RoC 2014 empowers the court (at any stage of the proceedings and regardless of the requirement of any rule of court) to make any order or give any direction "for the just, expeditious and economical disposal of the cause or matter".[2] Although there are clear parallels between the terms "just, expeditious and economical" and the Ideals in Ch 1 rr 3(2)(*a*)–3(2)(*e*) of the proposed RoC, important differences are clearly apparent. First, the terminology of Ch 1 rr 3(2)(*a*)–3(2)(*e*) particularises the priorities of expedition and economy by introducing concepts such as proportionality, efficiency, resources, need and practicality. Secondly, the powers under O 34A r 1(1) are purely discretionary in nature while the Ideals in Ch 1 rr 3(2)(*a*)–3(2)(*e*) are *required* to be applied throughout the course of the action.[3] Thirdly, O 34A is solely concerned with the case management powers of the court while the Ideals involve responsibilities on the part of all participants to the action including the court, the parties and the lawyers. As will be shown,[4] the Ideals fundamentally affect how the rules of civil procedure are to be interpreted and applied.

3 Chapter 1 r 3(1) is also novel as the RoC 2014 does not provide for the manner of general interpretation of the rules.[5] This omission in the RoC 2014 is understandable in the light of statutory directive that legislation is to be construed purposively. Section 9A(1) of the Interpretation Act[6] provides that "written law" should be interpreted in a manner that would promote its purpose or objective:

1 Cap 322, R 5, 2014 Rev Ed.

2 Equivalent terms appear in O 34A r 2(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), which governs pre-trial conferences.

3 See paras 20–21 below.

4 See paras 20–21 below.

5 Order 1 r 5 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) includes references to "a specified Order, Rule or Appendix'. Order 1 r 6 refers to an action or a claim for the possession of immovable property. These rules do not affect the interpretation of the general terminology of the current Rules of Court.

6 Cap 1, 2002 Rev Ed.

> In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

4 "Written law" is defined by s 2 of the Interpretation Act as including "all Acts … and subsidiary legislation made thereunder for the time being in force in Singapore". Section 21 of the Interpretation Act states: "Where any Act confers powers to make any subsidiary legislation, expressions used in the subsidiary legislation shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power."[7]

5 The unprecedented inclusion of the directive in Ch 1 r 3(1) of the proposed RoC that the rules are to be interpreted purposively is necessary because it is aligned to the Ideals (which are purposes) set out in Ch 1 rr 3(2)(*a*)–3(2)(*e*). The significance of Ch 1 r 3(1) is that all the rules of court must be read in the light of these Ideals. Although the purposive approach to a general rule of procedure may be curtailed by clear language requiring a literal application,[8] the ethos of the proposed RoC is purposive as indicated by Ch 1 r 3(1) and by the very significant reduction in the content of the rules (compared to the RoC 2014), as well as the broad powers of the court granted by Ch 1 r 5 and other provisions of the proposed RoC.

6 In *Access to Justice (Final Report)*,[9] which concerned recommendations for reform of civil procedure in the UK, Lord Woolf stated:[10]

> Every word in the rules should have a purpose, but every word cannot sensibly be given a minutely exact meaning. Civil procedure involves more judgment and knowledge than the rules can directly express. In

---

7 Therefore, terms and phrases used in the Rules of Court (Cap 322, R 5, 2014 Rev Ed) have the meaning given to the same terms and phrases in the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") and the State Courts Act (Cap 321, 2007 Rev Ed), as these statutes confer powers on the Rules Committee to make the Rules of Court. In *OpenNet Pte Ltd v Info-communications Development Authority of Singapore* [2013] 2 SLR 880 at [15], Chao Hick Tin JA stated that the court should give the expression "interlocutory application" in para (*e*) of the Fifth Schedule to the SCJA an interpretation that would promote the purpose underlying the SCJA. Also see *MF Global Singapore Pte Ltd v Vintage Bullion DMCC* [2015] 4 SLR 831 at [67].

8 As stated by V K Rajah JA in *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [57], the purposive approach may be limited "by the parameters set by the literal text of the provision".

9 Published in 1996.

10 *Access to Justice (Final Report)* (1996) ch 20 at para 10.

> this respect, rules of court are not like an instruction manual for operating a piece of machinery. Ultimately their purpose is to guide the court and the litigants towards the just resolution of the case. Although the rules can offer detailed directions for the technical steps to be taken, the effectiveness of those steps depends upon the spirit in which they are carried out. That in turn depends on an understanding of the fundamental purpose of the rules and of the underlying system of procedure.

7 As will be explained in the course of this article, the purposive approach means that a court should consider all the Ideals and not simply apply one in preference over another. As the Ideals operate synergistically in a purposeful manner, their relative significance, interaction and application are dependent on the specific facts of each case.

II. Background

8 An appreciation of the nature of these Ideals may be gained by offering a very brief summary of the evolution of civil procedure in Singapore. Prior to the reforms affecting case management and other changes to the rules that were introduced in the 1990s, litigants (through their lawyers) had a virtually free hand in dictating the duration and course of proceedings. In *Allen v Sir Alfred McAlpine & Sons Ltd*,[11] Lord Diplock observed:

> The underlying principle … is that the court takes no action in it of its own motion but only on the application of one or the other of the parties to the litigation, the assumption being that each will be regardful of his own interest and take whatever procedural steps are necessary to advance his cause.

