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The Law Society has come a long, long way from its inception in 1967. This golden jubilee is a year that we will understandably feel both nostalgic and celebratory. I gave a snapshot of our history in my OLY speech.

A different “snapshot” of history awaits in this final message of the year. Essentially, this is a lighter, brief narrative and pictorial history of some of the best of the past. This is no “Fiat Justitia”! Instead, a summary narrative with visual highlights.

Soren Kierkegaard wrote “Life can only be understood backwards; but it must be lived forwards.” We need to “Go Back” to “Go Forward” into the future.

And so to understand better, let me touch briefly on 5 Ps that have punctuated our history. Publications, Professional Development, Premises, Pro Bono and last but certainly not least, People.

**Publications**

Particularly poignant for this December 2017 issue. The last printed version of the Singapore Law Gazette before we fully go online. Our monthly publication cover was called “The Law Society’s Journal” in the 1980s.

To stay alive and be relevant, we need to upgrade, retool and uplift our competencies.

The Biennial Lecture was a keynote event introduced during former President Philip Jeyaretnam SC’s watch. We were treated to the Attorney-General’s

**Professional Development**

A silver jubilee ago, in July-August 1992, our journal was christened the *Singapore Law Gazette*. Those having in your hands a copy of the first SLG cover will remember that the late Joseph Grimberg SC was specially profiled in that edition.

A decade back when I was serving as Chair of the Publications Committee, we celebrated our 40th anniversary. Below is the unique SLG cover featuring pixelated photographs of 40-year old legal practitioners. Many of them hail from the NUS Graduating Class of 1992 that I am a proud part of. The same group celebrated a major milestone birthday this year. Fifty years. Their own golden jubilee!

Publications are not only about the monthly journal or gazette. Older practitioners fondly remember the printed Law Society Directory. A useful resource that contained *inter alia*, admission dates of practitioners, contact numbers and useful information such as the language proficiency of Commissioners of Oaths.

Feedback from members during the AGM impelled us to upload on the Law Society’s website (under “Find a Lawyer”) a virtual listing of lawyers with some salient non-confidential information. E.g. this aide memoire will enable one to quickly know the seniority of lawyer-members of the Society - a question that popped up in this year’s AGM!

**5 Ps from the Past 5 Decades**

**Professional Development**

To stay alive and be relevant, we need to upgrade, retool and uplift our competencies.

The Biennial Lecture was a keynote event introduced during former President Philip Jeyaretnam SC’s watch. We were treated to the Attorney-General’s
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**The Singapore Law Gazette**

An Official Publication of The Law Society of Singapore

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Rajah & Tann Singapore is a leading full service law firm in Singapore and one of the largest in South East Asia. Our firm has been at the leading edge of law in Asia, having worked on many of the biggest and highest profile cases in the region. Rajah & Tann Singapore is a member firm of Rajah & Tann Asia, one of the largest regional networks that brings together leading law firms and over 600 lawyers in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand, Philippines and Vietnam. The firm also has Singapore-based regional desks focusing on Japan and South Asia.

Rajah & Tann Singapore clinched the “Singapore National Law Firm of the Year” award for the third time at Chambers Asia Pacific Awards 2017. This makes us the only Singapore firm who has won the title thrice since the inception of the Awards in 2012. The firm also won the coveted “Most Innovative Law Firm in ASEAN” award at the Financial Times’ Asia Pacific Innovative Awards 2016.

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Rajah & Tann Singapore is looking for individuals with post-qualification experience in the relevant practice area, good grounding in legal knowledge and drafting skills, initiative, drive, commercial acumen and good communication skills to fill the following roles:

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(III) Commercial Litigation – Associate / Senior Associate
(IV) Construction & Projects, Energy & Resources – Associate
(V) Corporate – Associate / Associate (Professional Support)
(VI) Corporate Real Estate – Associate / Senior Associate / Partner
(VII) Financial Institutions – Associate / Senior Associate
(VIII) Funds & Investment Management – Associate / Associate (Professional Support)
(IX) Intellectual Property – Senior Associate / Partner

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of England, Lord Peter Goldsmith delivering the Biennial Lecture in 2009. It got better – doubly better to precise – during SG50 in 2015. We were privileged to have Singapore’s Ambassador at Large Professor Tommy Koh delivering the Biennial Lecture.

Our CPD Day is well-loved, massively attended, priced very reasonably and offers strong value for money. It remains a practical, value-added way for lawyers of every seniority to earn their CPD points.

**Pro Bono**

Much of what is virtuous about our profession is strongly tied in with *Pro Bono*. This is exemplified by various flagship awareness events.

For instance, two charity walks organised by the Law Society over the years most recently, Just Walk in 2015. Last year’s flagship fundraiser, the Just Sing event was chaired by outgoing Treasurer, Dinesh Dhillon. This year’s Just Jubilee, Law Society Pro Bono Services’ law carnival cum fundraiser, was chaired by incoming Treasurer, Tito Isaac.

A feather in the cap for *pro bono* outreach is our legal clinics. A linchpin of our outreach, it functions as an invaluable first port of call. Litigants in person often receive a road map on practical legal options as a guide for the way forward in their case. The genesis of the legal clinics is a weekend from 5 to 7 March 1994 at the Raffles City Atrium. Many Law Society volunteers served in that historic legal clinic. Below is a picture of the opening of the Law Awareness Weekend by BG George Yeo. Law Awareness Weekend has since become Law Awareness Week!

**Premises**

The historic official opening of the Law Society Office at 39, South Bridge Road on 18 September 1999 saw the former Law Society Presidents as Guests of Honour. It took the vision and persuasion of Mr Chandra Mohan K Nair, former Law Society President to make our dream a reality.

A lovely night shot of 39, SBR. You can now understand why some older members are sentimentally attached to our present premises!

One of the iconic features of the Law Society premises was the Jus Curio Shop housed in it. Do continue to savour the curiosities and sample its souvenirs found as long as stocks last!

**People**

In the final analysis, the profession is all about people. If you look closely at the List of Practitioners 50 years ago, you will see the following familiar names:

Nazir Ahmad Mallal and Mohamed Javad Namazie (Mallal & Namazie), Chye Cheng Tan or CC Tan as we know him better (Tan Rajah & Cheah), Ong Tiang Wee (also known as T.W. Ong) (Laycock & Ong), Frederick Bernard Oehlers (Oehlers & Co.), David Saul Marshall, Wee Eng Lock (Wee
President’s Message

Swee Teow & Co.), Rodney Stephen Boswell (Boswell, Hsieh & Lim) and Thomas George Dunbar (Murphy & Dunbar).

