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For *The Straits Times*

In a recent parliamentary speech, Dr Tan Wu Meng (Jurong GRC) rightly highlighted the need for a “deep dive” into the continuing obstacles facing those wanting to represent themselves in family proceedings. He said this should include the need to streamline processes and additional, presumably easier and more effective, enforcement mechanisms.

In response, Minister for Culture, Community and Youth and Second Minister for Law Edwin Tong agreed that family proceedings could be challenging for some litigants in person, as they are known in legal parlance. He mentioned that efforts had been made to implement simplified divorce tracks, and to strengthen enforcement of maintenance orders, though more would continue to be done to ensure fair and just outcomes for litigants.

Like in other countries, data shows that there is a high proportion of litigants in person in the courts in Singapore. Almost all complainants (98 per cent) and respondents (100 per cent) in family maintenance applications were not represented based on data from the Family Justice Courts between 2015 and 2018. In divorce cases, a high number of petitioners/plaintiffs (more than 90 per cent) but only a quarter or even fewer respondents were represented in civil cases, the proportion of litigants in person are much lower, although statistics from both the State Court and the Supreme Court show that they remain a significant presence.

In a just legal system, every party to a lawsuit must have the right to present their interests and have them carefully considered. But, in adversarial systems like ours in Singapore, the right to access justice typically involves lawyers. As Chief Justice Sundaresh Menon observed in a 2014 speech, our adversarial system presumes that each party is “represented by advocates who advance their clients’ case with full vigour”. Accordingly, the judge’s role is more of a referee than “a director of the proceedings”.

In this context, how do we understand the position of those who represent themselves? The law is clear that every person has the right to do so but it is not difficult to imagine that when one or more parties are not represented by legal counsel in such a system, an imbalance is created.

NAVIGATING A LEGAL LABYRINTH

Most litigants are untrained in the law, and if they proceed without a lawyer, they find court processes, rules of procedure and evidence, and substantive law, daunting. Our research, which included in-depth interviews with litigants in person in Singapore, confirms that navigating court processes can be a highly stressful experience, exacerbated further when the stakes are personally high for litigants in person.

Litigants in person often have to familiarise themselves with the ins and outs of the law in a short period of time, sometimes with the added stress of knowing that it

Rebalancing the scales to enhance access to justice for the layman

Some questions to consider as Singapore continues to lift the barriers, including making it easier for people to represent themselves in legal proceedings.



The Supreme Court in Singapore. As litigants in person will continue to be a permanent presence in the legal system, perhaps increasingly so, say the writers, it is imperative that we view litigants in person as rightful participants of the system, and see that their engagement with the system, at great cost to themselves, reflects their belief in the justice of the Singapore legal system, which is a valuable thing indeed. ST FILE PHOTO

could have a significant impact on family or finances. We found that they specifically encountered difficulties such as issues with legal language and comprehension of legal concepts, costs, lack of help, lack of time, and other resource constraints. At the same time, they reported a range of negative feelings including fatigue, embarrassment, fear, anxiety, stress, frustration, anger, and desperation. Some reported feeling that they were pushed to the edge, and others, a sense of unfairness.

Singapore has made numerous advances to support litigants in person. Several tribunals obviate the need for lawyers, from the Small Claims Tribunals (established in 1985), to the more recent Community Justice

Tribunal and the Employment Claims Tribunal. These venues are able to use simplified processes which allow litigants to represent themselves to resolve their legal issues.

Furthermore, the Courts (Civil and Criminal Justice) Reform Act (2021) reduced legalese in Singapore statutes and made language more accessible to lay persons. For example, the term “plaintiff” was replaced with the word “claimant”, and “subpoena” with “order to attend court”. These changes substitute legal jargon with terms lay persons are more likely to comprehend, supporting increased understanding of the law by unrepresented persons.

Other changes are afoot, such as allowing third parties to file civil proceedings on a victim’s behalf in

the newly set-up Protection from Harassment Courts. In addition, more resources have also been made available to litigants in person, with information on substantive laws and legal processes now easily accessible online: The Community Justice Centre, a community partnership with public sector support, provides legal as well as social support from their offices in the State Court.

IMPACT ON THE LEGAL ECOSYSTEM

These incremental changes are necessary to enhance access to justice, but they can also be understood as moving towards a fundamental transformation of the legal system. This requires, as we proposed, that policy be

analysed from the perspective of a legal ecosystem. Transformative changes to the system can improve access to justice for litigants in person, as well as benefit other actors in this ecosystem – lawyers and courts, including court staff. We raise three points here for consideration.

The first is to consider the extent to which efforts to enhance access for litigants in person will encourage more people to represent themselves, even in non-tribunal cases.

Our research indicates that they are encouraged by what they consider to be the increasing openness of the courts as well as the availability of legal information for laypersons.

Secondly, there is a need to carefully assess how litigants in

person impact other participants in the system, especially if the legal system moves towards a less adversarial model.

Under the current adversarial system, judges are called to play the role of a neutral arbiter. However, to mitigate the imbalance of knowledge and power when such a litigant in person faces off with a represented party, judges may find themselves having to help the litigants in person a little more which the represented party could possibly see as unfair.

This requires a delicate balancing. There is a need to better inform the public and lay litigants on how our adversarial system constrains both judges (and lawyers), while, at the same time, consider changes that could better ensure fairness.

Thirdly, because the presence of litigants in person impacts lawyers and the clients they represent, there is a need for clearer “relational norms”. Official guidelines in layperson language can be used by lawyers to explain to their clients what rules and obligations the lawyer may have to follow when the other party is not represented. Making the rules and limits of engagement clear to all parties, including litigants in person, could ensure that expectations of all parties are better managed and the system functions more effectively.

For instance, in England and Wales, the Bar Council, the Chartered Institute of Legal Executives and the Law Society issued joint guidelines in 2015 that offer practical advice to lawyers on handling cases where a party is not represented. The guidelines contain helpful explanatory notes which explain the lawyer’s role to litigants in person and to clients, and also point out that the “court is obliged to afford procedural fairness to all parties, whether represented or appearing in person, and duty to the court extends to providing appropriate assistance accordingly”. The client is thus informed that while the lawyer has duties to them as a client, the lawyer also has “a professional duty to the court and the administration of justice”. Guidance of this nature could help lawyers to better avoid professional conflicts of interests and manage their clients’ expectations.

There is a need to squarely face the possibility that even the best efforts to facilitate access for litigants in person have a limit, because there are core aspects of the legal system that cannot be simplified beyond a certain point.

But as litigants in person will continue to be a permanent presence in the legal system, perhaps increasingly so, it is imperative that we view litigants in person as rightful participants of the legal system, and see that their engagement with the legal system, at great cost to themselves, reflects their belief in the justice of the Singapore legal system, which is a valuable thing indeed.

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