9 This characterisation of English civil procedure represented the position in Singapore until the 1980s. In 1988, almost a third of the cases in the courts took more than five years to conclude.[12] At the end of 1990, 2,059 civil cases were awaiting hearing in the Supreme Court.[13] In 1991, it took about two years for an appeal to be heard by the Court of Appeal.[14] The backlog of cases and waiting time for hearings were significantly reduced within a short time as a result of the above-

11 [1968] 2 QB 229 at 254.

12 The actual percentage was 29.85. See *Supreme Court Singapore: Excellence into the Next Millennium* (Singapore: Supreme Court, 1999) at p 56.

13 See *Supreme Court Singapore: The Re-organisation of the 1990s* (Singapore: Supreme Court, 1994) at p 77.

14 See the Singapore Judiciary Annual Reports, 1997 and 1998.

mentioned reforms.[15] A primary reason for the former state of affairs was the absence of active court control of proceedings and lax rules which permitted litigants to flout requirements (particularly those concerning time limits for taking steps in the action), proceed in an unproductive and disproportionate manner (including the engagement of expensive and time-consuming satellite litigation), and disregard the limits of the court's resources (and the consequential impact on access to justice by other litigants). Therefore, for much of the 20th century, the ultimate concern of judges was the provision of substantive justice. Delayed justice, improper use of court resources, misuse of procedure and unnecessary costs may have been frowned upon but were not adequately managed. As Lord Dyson MR pointed out:[16]

> [I]t is easy to see why, not least given the long heritage we have of striving to secure justice on the merits in each case and the intuitive understanding that doing justice is to reach a decision on the merits, mistaken assumptions took hold.

10 The former litigation culture was underpinned by the belief that procedure (including the management of litigation) was separate from, incidental to and limited to the role of serving substantive justice. In *Lea Tool and Moulding Industries Pte Ltd v CGU International Insurance plc*,[17] Lai Kew Chai J stated: "our procedural laws are merely handmaidens [to help us achieve justice]".[18] However, more recent case law has changed the emphasis to an integrated and symbiotic relationship between procedure and substantive law. Andrew Phang Boon Leong JC (as he then was) observed in *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd*[19] ("*Ng Huat Foundations*"):[20]

> The quest for justice, therefore, entails a continuous need to balance the procedural with the substantive. More than that, it is a continuous attempt to ensure that both are *integrated*, as far as that is humanly possible. Both *interact* with each other. One cannot survive without the other. There must, therefore, be – as far as is possible – a fair and just procedure that leads to a fair and just result. This is not merely abstract theorising. It is the *very basis* of what the courts do – and ought to do. When in doubt, the courts would do well to keep these bedrock principles in mind. [emphasis in original]

15 See Jeffrey Pinsler, *Civil Justice in Singapore: Developments in the Course of the 20th Century* (Butterworths Asia, 2000) ch 4.

16 In a speech (entitled "The Application of the Amendments to the Civil Procedure Rules") delivered at the District Judges' Annual Seminar on 22 March 2013.

17 [2000] 3 SLR(R) 745 at [16].

18 Also see *Re Coles and Ravenshear* [1907] 1 KB 1 at 4, where a similar characterisation of procedure is found.

19 [2005] 2 SLR(R) 425.

20 *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [8].

11 The learned judge observed that the relationship is not always straightforward:[21]

> It is true, however, that in the sphere of practical reality, there is often a *tension* between the need for procedural justice on the one hand and substantive justice on the other. The task of the court is to attempt, as I have pointed out in the preceding paragraph, to *resolve* this tension. There is a *further* task: it is to actually attempt, simultaneously, to *integrate* these two conceptions of justice in order that justice in its fullest orb may shine forth. [emphasis in original]

12 These principles, which have been reiterated by the Court of Appeal and High Court in successive cases,[22] are mentioned here because they are embedded in the Ideals. The Ideals seek justice through the attainment of essential procedural goals. It can no longer be said that justice is merely concerned with the correct application of the law to the facts. While this may be the predominant concern (substantive justice), justice includes additional objectives such as those set out in the Ideals.

13 *Ng Huat Foundations* offers an excellent illustration of the relationship between procedural and substantive justice, and can be prospectively justified under every Ideal set out in Ch 1 r 3. The bank petitioned for the respondent ("R") to be wound up. R applied for a stay of the winding-up proceedings pending its related appeal concerning a decision rejecting its application for a scheme of arrangement with creditors. The High Court disagreed with R's argument that it had a procedural right to a stay.[23] Phang JC took into account the numerous attempts which R had made (including a string of applications over the course of more than a year) to avoid the winding up.[24] It was clear from its previous conduct in the proceedings that R's purpose was to use the

---

21 *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [9].

22 See *Lee Hsien Loong v Singapore Democratic Party* [2008] 1 SLR(R) 757 at [36]–[39], [89] and [122]–[123]; *Ang Sin Hock v Khoo Eng Lim* [2009] 4 SLR(R) 549; *Lee Chee Wei v Tan Hor Peow Victor* [2007] 3 SLR(R) 537 at [82]; *V Nithia v Buthmanaban s/o Vaithilingam* [2015] 5 SLR 1422 at [37]; *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196; *Public Prosecutor v Goldring Timothy Nicholas* [2014] 1 SLR 586 (principles applied to criminal proceedings); and *Perdigao Agroindustrial SA v Barilla GER Fratelli-Societa Per Azioni* [2009] SGHC 210 at [46]. *Cf Edmund Tie & Co (SEA) Pte Ltd v Savills Residential Pte Ltd* [2018] 5 SLR 349, where Choo Han Teck J said:

> It is substantive law and not procedure that occupies the throne, but one must climb the steps of procedure if he is to pluck the crown. Part of the reason law is regarded as a discipline is that solicitors are required to observe procedure, which is an essential part of respecting the law.