We cannot downplay the power of sports. Council 2017 inaugurated “The Sports Personality of the Year” Award. The winning of the Judges’ Cup this year was especially sweet in a golden jubilee year.

The Secretariat, as my predecessor Thio Shen Yi SC pithily said, are both institutional memory and nerve centre. It is a continuing privilege and joy to work with staff whose spirit and sinew exemplifies service and stewardship at its best.

It is indeed the people who evoke the emotional memories for us. They made our Society what it is today. Here are some past staff personalities:

Emanuel Albuquerque was the secretary to the predecessor Bar Committee in 1962.

The Society’s first Executive Secretary, Patrick Nathan was appointed in 1983.

And who can forget larger than life Uncle Choo with the tales he would regale us with!

Sadly, we lost one of the pillars of our Law Society Secretariat this year. The late Ambika Rajendram was a font of wisdom and an invaluable guiding hand behind the scenes. Ambika’s sacrificial service is the legacy she has passed on to her Secretariat colleagues and lawyer-leaders of the Society. It is that same spirit that continues to inspire us today.

May we as a legal profession continue to learn from the past, stay grounded and blessed by the relationships we have in the Bar at present and be filled with hope for a brighter future that we share together as a Law Society community.

Have a great year end holiday and fresh new 2018 filled with hope and purpose for what lies ahead after the 50th Anniversary!

(Derived in part from the 2017 Law Society AGM Message)

Gregory Vijayendran
President
The Law Society of Singapore

We took the opportunity this year to honour our pioneers in practice. We tracked 5 lawyers who practised for 50 years: Andrew Ee Chong Nam, Foo See Juan, May Oh Buong Yu @ May Lau Buong Yu, Micheal Teo Swee Eng and V Ramakrishnan. Two of them (Andrew Ee and V Ramakrishnan) attended the launch of our Golden Jubilee event this year. They were honoured with a certificate. Andrew was interviewed for our special commemorative 50th anniversary issue of the Singapore Law Gazette in May. V Ramakrishnan was acknowledged during our Golden Jubilee Ball. Their examples of perseverance in practice motivate us all to stay the course.

For those called in the old Supreme Court building, an iconic photograph during Mass Call would typically be taken of the cohort en masse at the steps of that majestic building facing the Padang. Here is the 2002 photo of the newly called lawyers:

(Derived in part from the 2017 Law Society AGM Message)
Dear Members,

This is the last print edition of the Singapore Law Gazette. The Gazette was first published in 1992 and for 25 years, neither the Law Society nor the members have had to fund the publication costs. However, that era has come to an end with this issue as we move to the online version of the Gazette with a makeover.

I would like to take the opportunity to thank the Publications Committees over the years, our long-serving Publications Director Ms Sharmaine Lau and her team, as well as the contributors of the Gazette articles for their tireless efforts and the readers for your unceasing support.

As we come to the close of 2017, I would like to give members a quick recap of the Law Society’s activities for the year.

1 **Law Society’s 50th Anniversary Celebrations**

The Law Society celebrated our Golden Jubilee in February 2017 with the unveiling of a logo specially designed for the occasion and the revamp of our website. Red packets bearing the Law Society logo were distributed to members during the Chinese New Year period. Later in the year, collar pins of the 50th anniversary logo as well as Ezlink cards printed with the 50th anniversary logo and containing $5 load value each were distributed to members to mark our 50th anniversary.

In May 2017, the Law Society published a commemorative 50th anniversary issue of the Singapore Law Gazette, giving the reader a front-row view of the last 50 years of Singapore’s rich legal history, as told by the lawyers involved in some of the cases.

“Just Jubilee”, a fun-filled carnival suitable for all ages which was held on 7 October at the NUS Bukit Timah Campus, Upper Quadrangle, is our marquee fundraising event to celebrate the Law Society’s 50th anniversary as well as the 10th anniversary of our pro bono efforts.

Fiat Justitia, our 50th anniversary coffee table book was launched at our Dinner and Dance (“D&D”) on 10 November which saw a record turnout of close to 600 members. I would like to express our gratitude to our law firms and members who donated generously towards the publication costs of the book and the sponsors of the D&D – American Express (platinum sponsor), Law in Order (gold sponsor), Maserati, Fujixerox and DTI/EQIP.

2 **Search for New Premises**

An EGM was held on 4 September 2017 and a resolution was passed authorising Council to purchase new additional...
premises for the general use and benefit of the Law Society and its members at an outlay of up to S$15.5 million. We are currently searching actively for appropriate premises to serve members better.

3 Incorporating Law Society Pro Bono Services (“LSPBS”) as a Subsidiary

The Law Society has established its first wholly-owned subsidiary, known as the Law Society Pro Bono Services Ltd (“LSPBS”). While the Society previously provided pro bono legal aid through the Pro Bono Services Office (“PBSO”), all of PBSO’s activities were transferred to LSPBS with effect from 1 April 2017. Setting up LSPBS as a subsidiary will facilitate the distinct branding of the Law Society’s access-to-justice initiatives, through a clearer separation from the Law Society’s other core functions of regulation, representation and law reform.

4 One-stop Helpline for Pastoral Care – 6530 0213

As part of its efforts to enhance pastoral care for members, the Law Society launched a new members’ helpline in March 2017. The “Members’ Assistance and Care Helpline” (“MACH”) provides members with a one-stop forum for help with ethical issues or any problems which affect their work. Members will be referred to the appropriate Law Society scheme, or to the committee dealing with ethical issues.

5 Technology Adoption

We launched three schemes in March 2017 to encourage more law practices to embrace technology:

a. **Tech Start for Law:** This programme was launched together with the Ministry of Law and SPRING Singapore on 1 March 2017. Singapore law practices looking to adopt technology to improve their productivity will receive funding support of up to 70% of the first-year’s cost for technology products in practice management, online research and online marketing. We received 105 applications as of 1 December 2017. The scheme will end on 28 February 2018.

b. **SmartLaw Assist:** SmartLaw Assist offered subsidies for legal research tools which are not covered by the Tech Start for Law. In partnership with our professional indemnity insurer brokers Lockton, we used the Law Society’s Education Fund to subsidise 70% of the first-year subscription costs of an online knowledge database from Singapore Academy of Law, Lexis Nexis or Thomson Reuters for at least one user. This scheme ended on 30 June 2017 and we received 82 applications.

c. **SmartLaw Certification:** This certification scheme aims to recognise law practices which have adopted technology to improve productivity and increase business capabilities. Law practices which have (1) adopted a practice management or accounting software, (2) an online knowledge database, and (3) have an online presence (whether through a marketing portal or their own dedicated website) will be able to display a “SmartLaw” logo on their websites and marketing materials.

6 Expansion of Mandatory Continuing Professional Development (“CPD”)

In January 2017, the Mandatory CPD scheme was expanded to cover all lawyers, including those with 15 or more years of practice experience and foreign lawyers registered to practise Singapore law. The Law Society stepped up to provide a wider range of offerings for our members looking to fulfil their CPD requirements while keeping down the costs for many of our seminars and conferences. We organised the Litigation Conference (20 & 21 April 2017), the Future Lawyering Conference (20 & 21 July 2017), the 3rd Regional Insolvency Conference (24 & 25 August 2017) and CPD Day (31 October & 1 November) and will continue to organise a wide range of seminars and conferences in the new year.

7 Launch of Law Society Mediation Scheme (“LSMS”)

The Law Society’s Mediation Scheme (“LSMS”) was soft-launched on 31 October 2016 and officially launched on 10 March 2017 by Chief Justice Sundaresh Menon. The LSMS provides a cost-effective and timely dispute resolution mechanism as an alternative to litigation or arbitration and complements the existing Law Society Arbitration Scheme (“LSAS”). As of 1 December 2017, we handled 7 LSMS cases.
Young Lawyers’ Task Force Report Summary

Genesis

In 2016, Council commissioned the Young Lawyers’ Task Force ("YLTF") to study ways in which the professional training and the professional lives of young lawyers could be elevated. This culminated in a report formally adopted by Council in 2017 ("the YLTF Report"). Council members Paul Tan and Yeo Chuan Tat initiated and led the effort, with the support of then-Council President Thio Shen Yi, SC.

This summary is not intended to be an exhaustive treatment of all the findings and recommendations of the YLTF Report – perusal of the full report at the Society’s website <www.lawsociety.org.sg> (under For Lawyers > Members Library > Practice Matters > Committee Reports) is highly recommended.

Methodology

The YLTF identified various aspects of a young lawyer’s career, ran focus groups with young lawyers to tap on their opinions and insight regarding these aspects, and made recommendations based on their findings.

A Selection of Findings and Recommendations

(1) The Training Contract

The focus groups suggested that many young lawyers desired (a) more interaction with their mentors; (b) a more ‘structured’ and directed training programme; (c) more meaningful rotation between practice groups, especially when young lawyers could be uncertain about their preferred areas of practice.

Some key recommendations of the YLTF Report in this area were to:

1. Increase the training period to one year, but with a concomitant recommendation to allow firms to charge out for trainees in order to support a more significant allowance or salary for this extended period;
2. Allow trainees to appear in court with supervisors in attendance after 6 months of training;
3. Give trainees a meaningful opportunity of at least 3 months to work in a department or group different from their primary group;
4. Introduce a second band of supervising solicitors comprising more junior lawyers to provide further avenues for training and mentorship;
5. Pro bono involvement should be encouraged and be a key component of a trainee’s learning.

(2) In-house Training Within Firms

Young lawyers also expressed a desire for a more structured training curriculum within their firms, particularly
to include competencies (skills training) and also soft-skills training (e.g. marketing and business development, stress management).

Some key recommendations of the YLTF in this area were:

1. Law firms to be encouraged to introduce and increase training opportunities in-house;

2. Young Lawyers’ Committee (“YLC”) to set up portal for firms to publicise any in-house training open to young lawyers from other firms, and to link senior lawyers willing to offer in-house training to young lawyers in other firms with firms willing to host such training.

(3) **External Training (i.e. CPD)**

Young lawyers were generally positive about the CPD scheme, but felt that more could be done to improve the overall structure of the scheme to cater for different levels of seniority.

Some key recommendations of the YLTF in this area were:

1. CPD Committee and YLC should work together to identify and develop the types of courses that young lawyers should participate in each of their first three years;

2. Specialist tracks could be developed (i.e. along the lines of skills e.g. corporate and litigation, and subject matter e.g. industry focus).

(4) **Treatment in Law Firms**

Young lawyers raised a number of areas regarding their treatment by their firms, in which they felt there could be improvement. Some of these include mentorship, work-life balance, and communication of firm decisions and direction.

The Task Force noted that mentorship and regular feedback are critical aspects of any lawyer’s training, and that some of these issues were not capable of resolution by hard legislation, though employers would do well to take note. Some key recommendations in this regard include:

1. A more consistent and structured feedback mechanism (including face-to-face two-way feedback sessions with a supervising partner) at least twice a year;

2. Other anonymised feedback mechanisms to be considered where possible e.g. associates’ committees or ombudsmen;

3. Appointing non-partner mentors who may be more accessible to junior associates;

4. A survey for young lawyers taken upon renewal of PCs, with results of the survey to be shared with the profession to scrutinise how young lawyers perceive their treatment and development in firms generally.

(5) **Networking and Recognition Opportunities for Young Lawyers**

Young lawyers were unanimously of the view that networking was an important aspect of their professional lives, even at this early stage of their career, and particularly beyond the legal fraternity.

The Task Force noted a disconnect between young lawyers’ interest in networking and their lack of awareness and interest in the networking events/opportunities organised by the Law Society and SAL, and also felt that a broader notion of networking could be introduced to young lawyers in the form of participation in Law Society sub-committees. Some key recommendations include:

1. YLC to organise peer-focused networking events, whether standalone or tagged to other seminars and conferences (e.g. a Young Lawyers’ CPD Day);

2. Young lawyers to be encouraged to join Law Society committees in order to deepen their roots in the community.

**Going Forward**

The YLTF Report has now been published, as well as provided to the Committee for the Committee for the Professional Training of Lawyers which is in the process of reviewing the training contract regime. It is hoped that this will encourage discussion as well as inspire fresh ideas and opinions which will aid in a fully-informed and all-rounded review of the crucial first few years of a young lawyer’s career. Avenues for the discussion/sharing of such ideas will certainly follow and young lawyers(to-be) are encouraged to contact the Law Society if they have any further ideas.
MDD Forensic Accountants wishes you a Merry Christmas and a prosperous New Year!