23 *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [18].

24 *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [15].

appeal (which was "doomed to fail")[25] to cause further delay in the winding-up proceedings.[26] In deciding against a stay, the learned judge balanced the positions of the parties and declared:[27]

> [W]here legal futility would result, the ostensible grant of procedural justice would, in the balance and scheme of things, result in the exact *opposite* of what was originally desired – in other words, the attainment of *substantive injustice* instead. The balance wheel of justice would, in other words, be diverted from its rightful course and be sent careening into a legal abyss instead. [emphasis in orginal]

14 The balance weighed in favour of the petitioner.[28] The crux of this case is that a party cannot claim that he is entitled to take a step in the proceedings irrespective of the circumstances of the case. The court will determine whether such a step would be consistent with substantive justice and will look at the positions of both parties for this purpose (balance). Furthermore, the court will not allow a party to misuse procedure: "What will not happen, however, will be the continued and unjustified delay that has been based on one technical application after another."[29]

15 The decision in *Ng Huat Foundations* is consistent with the Ideals. The respondent had fair access to justice (Ch 1 r 3(2)(*a*)); it was necessary to avoid further unproductive delay (Ch 1 r 3(2)(*b*)); further work in this case would not have been proportionate to the outcome (Ch 1 r 3(2)(*c*)); prolongation of the proceedings would have wasted court resources (Ch 1 r 3(2)(*d*)) and would not have generated "[f]air and practical results suited to the needs of the parties" (Ch 1 r 3(2)(*e*)).

III. Relationship between the Ideals and identification of an all-encompassing principle

16 As shown in *Ng Huat Foundations*, the Ideals may all operate in unison. Indeed, the word "and" at the end of Ch 1 r 3(2)(*d*) requires a

25 *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [40].

26 In the view of the court in *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [40], this constituted "a blatant abuse of the process of court … this matter has already been delayed for a very substantial period of time".

27 *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [21]

28 *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [16].

29 *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [41]. The court also pointed out that (in the context of the balance of justice) that the respondent may still have his day in court if the liquidator decides to make the appropriate application (at [41]).

conjunctive application of all the Ideals if this is possible. However, whether one or more or all the Ideals apply, and whether an Ideal is to be prioritised over another (on the assumption that the Ideals will not always be consistent with each other on the facts), must depend on the circumstances of the case. For example, it may be necessary to prolong a proceeding in the interest of a fair result suited to the needs of a party (the Ideal in Ch 1 r 3(2)(*e*)) even though this would counter the Ideal of expeditious proceedings (in Ch 1 r 3(2)(*b*)). Conversely, the court might deny the party's application for a specific interlocutory relief (even though he would be entitled to it in law) because the party does not truly need it or that relief would not be practical in the circumstances of the case (the Ideal in Ch 1 r 3(2)(*e*)), nor proportionate to the nature of the case (the Ideal in Ch 1 r 3(2)(*c*)). Again, it may be necessary to add a person as a party to the proceedings in the interest of fair access to justice (the Ideal in Ch 1 r 3(2)(*a*)) even though such a development would extend the scope of the dispute and use more of the court's resources (the Ideal in Ch 1 r 3(2)(*d*)).

17 However, the interaction and synergy of the Ideals would only be optimal if they operate in the context of an all-encompassing or overarching principle. It might be argued that as the attainment of justice is the pre-eminent aim of the legal system, the express formulation of an all-encompassing or overarching principle would be appropriate. The point might also be made that the all-encompassing principle is implied by the word "justice" in Ch 1 r 3(2)(*a*). However, as the full terminology of that paragraph is "fair access to justice", the view might be taken that this Ideal is equally concerned with the accessibility of the rules of procedure to the parties before the court and potential litigants (so that justice may be done).[30] Furthermore, Ch 1 r 3(2)(*a*) is one of the five paragraphs that contain the Ideals and is not singled out as an all-encompassing provision. This position may be compared to r 1.1(1) of the UK Civil Procedure Rules 1998[31] ("CPR") which, until its amendment in 2013, expressed the "overriding objective" as enabling the courts to deal with a case "justly" (the wording since 2013 is "justly and at proportionate cost").[32] Rule 1.1(2) of the CPR goes on to list a series of factors (most of which are similar to the Ideals in Ch 1 r 3(2)) which would enable the court to achieve these aims. The same approach in a different form is engaged in the Hong Kong Rules of the High Court[33] ("HK Rules"). Order 1A r 1 of the HK Rules lists a series of factors

30 See para 22 below on "fair access to justice".

31 SI 1998 No 3132.

32 In 2013, para 1.1(1) of the UK Civil Procedure Rules 1998 (SI 1998 No 3132) was amended to include the concept of proportionality (which was already addressed in para 1.1(2)(c)). The overriding objective in para 1.1(1) is now phrased as "enabling the courts to deal with cases justly and at proportionate cost".

33 LN 152 of 2008.

(referred to as "underlying objectives") that are similar to the Ideals in Ch 1 rr 3(2)(*a*)–3(2)(*e*). Order 1A r 2(2) of the HK Rules then states:

> In giving effect to the underlying objectives of these rules, the Court shall always recognize that the primary aim in exercising the powers of the Court is to secure the just resolution of disputes in accordance with the substantive rights of the parties.