Making Numbers Make Sense > mdd.com
Robots and Legal Reasoning: Thinking Like a Lawyer 2.0

This article provides a brief introduction to how artificial intelligence is likely to affect the raison d’etre of lawyers – the ability to exercise legal reasoning. With increased computing power and computational research, the way that lawyers and judges reason is likely to change significantly in the future. Lawyers and judges will need to upgrade their legal reasoning skills from 1.0 to 2.0 and make a paradigm shift in how to think like a lawyer.

Introduction

In 1949, in the aftermath of World War 2 and when the first modern computers were being developed, Professor Lon Fuller wrote a famous article for the Harvard Law Review entitled “The Case of the Speluncean Explorers” ("Speluncean Explorers case").¹ Set in the year 4300 in the fictional world of Newgarth, the case involved four cave explorers who were charged with wilfully taking the life of their colleague inside a cave. The entrance to the cave had been completely sealed by a landslide and the five explorers had gone without food for more than 20 days. In order to survive longer, they agreed to cast lots to ascertain who should be eaten by the remaining explorers. Before the roll of the dice, one of the explorers decided to withdraw from the agreement, but as luck would have it, he became the unfortunate victim of cannibalism. The four surviving explorers, who were later rescued, were convicted of the crime of murder and sentenced to the death penalty.

On appeal before the Supreme Court of Newgarth, the five judges came to different conclusions about the fate of the four defendants. Two judges voted to set aside the conviction, one voted to affirm the conviction, one decided to abstain and the final judge (the Chief Justice) preferred that the defendants should seek executive clemency. Controversies over the proper role of the Executive and the Judiciary, whether the survivors’ conduct should be governed by the law of nature or the law of the land and what the proper purpose and scope of the criminal provision should be were all debated in the five intriguing judicial opinions. Professor Fuller’s essay has often been highlighted as illustrative of the breadth of legal reasoning.²
Today, with the rapid rise of artificial intelligence (“AI”), one may wonder whether, in the year 4300, we will still have or need human judges or lawyers. Some may even say that we do not need to wait so long as robots may take over the practice of law by the year 2050!

In the past few years, there has been an explosion of literature on the possibility of robots replacing lawyers, or robots becoming lawyers. The frissons created by recent AI developments in the global legal industry have triggered speculations and concerns that lawyers will soon be made redundant. While a number of commentators have observed that robots may be able to automate many of the legal services that lawyers currently provide to their clients, what has been less examined is the more fundamental fear that robots will greatly undermine the raison d’etre of lawyers – the ability to exercise legal reasoning, or simply put, the ability to think like a lawyer.

This article provides a brief introduction to how developments in AI, which have already made a substantial impact in rule-based games such as chess, are likely to change significantly the way that lawyers and judges reason in the future.

The Complexity of Legal Reasoning

It has been observed that legal reasoning is a form of “expert reasoning”, with “its own terminology, its own universe of acceptable data, and its own rules”. In civil law systems, at its earliest conception during the Roman empire, legal reasoning was focused on whether a claimant had a legal remedy. There were no legal rules as such, and the facts of each case determined whether a legal action existed. Gradually, legal reasoning in civil law became more rule-based, as legal scholars and jurists formulated legal definitions and propositions.

In the English common law system, legal reasoning was traditionally concerned with whether the “right form of action had been brought”, for example, actions of debt or trespass. However, since the 19th century, the common law system replaced the forms of action with doctrinal law such as contracts and torts. With the rise of the regulatory state, the interpretation and application of legal rules in legislation also became prominent. Together, common law reasoning and statutory interpretation form the bedrock of what law students today typically learn in law school.

In view of the modern rule-based nature of law, law has often been compared with games governed by clear and identifiable rules, such as chess. Writers on the subject of legal reasoning have typically viewed legal rules as much more complex than the rules of chess because of the broad universe that the law occupies. In his classic primer on legal reasoning, Thinking Like a Lawyer: A New Introduction to Legal Reasoning (“Thinking Like a Lawyer”), Professor Frederick Schauer noted that:

… law cannot plausibly be seen as a closed system, in the way that games like chess might be. All of the moves of a game of chess can be found in the rules of chess, but not all of the moves in legal argument and legal decision-making can be found in the rules of law.

Similarly, it has been observed that legal rules are more flexible than the rules of chess in view of the greater number of permutations in organising legal rules and facts to reach a decision:

… in complex cases there are often many possible rules and precedents from which to choose, and both the facts and the rules can be interpreted and reinterpreted in relation to each other until the judge is satisfied with the total combination – satisfied with the fitness or coherence of the overall picture, and satisfied that the decision is just.

The complexity of legal reasoning is also demonstrated by the fact that different judges can have diverse plausible views on the same legal issue. While the Speluncean Explorers case mentioned in the Introduction is fictional, dissenting judgments are issued by judges from time to time in the real world. A recent example of a dissenting opinion in the Singapore courts is Attorney-General v Ting Choon Meng, where Chief Justice Sundaresh Menon disagreed with the majority view which held that the Government is not a “person” under section 15 of the Protection from Harassment Act that can obtain an order to prevent or stop another person from publishing false statements of fact.

The Impact of AI on Chess

To understand the likely impact of AI on legal reasoning in the future, it is useful first to consider how AI has affected the game of chess in the past 60 years or so. Although the rules of chess are far less complex than legal rules, chess and law share a common characteristic in that chess players, as well as lawyers and judges, have to evaluate, reason and make decisions based on the information available.

In chess, such information is presented through the configuration of the pieces and pawns on the chessboard; in law, such information is obtained through the facts of the
case and the relevant legal materials such as precedent cases and academic commentary. Chess players also refer to relevant materials (for instance, records of games played previously and chess books) before the game to help them in the decision-making process over the chessboard. What is notable is that before the advent of computers, chess players did not have a machine to tell them what the good or bad moves in a given position may be. These moves had to be worked out through a process of analysis, trial-and-error and experience, much like what any lawyer has to do in the practice of law. Today, any chess player with a computer can easily turn on a chess engine to find good moves and detect bad moves, some of which will even confound the strongest chess players in the world.

In his recent book Deep Thinking: Where Machine Intelligence Ends and Human Creativity Begins ["Deep Thinking"], former World Chess Champion Garry Kasparov outlined the history of how machines eventually beat the strongest chess player (Garry Kasparov himself at that time) in the world. This process was not a straightforward one. As with many human endeavours, it took years of experimentation before the correct formula was found. Initially, in the aftermath of World War 2, computer scientists concentrated on developing a chess program based on what was called a “Type B” algorithm, where it tried to follow “the way a human player thinks by focusing only on a few good moves and looking deeply at those instead of checking everything". Because of the slow computer processing power at that time, this “intelligent search” technique was preferred to the “brute force” of a “Type A” algorithm, an “exhaustive search method that examines every possible move and variation, deeper and deeper with each pass".