18 In its "Response to Public Consultation on Civil Justice Reforms",[34] the Law Society of Singapore, *inter alia*, took issue with the absence of an "overriding objective": "The absence of an overarching objective of the Ideals does not sufficiently signal to the parties and their counsel the transformative effect envisaged by the proposed RoC."[35] It also expressed its concern that "[b]y not identifying a paramount philosophy behind the Ideals, inconsistent and incoherent interpretations of the proposed RoC may result".[36] The inclusion of an all-encompassing principle would address the points raised in the preceding paragraph and by the Law Society. For example, it could be expressed as follows:

> To achieve the just resolution of the dispute (or any part of it) at any stage of the proceedings through fair, efficient and economical litigation.

19 The singular aim of this all-encompassing principle is the attainment of justice ("just resolution of the dispute"). The terms "fair, efficient and economical" represent the Ideals in Ch 1 rr 3(2)(*a*)–3(2)(*e*). "Fair" connects fair access to justice and fair and practical results suited to the needs of the parties (rr 3(2)(*a*) and 3(2)(*e*)). "Efficient" links with expedition (r 3(2)(*b*)), proportionality (r 3(2)(*c*)) and the proper use of the court's resources (r 3(2)(*d*)). Therefore, the Ideals (or any one or combination of them) have the ultimate objective of securing justice. There are parallels between the proposed all-encompassing principle with O 34A rr 1(1) and 2(2)[37] which enable the court to make any order or give any direction "for the just, expeditious and economical disposal of the cause or matter". The proposed all-encompassing principle would be consistent with the following statement in the Public Consultation on Civil Justice Reforms paper: "The court will be empowered to do what is right and necessary on the facts of the case before it to ensure that

34 The Law Society, "Response to Public Consultation on Civil Justice Reforms" (31 January 2019).

35 The Law Society, "Response to Public Consultation on Civil Justice Reforms" (31 January 2019) at para 3.7.

36 The Law Society, "Response to Public Consultation on Civil Justice Reforms" (31 January 2019) at paras 3.10–3.11.

37 Discussed at para 2 above.

justice is done, provided it is not prohibited from so acting by any written law and its actions are consistent with the ideals."[38]

IV. Effect of the Ideals

20 The Ideals are not mere exhortations to the court, lawyers and parties to attempt to achieve the stated goals. They are fundamental obligations and pre-eminent considerations for the resolution of issues. Hence, Ch 1 r 3(3) states that the court "*shall* seek to achieve the Ideals in all its orders or directions" [emphasis added]. Chapter 1 r 3(4) imposes a duty on the parties "to assist the Court and to conduct their cases in a manner which will help to achieve the Ideals".[39] The operative role of the Ideals is emphasised by the proposed RoC. In the Preamble to the proposed RoC, para 2 states:

> When an action is commenced under these Rules, the Court will conduct proceedings in a manner that will bring the action to a conclusion that is in keeping with the Ideals set out in Chapter 1, Rule 3. All parties are to assist the Court and conduct their cases in a manner that will bring about such a resolution of their actions.

21 Similarly, para 12 of the Preamble declares that the court is to "consider all matters necessary to bring the proceedings to a conclusion in accordance with the Ideals". This is repeated by Ch 7 r 8(1), which states that, at the case conference, the court is to "consider all matters necessary to bring the proceedings to a conclusion in accordance with the Ideals". Chapter 1 r 5(2) of the proposed RoC states:

> Where there is no express provision in these Rules on any matter, the Court may do whatever it considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of the process of the Court, so long as it is not prohibited by law and is consistent with the Ideals.

Furthermore, pursuant to Ch 1 r 5(4)(*e*), the court may "dismiss, stay or set aside any proceedings and give the appropriate judgment or order even though the non-compliance could be compensated by costs if the non-compliance is inconsistent with any of the Ideals in a material way". Particular processes such as discovery and production of documents are

38 Ministry of Law, *Public Consultation on Civil Justice Reforms: Recommendations of the Civil Justice Review Committee and Civil Justice Commission* (26 October 2018) at para 22.

39 The principles governing the duty to assist the court are considered at paras 29–36 below.

expressly governed by the Ideals.[40] Compliance with the Ideals will also have an important bearing on costs.[41]

V. Analysis of the Ideals

A. Fair access to justice

22 The expression "[f]air access to justice" in Ch 1 r 3(2)(*a*) signifies that that the rules of procedure must be applied in a manner that facilitates rather than obstructs substantive justice. Procedures must be fair, just and uncomplicated so that litigants have straightforward and timely access to appropriate and justified reliefs and solutions without having to incur prohibitive costs. In *Sanjeev Sharma s/o Shri Sarvjeet Sharma v Surbhi Ahuja d/o Sh Virendra Kumar Ahuja*,[42] Valerie Thean JC (as she then was) said: "Courts, being tasked with access to justice, are concerned to act in accordance with fair rules, and yet, at the same time, to ensure equitable outcomes for each individual case."[43] In relation to costs, Vinodh Coomeraswamy J stated in *Then Khek Koon v Arjun Permanand Samtani*[44] that "the policy of the procedural law in awarding and quantifying costs is to enhance access to justice for actual and potential litigants". On appeal,[45] Andrew Phang Boon Leong JA observed:[46]

> [I]n all manner of litigation, legal costs are an inevitable expense to both the party bringing the action and the party defending it. It is therefore impossible, at least from a practical standpoint, for an individual's general right of access to the law to be divorced from the rules and principles governing the costs of litigation.