With quicker hardware and improved programming over the next few decades, Type A programs overtook Type B ones such that by the 1980s, they were able to defeat strong chess players. In 1996, the first face-off in a 6-game chess match between Garry Kasparov and Deep Blue (the strongest chess program developed by IBM) resulted in a 4-2 win for the human world champion. But the tables were soon overturned in the rematch in 1997, when he lost to a much-improved version of Deep Blue by just one point.

A similar revolution is likely to occur in the legal industry. In Tomorrow’s Lawyers: An Introduction to Your Future, Professor Richard Susskind, the well-known legal futurist, noted that AI is not attempting to mimic the reasoning of the best lawyers (Susskind calls this the “AI fallacy”), which is analogous to using the outdated Type B chess algorithm. Rather, brute-force computing (similar to the Type A chess algorithm) will be used to conduct legal analysis:

We saw this in 1997 when IBM’s Deep Blue system beat the world chess champion Garry Kasparov. It did so not by copying the thought processes of grandmasters but by calculating up to 330 million moves per second. So too in law – human lawyers will be outgunned by brute processing power and remarkable algorithms, operating on large bodies of data.

Can Lawyers and Judges Reason Better with AI?

At this point, the impact of AI on legal reasoning would appear to be at its infancy, despite the hype surrounding legal answering systems such as ROSS and chatbots such as DoNotPay. Nevertheless, significant progress has been made, through computational research, to model common law and statutory reasoning. As explained by Professor Kevin D. Ashley in Artificial Intelligence and Legal Analytics: New Tools for Law Practice in the Digital Age, the field of AI & Law has been studying how to develop computer programs which are able to “reason logically with legal rules from statutes and regulations”, and “reason about whether [legal cases] are analogous to a case to be decided”. In future, it may no longer be science fiction for computer programs to perform legal reasoning based on information extracted from legal sources. With the help of such programs, lawyers may be able to “post and test legal hypotheses, make legal arguments or predict outcomes of legal disputes”. There is therefore cause for optimism that computational tools will help lawyers and judges to sharpen their legal reasoning skills, well before they step into a courtroom.

However, there may be limits to what AI can do to improve legal reasoning by lawyers and judges. Firstly, given the complexity of legal reasoning, it remains an interesting question whether AI can adapt legal reasoning to new scenarios which are not found in available legal sources. Professor Schauer presciently noted in Thinking Like a Lawyer that “law is inevitably and especially subject to the unforeseeable complexity of the human condition”. He added that:

[a]s the world continues to throw the unexpected at us, law will find itself repeatedly forced to go outside of the existing rules in order to serve the society in which it exists.

Secondly, AI may create the illusion that there is only one way of reasoning to solve difficult legal problems. But as seen from the Speluncean Explorers case, human reasoning is able to accommodate a wide range of plausible legal views. Lawyers and judges who treat AI as, in the words...
of Garry Kasparov in *Deep Thinking*, an “oracle”\(^{28}\) may find themselves over-reliant on what the computer says, which may ironically narrow their appreciation of the complexity of legal reasoning.

Finally, it cannot be presumed that there will only be one computer program that can conclusively determine the right way to think like a lawyer. In the chess world, multiple chess engines have been developed where different good moves may be found in a particular chessboard position. Likewise, lawyers and judges may have to analyse the legal reasoning outputs obtained from different computer programs and make their own conclusions as to which legal argument works best for their case.

**Conclusion**

Legal reasoning has had a rich and varied tradition, going back all the way to Roman law. Lawyers and judges today should justly be proud to be part of a profession that has addressed the difficult problems presented by an ever-evolving society not through superficial analysis and off-the-cuff answers, but through the complex process of legal reasoning. The rise of AI should be viewed more as an opportunity to raise legal reasoning to the next level than as a threat to the livelihood of lawyers and judges. At the same time, the limitations of AI should be recognized, given our increasingly uncertain world. Still, just as AI has changed the way that the game of chess is played, so will AI likely transform the rules of the game in law and legal reasoning. The time has come for lawyers and judges to upgrade their legal reasoning skills from 1.0 to 2.0 and make a paradigm shift in how to think like a lawyer.

*The views expressed in this article are the personal views of the author and do not represent the views of RHTLaw Taylor Wessing LLP.*

**Notes**

Regulating Telehealth — the New Frontier in Healthcare

The new frontier in healthcare is telehealth: the use of infocomm technology in providing healthcare services over physically separate environments. This article examines the existing framework that regulates telehealth in Singapore and highlights emerging legal issues that merit further consideration. Proactive regulatory measures kept apace with the advances in telehealth will help to maximise telehealth’s potential while balancing and safeguarding patients’ interests.

Summary

From Uber to Oculus; Spotify to Siri; Airbnb to Alexa — transformative innovation (disruptive or otherwise) pervades our daily lives. Telehealth is the latest buzzword in transformative innovation that is shaping the provision of healthcare. The benefits of telehealth are manifold. For example, telehealth can enable a doctor to remotely operate on a patient, or a patient to consult his doctor from the comfort of his home.

The term “telehealth” and “telemedicine” are used interchangeably in some quarters. However, there is a distinction in the industry. “Telemedicine” refers to remote clinical services, whereas “telehealth” refers to the broader scope of health services including non-clinical services, such as health education.

There is no overarching legislation governing telehealth in Singapore; the regulatory regime comprises an accretion of various codes and guidelines, namely:

1 National Telemedicine Guidelines (“NTG”);

2 Ethical Code and Ethical Guidelines (“ECEG”) and Handbook on Medical Ethics (“Handbook”); and

3 Telehealth Product Guidelines (“TP Guidelines”).

The NTG, ECEG and Handbook are primarily concerned with patient safety in the telemedicine environment, while the TP Guidelines clarify when a telehealth product would be considered as a “medical device” subject to the Health Sciences Authority’s control.