B. Expeditious proceedings

23 Chapter 1 r 3(2)(*b*) prioritises expeditious proceedings. It has often been said that justice that is delayed is justice that is denied. Delayed justice is antithetical to access to justice.[47] In a book published

40 See Ch 8 rr 1(2) and 1(5) of the proposed Rules of Court.
41 See Ch 16 r 11(1)(*a*) of the proposed Rules of Court.
42 [2015] 3 SLR 1056.
43 *Sanjeev Sharma s/o Shri Sarvjeet Sharma v Surbhi Ahuja d/o Sh Virendra Kumar Ahuja* [2015] 3 SLR 1056 at [55].
44 [2014] 1 SLR 245 at [177].
45 *Maryani Sadeli v Arjun Permanand Samtani* [2015] 1 SLR 496.
46 *Maryani Sadeli v Arjun Permanand Samtani* [2015] 1 SLR 496 at [29].
47 See para 22 above.

at the commencement of the 21st century, the following observation was made about the progression of court proceedings:[48]

> It is desirable in any system of litigation for the proceedings to progress at an appropriate pace so that relief, if justifiable, is obtained as soon as possible, and that expense, consumption of time and the other ill-effects of a formal battle are minimised. The answer lies in an ideal balance so that there is a reasonable time in which the parties can prepare and present their cases at the various stages of the proceedings. A more fundamental problem arises out of the traditional mind-set towards the progress of the proceedings and the fact that until very recently the courts have not assumed the responsibility of intervening to control delay. In Singapore, a variety of measures have been introduced affecting the broad spectrum of civil justice including the rules of court, court administration and case management, new procedures and avenues for dispute resolution, and a new judicial philosophy towards the progress of proceedings.

24 Expedition in civil litigation has now been prioritised for almost three decades. Singapore has earned international recognition for its efforts in this sphere. However, expedition for the sake of prompt resolution without any consideration of the other Ideals in Ch 1 r 3(2) which, as already stated, must be read conjunctively, would be contrary to the scheme of the proposed RoC. For example, if the court determines a matter too quickly so that the decision does not yield a "[f]air and practical result suited to the needs of the parties" (pursuant to r 3(2)(*e*)), justice would not be achieved. An expedited outcome may also be disproportionate to the issues in the case (contrary to the Ideal in r 3(2)(*c*)) which justify additional time and attention for the purpose of proper resolution. The priority of reasonable expedition has been emphasised as an objective in civil procedure rules of various jurisdictions.[49]

C. Proportionality

25 Parties should only pursue litigation (or specific proceedings in the course of litigation) or appeals or other procedures if such a step is justified by the issues at stake. Such issues include the amount or value of the claim, the complexity or difficulty of the issues involved, the importance of the matter and the client's financial position and his other concerns. In other words, a procedure or step in the action should not be engaged if the benefit that is sought does not justify the disadvantage or cost of the proceeding. Therefore, civil proceedings must be justified

48 Jeffrey Pinsler, *Civil Justice in Singapore: Developments in the Course of the 20th Century* (Butterworths Asia, 2000) ch 4 ("Introduction").

49 Including the UK, Australia and Hong Kong. The rules in these jurisdictions are considered at paras 17 and 29.

by proportionality as provided by Ch 1 r 3(2)(*c*). The courts have emphasised that the failure to observe the principle of proportionality may result in serious sanctions. In *Lin Jian Wei v Lim Eng Hock Peter*,[50] the Court of Appeal admonished litigants that they cannot assume that they will recover the fees and costs which they pay their lawyers from the losing party if the amount involved for the conduct of the case is disproportionate to the claim. In *Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang*[51] ("*Lam Hwa*"), Sundaresh Menon CJ had this to say concerning the appellant's disproportionate approach in an action brought by the respondent for personal injury sustained at work:[52]

> What was at stake in this appeal was a modest sum of $1,208 in disbursements. There was no dispute as to the reasonableness of the sum either in regard to the cost actually incurred for travel or in relation to the overall size of the claim. Yet, the appellant pursued this matter to this court, notwithstanding that full reasoned grounds had been given by the DJ and the Judge. In so doing, it was the appellant that had incurred and caused the respondent to incur costs *grossly* out of proportion to the sum at stake. There are three aspects to this which concerned us. First, on any basis, we could not see how it could reasonably have been thought to be advisable to pursue an appeal to this court given the amount at stake. Second, if the appellant had reasonably felt that there might be a point of principle to pursue, it was incumbent on it, in light of the disproportionate cost of bringing any appeal, to closely and carefully review the merits in the light of the two written judgments and the applicable authorities and be satisfied that there was *considerable force* in its position before filing and pursuing the appeal with vigour to this court. Thirdly, the amount of material that was advanced in the course of the appeal again had to be proportionate in the light of what was at stake. [emphasis in original]

26 The lawyer also has a critical role to play in ensuring that his work is "cost effective" (as stipulated in Ch 1 r 3(2)(*c*)). This role is connected to his ethical duty to effectively assess the issues and properly evaluate the options in order to determine whether litigation or an appeal is viable and would secure the client's best interests. As r 17(2)(*e*) of the Legal Profession (Professional Conduct) Rules 2015[53] ("LP(PC)R 2015") states, the lawyer "must, in an appropriate case, together with his or her client, evaluate whether any consequence of a matter involving the client justifies the expense of, or the risk involved in, pursuing the

50 [2011] 3 SLR 1052.

51 [2014] 2 SLR 191.

52 *Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang* [2014] 2 SLR 191 at [35]. Also see *Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline* [2008] 2 SLR(R) 455; *Basil Anthony Herman v Premier Security Co-Operative Ltd* [2012] 2 SLR 616; and *Rockwills Trustee Ltd v Wong Meng Hang* [2018] SGHCR 16 at [7]–[9].