Despite the regulations, there are broader legal issues that have yet to be addressed and merit further consideration, such as the following:

1. What should be the licensure regime for overseas doctors providing telemedicine in Singapore?

2. How should jurisdictional issues be determined in a case of telemedical negligence?

3. What cybersecurity measures should be in place for telehealth products?

As Singapore moves into telehealth as part of the Smart Nation initiative, regulators must keep apace with advances in digital health. Proactive regulations and timely implementations can unlock the full potential of the transformative technology.
### Existing Legal Framework for Telehealth

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<th>Guidelines</th>
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| National Telemedicine Guidelines (“NTG”)⁴      | The NTG, issued by the Ministry of Health in 2015, sets out best practices in the following areas involved in the delivery of telemedicine:  
1. clinical standards and outcomes;  
2. human resources;  
3. organisational; and  
4. technology and equipment.                                                                 | As the NTG is intended to only be a guide to the industry, it has no force of law. It remains to be seen whether the Ministry of Health would sanction a healthcare provider or organisation that does not comply with the NTG. |
| Ethical Code and Ethical Guidelines (“ECEG”)⁵ and Handbook on Medical Ethics (“Handbook”)⁶ | In late 2016, the Singapore Medical Council published revised ECEG and Handbook, effective 1 January 2017, to address emerging medical issues including telemedicine.  
The following are some examples of the requirements relating to telemedicine:  
1. Doctors offering telemedicine must endeavour to provide the same quality and standard of care as in-person medical care. Otherwise, they must state the limitations of their opinions.  
2. Doctors performing remotely guided medical procedures must have the necessary expertise to provide the remote guidance.  
3. Doctors must take reasonable care to ensure confidentiality of medical information shared through technology and ensure compliance with the relevant laws on personal data.  
4. Prior to obtaining consent, doctors must provide their patients with sufficient information about telemedicine.  
5. Where patients need to operate telemedicine equipment, doctors must ensure the patients are sufficiently trained to do so. | Doctors in Singapore are to comply with the ECEG. Failure to meet the standards required under the ECEG may lead to disciplinary proceedings by the Singapore Medical Council. The Handbook supplements the ECEG, providing the rationale behind the ethical standards in the ECEG and explaining how doctors can achieve such standards. |
In August 2017, the Health Sciences Authority (“HSA”) issued the TP Guidelines regarding when a telehealth product would be classified as a medical device. The classification of a telehealth product as a medical device carries significant implications, because medical devices are stringently regulated by the HSA.

The classification of a telehealth product hinges on the intended use of the device by the product owner.

**Intended for medical purposes**

Telehealth products intended for medical purposes must be registered as a medical device with the HSA. The following are medical purposes:

- “purpose of investigation, detection, diagnosis, monitoring, treatment or management of any medical condition, disease, anatomy or physiological process”.

**Not intended for medical purposes**

Telehealth products that are not intended for medical purposes need not be registered as a medical device. For example, devices for general well-being (e.g. wearable pedometer) are not considered as a medical device.

However, where a telehealth product is not intended for medical purposes, but can nevertheless perform the function, the onus is on the product owner to include a clarification statement that the product is not intended for medical purposes.

In practice, the classification of the telehealth product may not be clear-cut. For example, how will the HSA categorise a device intended for both “medical” and “general well-being” purposes? It may well be classified as a medical device by its medical purpose notwithstanding its other collateral purposes. Further, would the clarification statement protect the product owner if the HSA determines the telehealth product is in fact intended for medical purposes?

Telehealth product developers may wish to take advantage of the recent Pre-Market Consultation Scheme to consult the HSA on the classification of their telehealth product.

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### Emerging Legal Issues

Looking ahead, regulators should consider the broader legal ramifications arising from telehealth. The following are three legal issues that merit further consideration.

#### Licensure Regime for Overseas Doctors

The NTG indicates that doctors delivering telemedicine from or within Singapore are to meet the licensing requirements imposed by the country where the patient is residing. In the hypothetical scenario, if the UK doctor is required to comply with the existing local licensure regime to provide virtual medical consultations in Singapore, this could impede the adoption of telemedicine.

For telemedicine to achieve its full potential in Singapore, licensure requirements must be made simpler for overseas doctors while striving to balance the interests of the patient. Singapore may take guidance from how other countries, such as the US, have attempted to ease licensure requirements for telemedicine. In the U.S., each state has different licensure requirements, which has been a barrier for doctors to practice telemedicine across state lines. The Interstate Medical Licensure Compact (“Compact”) was formed to create an expedited pathway to license qualified doctors to practice in multiple states. The objective of the Compact is to relieve the nation’s growing shortage of doctors and to provide patients with better access to specialist care.

#### Hypothetical Scenario

Three months ago, a doctor in the UK treated a patient in Hong Kong via a remote surgical system. Recently, the patient re-located to Singapore for work. In Singapore, the patient received virtual follow-up medical consultations with his UK doctor and began experiencing medical complications.

Singapore may take guidance from how other countries, such as the US, have attempted to ease licensure requirements for telemedicine. In the U.S., each state has different licensure requirements, which has been a barrier for doctors to practice telemedicine across state lines. The Interstate Medical Licensure Compact (“Compact”) was formed to create an expedited pathway to license qualified doctors to practice in multiple states. The objective of the Compact is to relieve the nation’s growing shortage of doctors and to provide patients with better access to specialist care.
The Compact is not part of any federal government program, but is an agreement among states. As of 1 December 2017, at least twenty states have participated in the Compact or introduced the Compact. Under the Compact, a doctor seeking to obtain a licence must meet certain requirements. For example, she must hold a full and unrestricted medical licence by a member state and have no history of disciplinary actions against her medical practice or any criminal record. Riding on the success of the Compact, the Physical Therapy Licensure Compact was recently formed in the U.S.

To date, there is no international licensing compact for doctors. Singapore could consider entering into partnership agreements with different countries to provide for an expedited pathway to license overseas doctors to practice telemedicine in Singapore and vice versa. Further, like the TP Guidelines which clarifies what telehealth products require registration as a “medical device”, it is suggested that regulators could provide clarity on the activities undertaken by an overseas doctor which require licensing, and those which are exempt. For example, local licensing would not be required where the overseas doctor only provides virtual educational programs to patients or healthcare providers or gives suggestions, as an expert in the field, to a licensed doctor in Singapore.

### Jurisdictional Issues in Telemedical Negligence

In the hypothetical scenario, would the Singapore court have jurisdiction over a telemedical negligence claim by the patient against his UK doctor? This would depend on whether Singapore is considered to be the natural forum. In Singapore, the courts have adopted the test set out in *Spiliada Maritime Corporation v Cansulex Ltd* to determine the natural forum. The test consists of two stages of inquiries: (i) which forum has the closest and most real connection with the dispute; and (ii) if there would be a denial of justice if the case is tried in that jurisdiction.

For tort claims, the place where a tort was committed is *prima facie* the natural forum. In telemedicine, where the provision of medical services may be spread across multiple jurisdictions, the challenge will be to determine the place of the tort. In complex situations involving multiple jurisdictions, the courts have applied the “substance of tort” test, whereby they look back on the series of events and determine where in substance the cause of action arose.

In the hypothetical scenario, the place of the tort can be difficult to pinpoint. Is it in the UK where the doctor conducted the remote surgery? Or is it in Hong Kong where the patient received the surgery? Or is it in Singapore, where the patient had follow-up virtual consultations and began to experience medical complications? To complicate the matter, what if the patient's injury is equally caused by the doctor's negligence during the remote surgery and the follow-up consultations? How would the court determine where in substance the cause of action arose? Would the Singapore court ever consider dissecting the claim so that it would only hear the issue regarding the follow-up consultations which occurred when the patient was in Singapore and defer the issue regarding the remote surgery which occurred when the patient was in Hong Kong to another court?

There has yet to be a case regarding telemedical negligence in Singapore. It remains to be seen how the courts will determine the place of the tort, especially in complex multi-jurisdiction scenarios. However, as telemedicine advances and patients in Singapore receive treatment from doctors located in other countries, challenges regarding jurisdiction will inevitably arise. To create certainty, doctors may wish to enter into legally binding agreements with their patients regarding jurisdiction. Further, law-makers may consider legislating “long-arm” provisions that would subject every doctor outside of Singapore who practices telemedicine here to Singapore’s jurisdiction. For example, in Malaysia the Telemedicine Act imposes liabilities on doctors who breach the Telemedicine Act, notwithstanding that they are located outside of Malaysia. To reinforce Singapore’s jurisdiction, regulators can also consider as part of the licensure regime for overseas doctors to require all applicants to consent to the jurisdiction of Singapore.

### Cybersecurity in Telehealth Products

Telehealth products, like all interconnected technology, are vulnerable to cyberattacks. Cybersecurity issues to telehealth products considered as “medical devices” can especially impact patient safety. The risk is real. In August 2017, Abbott Laboratories voluntarily recalled some 465,000 radio frequency-enabled pacemakers in the U.S. due to cybersecurity vulnerabilities, which could have allowed hackers to change the devices’ pacing commands or prematurely deplete the batteries.

The issue of telehealth products and cybersecurity is an emerging issue that has not been addressed in the TP Guidelines by the HSA. In the US, the FDA has taken some steps to set out guidance on cybersecurity measures for medical devices. In 2016, FDA issued a guidance document entitled “Postmarket Management of Cybersecurity in Medical Devices” (“2016 Guidance”). The 2016 Guidance targets medical devices that use software, including programmable logic and medical mobile apps that are considered as medical devices. The 2016 Guidance
recommends manufacturers to monitor, identify and address cybersecurity vulnerabilities as part of their post-market management of the device. Specifically, manufacturers should develop cybersecurity risk management programs throughout the lifecycle of the medical device. The 2016 Guidance builds on the guidance document entitled “Content of Premarket Submission for Management of Cybersecurity in Medical Devices” issued in 2014.  

Recently, US Senator Richard Blumenthal (Connecticut) introduced a new cybersecurity legislation focused on medical devices. The aim of the legislation is to ensure patient safety during cyberattacks on medical devices. Under the bill, manufacturers of medical devices would be required to create a cyber report card, mandate product testing before sale, increase remote access protection, provide fixes and updates for free, and follow certain procedures for end-of-life medical device.

Singapore has taken steps to counter cybersecurity threats. The Ministry of Communications and Information and the Cyber Security Agency of Singapore recently proposed a Cybersecurity Bill. The bill applies across all sectors. It provides a framework for the regulation of “critical information infrastructures” for the continuous delivery of “essential services”, which includes healthcare. The powers of the bill will be vested in a Commissioner of Cybersecurity who will determine which computer system is a “critical information infrastructure”. As the bill stands, it is unlikely to have a direct impact on telehealth products which most likely will not be considered as part of a “critical information infrastructure”.

Therefore, it is recommended that regulators provide guidance to the industry on what cybersecurity measures should be introduced before a telehealth product is placed in the hands of a user, as well as what actions need to be taken in the event of a cybersecurity attack. It may well be that the cybersecurity measures differ depending on whether the telehealth product is considered as a medical device or a device for general well-being. Further, to increase consumer’s confidence in telehealth products, regulators should consider creating an independent watchdog with expertise in telehealth to track the safety of the device, particularly regarding cybersecurity vulnerabilities.

Concluding Remarks

As with any new transformative technology, there will be a constant tension between proponents of a laissez faire approach and those in favour of a stringent regulatory regime. Telehealth is no exception. Thus far, Singapore has adopted a light-touch approach and introduced regulations incrementally to address specific aspects of telehealth. However, unregulated aspects of telehealth could negatively impact the value of telehealth. Proactive regulatory measures kept a pace with the advances in digital health will help to maximise telehealth’s potential, balance and safeguard patients’ interests, and boost user confidence in telehealth products and services.

Notes
1. Definition of “telehealth” is taken from the Health Sciences Authority’s Telehealth Products Guidelines (August 2017) p 7.
2. In April this year, six hospitals in Singapore announced that they will provide consultation via video-conferencing for eligible patients to see their doctors from home. Another example is Doctor Anywhere, which is an app that allows users in Singapore to have virtual consultations with doctors.
12. Ibid.
14. Telemedicine Act 1997 (Act 564). The Telemedicine Act has yet been enacted in Malaysia.
Ibid. See section 3: “Any person who practises telemedicine in contravention of this section, notwithstanding that he so practises from outside Malaysia, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.”


The U.S. Food & Drug Administration, Postmarket Management of Cybersecurity in Medical Devices, Guidance for Industry and Food and Drug Administration Staff (28 December 2016).

The U.S. Food & Drug Administration, Content of Premarket Submission for Management of Cybersecurity in Medical Devices, Guidance for Industry and Food and Drug Administration Staff (2 October 2014). The bill can be assessed here: <https://www.congress.gov/115/bills/s1656/BILLS-115s1656is.pdf>.

Vicarious Liability, Non-delegable Duty and the Ng Huat Seng Decision

In recent times, courts in Singapore and elsewhere have been grappling with the issue of delegability of duty of care. In the process, they have vigorously defended the conventional position that a duty of care is, in general, delegable. Accordingly, attempts at broadening the ambit of vicarious liability and non-delegable duty, respectively, have been carefully scrutinized. The recent Singapore Court of Appeal decision of Ng Huat Seng v Munib Mohammad Madni adds to the judicial thinking on this complicated and controversial subject.