53 S 706/2015.

matter". In appraising the case with his client, the lawyer must consider the prospect of settlement through negotiation, mediation or other form of alternative dispute resolution.[54] In *Lam Hwa*, Menon CJ observed that even if the appellant is given leave by the lower courts to appeal at each stage, such leave does not displace the solicitor's duty to properly evaluate the case with the client and make a "risk-benefit evaluation at each significant stage of the proceedings".[55] Reference was made to r 40 of the former Legal Profession (Professional Conduct) Rules 2010 (the predecessor of r 17(2)(*e*) of the LP(PC)R 2015).[56] Furthermore, the lawyer owes a duty to the administration of justice to determine whether it would be in the overall interests of justice to take further steps (such as an appeal) in the litigation.[57]

D. Efficient use of court resources

27 This factor in Ch 1 r 3(2)(*d*) overlaps with the principle of proportionality in the sense that the court will not permit its resources to be unjustifiably sapped. It also promotes access to justice so that it is available to all persons who seek it whether they are already involved in litigation or may be future litigants. The volume of modern litigation means that the court must carefully manage its resources to achieve these objectives. Each case should only use the resources appropriate to it. Unnecessary applications, excessive documentation, raising issues or matters which are not pertinent to the dispute, adjournments, vacation of hearings and unreasonable delay militate against the court's ability to ensure that its resources are properly shared among current and future litigants. Therefore, in *Lam Hwa*, Menon CJ observed that "the appeal not only entailed substantial costs being incurred … but also gave rise to wastage of precious and limited judicial time and resources". And in *Zhou Tong v Public Prosecutor*,[58] V K Rajah JA pointed out that "a solicitor's failure to assist the court adequately would also result in wastage of judicial time and resources, and could even, in some

54 For a further consideration of r 17(2)(*e*) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015), see Jeffrey Pinsler, *The Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing, 2016).

55 *Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang* [2014] 2 SLR 191 at [36] and [40].

56 *Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang* [2014] 2 SLR 191 at [36]. Also see *Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline* [2008] 2 SLR(R) 455 at [46].

57 *Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang* [2014] 2 SLR 191 at [37], [38] and [40]. Also consider the core principles in rr 4(*a*)–4(*c*) and the specific principle in r 9(1)(*a*) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015).

58 [2010] 4 SLR 534 at [2].

instances, result in miscarriages of justice". Pro-active case management is the key to achieving efficiency in use of court resources.

E. Fair and practical results suited to the needs of the parties

28 This ideal in Ch 1 r 3(2)(*e*) does not promise the litigant that he will be completely satisfied by the outcome of the case. However, it does assure him that the adjudication process will address his needs and provide a "fair" result. The word "practical" in this Ideal suggests that the court will endeavour to resolve the case in a meaningful way and sometimes beyond the rigour of a procedural rule. The judicial capacity to do so is supported by ample power given to the court by such rules as Ch 1 rr 5(1)–5(3). It should not be assumed that the need of the party is only to be viewed from the party's perspective. It is possible that the court may disagree with the party's contention that he needs to avail himself of a procedure or that he should be granted a specific relief. In these circumstances, it is the court's view of the situation which would determine the matter. For example, if the party wishes to file a further affidavit with the leave of the court (having filed previous affidavits), it is quite possible that the court may consider that such a step would not meet his needs (because the affidavit would not materially add to the evidence in the preceding affidavits) in the light of the issues. In such circumstances, the affidavit would be contrary to Ch 1 r 3(2)(*c*) (because the affidavit would not constitute "cost effective work" that is proportionate to the case) and Ch 1 r 3(2)(*b*) (because the affidavit would cause unnecessary delay) and Ch 1 r 3(2)(*d*) (the affidavit would inappropriately use the court's resources).

VI. Duty to assist the court in achieving the Ideals

29 Chapter 1 r 3(4) of the proposed RoC states: "All parties have the duty to assist the Court and to conduct their cases in a manner which will help to achieve the Ideals." Moreover, lawyers are ethically bound to assist in the administration of justice which includes compliance with the Ideals.[59] Adversarial tradition dictates that litigants are required to present their cases truthfully and to comply with the rules of evidence and procedure. Chapter 1 r 3(4) does not require the parties to *positively* assist each other in the presentation of their cases in the absence of any evidential, procedural or ethical requirement that they do so.[60] However, they must comply with the Ideals even if by doing

59 Consider the core principles in rr 4(*a*)–4(*c*) and the specific principles in r 9(1) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015).

60 For an example of an English case on this issue, see *SARPD Oil International Ltd v Addax Energy SA* [2016] EWCA Civ 120; [2016] CP Rep 24.

so they may compromise their own cases. For example, a relatively wealthy party is not entitled to use his position to take advantage of his opponent by forcing the latter to engage in costly procedures that are not justified by the principles of fair access to justice, proportionality, efficient use of court resources and/or need. The duty to assist the court is not unique to the proposed RoC as it appears in the civil procedure rules of other jurisdictions including r 1.3 of the UK CPR, s 56(3) of the New South Wales Civil Procedure Act 2005 ("NSW CPA") and O 1A r 3 of the HK Rules. It is submitted that the purpose of Ch 1 r 3(4) is to ensure that the parties comply with all their legal and procedural obligations, do not take improper advantage of each other,[61] respond in good faith to all the court's requests for information and any questions that it may have for clarification of the issues, and co-operate with the court and the other parties in accordance with the rules.

30 In the course of delivering his speech at the Singapore Academy of Law Lecture 2018,[62] the Honourable the Chief Justice Sundaresh Menon, when discussing "honour", referred, *inter alia*, to an account of a defence lawyer's unwillingness to refrain from objecting to a defect in a criminal charge despite the instructing solicitor's exhortation that if no objection were taken, a resulting conviction might be set aside on appeal as a result of that defect. The lawyer justified his position by saying: "We are officers of the court. Our duty is to assist, not to mislead."[63] This principle of not raising a procedural irregularity before an appellate court if it could have been brought to the attention of the lower court is embedded in the procedural duty of co-operation with the court pursuant to Ch 1 r 3(4) of the proposed RoC and affirmed by the ethical rule in r 9(4) of the LP(PC)R 2015.[64]

---

61 For examples of English cases involving such an issue, see *Chilton v Surrey County Council* [1999] CPLR 525 and *Hertsmere Primary Care Trust v Estate of Balasubramanium Rabindra-Anandh* [2005] EWHC 320 (Ch); [2005] 3 All ER 274.

62 See the Honourable the Chief Justice Sundaresh Menon, "Singapore Academy of Law Lecture 2018 – An Essential Dedication to Honour and Service" (2019) 31 SAcLJ 1.

63 The Honourable the Chief Justice Sundaresh Menon, "Singapore Academy of Law Lecture 2018 – An Essential Dedication to Honour and Service" (2019) 31 SAcLJ 1 at [39], referring to David Marshall, "Some Thoughts on Legal Ethics" (1986) 6 Sing LR 79 at 82.

64 Rule 9(4) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) states:

> A legal practitioner must not raise as a ground of appeal any procedural irregularity in any proceedings before a court or tribunal, if the legal practitioner could have brought that procedural irregularity to the attention of the court or tribunal during those proceedings but failed, without reasonable justification, to do so.

31 Personal issues between parties or between lawyers must not obstruct the Ideals. Lawyers must not permit any personal animosity between them or their clients to compromise their responsibility to assist the court. The following observation of the Court of Appeal in *Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline*[65] concerning the conduct of lawyers would apply to parties who "use their lawyers" to express their hostility:

> [W]hat would otherwise have been a routine court-mediated settlement escalated into a titanic struggle for vindication by each party's counsel without regard for the costs involved. Indeed, in their ensuing contest of wills, counsel completely subverted the *raison d'être* of the CDR process, with no regard at all for the interests of their respective clients and the public interest in not wasting public resources for private gain.

32 As is evident from this passage, all the Ideals in Ch 1 r 3(2) are compromised. The phrase "use their lawyers" in the preceding paragraph raises another important point which was focused on by the Court of Appeal in *BOI v BOJ*[66] ("*BOI*"). Andrew Phang Boon Leong JA stated:[67]

> 3 … counsel are not the mere 'mouthpieces' of their clients. They are not mere automatons, executing every instruction of the client, especially where the client wants each and every point to be taken in order to inflict maximum 'damage' on the other party, and where the taking of such points is – in a word – pointless and would not only engender a wastage of the other party's, but also the court's, time and resources. There is a reason why lawyers are also known as 'counsel' – in such situations, lawyers must *counsel* their clients and apprise them of what is permissible and what is not. We operate within an adversarial system.
>
> …
>
> 139 We would like to conclude much as we began. First, as we emphasised right at the outset of this judgment (at [3] above), counsel are not the mere 'mouthpieces' of their clients. They have to be especially aware of this in family proceedings (such as the present) because such proceedings are frequently driven by emotional and even bitter clients. To the extent that they do not counsel (and/or even, if necessary, admonish) their clients and scrupulously observe their duty to the court, lawyers fail to live up to their calling as members of a profession whose hallmarks are honour and justice.
>
> [emphasis in original]

65 [2008] 2 SLR(R) 455 at [41].
66 [2018] 2 SLR 1156.
67 *BOI v BOJ* [2018] 2 SLR 1156 at [3] and [139].

33 *BOI* involved, *inter alia*, an application for recusal on the basis of "apparent bias". In upholding the dismissal of the application, Phang JA concluded his judgment by stating:[68]

> [W]e cannot emphasise enough how extremely serious allegations of judicial bias are. Indeed, such allegations can be utilised not only as a weapon of abuse by disgruntled litigants but also waste valuable court time and resources in the process. We would imagine that, by their very nature, such allegations would be rare in the extreme. Should such proceedings arise before the court in the future and be found to be unmeritorious, there may be serious consequences.

34 Although Ch 1 r 3(4) does not expressly cover lawyers (unlike the position in some other countries),[69] there can be no doubt that they have the duty (as officers of the court) to assist in the administration of justice.[70] Apart from the general principles in rr 4(*a*)–4(*c*) of the LP(PC)R 2015, r 9(1)(*a*) of the LP(PC)R 2015 specifically declares this duty (in addition to the duty to act honourably). Rule 9(1)(*b*) demands that the lawyer's work upholds the integrity of the court and proceedings and that his work "will contribute to the attainment of justice". The lawyer must maintain "the fairness, integrity and efficiency" of the proceedings (r 9(1)(*e*)) and comply with all applicable legal rules (r 9(1)(*f*)).

35 Lawyers also have a responsibility to act reasonably in controlling their clients' conduct. Rule 10(*a*) of the LP(PC)R 2015 states:

> A legal practitioner's duty to assist in the administration of justice includes a responsibility, commensurate with the amount of control the legal practitioner has over his or her client, to prevent the client from misleading a court or tribunal in any manner and from otherwise acting improperly.

Rule 10(2) states, *inter alia*, that the lawyer must inform the client of the client's responsibilities to the court or tribunal and "to comply with every legal requirement concerning the conduct and presentation of the client's case". This means that the lawyer must inform the client of "his duty to assist the Court and to conduct their cases in a manner which will help to achieve the Ideals" pursuant to Ch 1 r 3(4) of the proposed RoC. A failure to do this may result in disciplinary proceedings against the lawyer.

---

68 *BOI v BOJ* [2018] 2 SLR 1156 at [141].

69 For example, the responsibility of lawyers is expressly stated in s 56(4)(*a*) of the New South Wales Civil Procedure Act 2005 and O 1A r 3 of the Hong Kong Rules of the High Court (LN 152 of 2008).

70 See *Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang* [2014] 2 SLR 191 and para 26 above.

36 The question arises as to whether a person related to the party (such as a person who funds and/or controls the litigation) has any responsibility to assist the court. No mention of such a person is made in Ch 1 r 3(4). Section 56(4) read with s 56(6) of the NSW CPA prevent a non-party with "a relevant interest"[71] in the proceedings from causing the actual party to be put in breach of any of the objectives. It is submitted that the Singapore court should adopt a purposive approach so that where the non-party can be said to be the "true party", he would be bound by the duty in Ch 1 r 3(4) as if he were the actual party. Otherwise, the Ideals could be defeated by the argument that the controlling non-party is not a party within the meaning of "party" in Ch 1 r 3(4).

VII. Relationship between the Ideals and pre-established case law principles

37 The interaction and synergy of the Ideals has been discussed.[72] A related issue of importance is how the courts will apply the Ideals in the face of pre-established case law principles. The answer must be that where the case law principles conflict or are inconsistent with one or more of the Ideals or a rule of the proposed RoC, the court will have to modify and adapt the pre-existing principle. For example, in many cases, the courts have permitted an amendment of a pleading if it would not cause prejudice to the opponent and the latter can be compensated in costs. Applications have even been permitted after trial.[73] In deciding whether to grant an application for an amendment of a pleading under the proposed RoC, the court will need to consider all the Ideals; in particular, whether the amendment is consistent with the Ideal of "expeditious proceedings" (Ch 1 r 3(2)(b)), proportionate, cost-effective work (Ch 1 r 3(2)(*c*)), efficient use of court resources (Ch 1 r 3(2)(*d*)) and whether the amendment would generate a fair and practical result suited to the needs of the parties (Ch 1 r 3(2)(*e*)).[74] Some indication is

71 This phrase includes a person who finances the litigation or provides any other assistance to the party and exercises direct or indirect control or has any influence over the conduct of the proceedings or the conduct of the party over the proceedings (s 56(6) of the New South Wales Civil Procedure Act 2005).

72 See paras 7 and 17 above.

73 In *Geocon Piling & Engineering Pte Ltd v Multistar Holdings Ltd* [2015] 3 SLR 1213, in which an application for leave to amend a statement of claim was made after the trial and after the parties had exchanged their closing submissions (but prior to the oral closing submissions). The High Court applied the principles set out in *Chwee Kin Keong v Digilandmall.com Pte Ltd* [2004] 2 SLR(R) 594 at [84]–[88] to the effect that the court may grant leave to amend a pleading after closing submissions if it is just to do so and any ensuing prejudice can be compensated by an order as to costs.

74 See also para 28 above.

given by Ch 7 r 13(3) of the proposed RoC of what the court's likely approach will be: "The Court shall not allow any pleading to be amended within 14 days before the commencement of the trial except in a special case." This paragraph rules out any amendment beyond the time limit unless the circumstances are exceptional enough to justify it.

38 Chapter 1 r 5(4)(*e*) of the proposed RoC also moderates the long-established view of the common law that the court should be indulgent if the order sought from it would not prejudice the opponent and he can be compensated in costs. That provision states in respect of procedural irregularity that the court may "dismiss, stay or set aside any proceedings and give the appropriate judgment or order *even though the non-compliance could be compensated by costs* if the non-compliance is inconsistent with any of the Ideals in a material way" [emphasis added]. The word "material" suggests that the court must consider the degree to which an Ideal has been infringed. Therefore, if the effect of an amendment would be to cause only limited delay and would not significantly impact upon the court's resources but is significant enough in proportion to the issues (that is, it would be just), and would lead to a fair and practical result that meets the needs of the applicant, one may expect that it would be granted. It should also be said that although "prejudice" is not mentioned in the Ideals, this would be taken into account by the word "fair" in Ch 1 r 3(2)(*e*) of the proposed RoC. If prejudice results, this Ideal would be compromised. However, prejudice is not a conclusive requirement under the Ideals but a factor that is to be considered. The traditional dualistic trend of considering compensation against prejudice gives way under the proposed RoC to a new multifactorial approach represented by the Ideals.

VIII. Conclusion

39 The Ideals should be hailed for their significance in expressly prioritising the primary objectives of civil procedure. These paramount principles will enable the court and the parties to focus on the important concerns of their case. Their efficacy will depend on how they are interpreted and applied to the myriad of different factual situations faced by the courts and lawyers on a daily basis. The Ideals will certainly require a shift in approach by the courts and a different mindset on the part of litigants and their lawyers. Civil procedure and its relationship with substantive justice must evolve to meet the ever-increasing demands of litigants on the resources of the legal system. The "ideal"

outcome of an action is one that is both substantively and procedurally just so that "justice in its fullest orb may shine forth".[75]

75 See para 11 above.