Introduction

The primary aim of tort law is to provide compensation to the innocent victim, and the ideal basis of such compensation is corrective justice – that the guilty defendant should compensate the innocent claimant. Where the tortious act is committed by someone other than the defendant, such as his employee, a contractor engaged by him, or someone with whom he has a casual or social relationship, the responsibility framework becomes somewhat more complicated.

So far as torts by employees are concerned, the law has quite readily accepted the notion that the employer should be held vicariously liable, albeit constraining its application by tests as to whether the delegate is an employee or an independent contractor and whether the tort was committed ‘in the course of employment’. Vicarious liability applies only to torts committed by employees. Recently, however, vicarious liability was extended in Various Claimants v Catholic Child Welfare Society⁴ (also known as the Christian Brothers case) and Cox v Ministry of Justice⁵ to relationships akin to employment. Most recently, the UK Supreme Court in Armes v Nottingham County Council,⁶ extended vicarious liability to a scenario which was not akin to an employment relationship.

As regards non-delegable duty, judges have continually reiterated that such liability is exceptional. The standard explanation is that tort liability is fundamentally fault-based and that a person is, in general, liable for his own carelessness and not the carelessness of others. Nevertheless, over the years, courts have recognised instances where the duty is non-delegable, such as where the defendant engaged in an ultra-hazardous activity or where employee safety is concerned. Quite recently, the UK Supreme Court in Woodland v Swimming Teachers Association⁴ crafted a framework for ascertaining whether a non-delegable duty would be imposed. Post-Woodland, the UK approach towards non-delegable duty is that the claimant has to show that his case came within one of the recognized instances of non-delegable duty or that the features of the Woodland framework are satisfied. This approach was recently endorsed by the Singapore Court of Appeal in MCST No 3322 v Tiong Aik.⁵

Most recently, in Ng Huat Seng v Munib Mohammad Madni,⁶ Singapore’s apex court had occasion to deal with the issues
of vicarious liability, selection of independent contractors and non-delegable duty.

Case in a Nutshell

The Ng Huat Seng case involves the demolition of a house, resulting in damage to an adjoining house. The defendant house owner engaged a contractor, Esthetix, to demolish his existing house and to design and build a new one. In the course of demolition, debris damaged the adjoining wall as well as part of the property of the claimant.

The District Court allowed the claim against Esthetix but not against the defendant owner. The reasons were:

1. Esthetix was an independent contractor and hence the owner was not vicariously liable;
2. the owner was not negligent in appointing Esthetix; and
3. the owner did not owe a non-delegable duty to the claimant as the demolition works were non-ultra-hazardous.

The High Court dismissed the appeal upon similar reasoning and the claimant appealed further. The Court of Appeal affirmed the High Court’s decision, essentially agreeing with the lower courts on all three issues of vicarious liability, selection of contractor and non-delegable duty.

Vicarious Liability

Counsel for the claimant argued, relying on Skandinaviska Enskilda Banken AB (Publ) v Asia Pacific Breweries (Singapore) Pte Ltd 7 (Skandinaviska), Christian Brothers and Cox, that a multi-factorial approach should be applied to determine whether vicarious liability should be imposed in relationships, such as the present, which fell outside the setting of an employment relationship. On this basis, counsel argued, vicarious liability could be imposed on a defendant even for an independent contractor’s negligence. The contention was a radical and bold one.

Sundaresh Menon CJ, delivering the judgment of the five-member court,6 began with a reminder6 that vicarious liability is a form of secondary liability and which holds a defendant liable for the negligence of another even if the defendant had not been negligent at all.

The Chief Justice then endorsed10 the High Court’s adoption, post-Christian Brothers and Cox, of a two-stage inquiry in deciding whether to impose vicarious liability, namely:

1. … was the relationship between the tortfeasor and the defendant of a type which was capable of giving rise to vicarious liability; and
2. … did the tortfeasor’s conduct possess a sufficient connection with the relationship between the tortfeasor and the defendant.

The keen observer will notice subtle variations or refinements taking place in the inquiry.

First Stage of Vicarious Liability Inquiry

In the past, the first stage was whether the tortfeasor was an employee, using a multi-factorial test of control, integration and economic reality. The Christian Brothers and Cox scenarios, which the courts felt were situations to which vicarious liability should extend, pushed courts to restate the test at a higher level of abstraction. In the words of Menon CJ:11

Under the orthodox analysis, it has always been recognized that a prerequisite for the imposition of such liability is the existence of a special relationship between the defendant and the tortfeasor such as would make it fair, just and reasonable to impose liability on the defendant for the wrongful acts of the tortfeasor. (emphasis added)

The honourable Judge then cited12 the five features of a relationship which, according to Lord Phillips in Christian Brothers, make it just, fair and reasonable to impose vicarious liability:

1. the employer would be more likely than the employee to have the means to compensate the victim and could be expected to have insure itself against that liability;
2. the tort would have been committed as a result of activity undertaken by the employee on behalf of the employer;
3. the employee’s activity would likely be part of the business activity of the employer;
4. the employer, by employing the employee to carry out the activity, would have created the risk of the tort being committed by the latter; and
5. the employee would, to a greater or lesser degree, have been under the control of the employer at the time the tort was committed.
Whilst implicitly endorsing the above five features or factors of the requisite relationship for imposing vicarious liability, Menon CJ made it clear that they “do not present a new analytical framework”. Rather, they are a helpful “guide” and a “renewed and more fine-grained method” but they “do not detract from the normative roots” of vicarious liability.

The Chief Justice accepted that Christian Brothers and Cox were correct applications of vicarious liability outside the strict confines of an employment relationship but emphasized that both cases involved relationships which possessed the same fundamental qualities and were “closely analogous” or “akin” to the employment relationship. In fact, he thought the relationship in Christian Brothers even closer than that of an employment relationship.

As to where or how the line is to be drawn, Menon CJ twice quoted Lord Reed JSC in Cox, where the latter said that the extension of vicarious liability beyond the employment context is to be done:

... not to the extent of imposing liability where a tortfeasor’s activity are entirely attributable to the conduct of a recognisably independent business of his own or of a third party. (emphasis added)

Echoing the view of the High Court, Menon CJ commented that the inquiry set out in Christian Brothers and affirmed in Cox was not intended to inaugurate a radical change in the law of vicarious liability but to systematize and update it in the light of modern business realities.

To impose vicarious liability for the tort of an independent contractor, he remarked, would be “antithetical to the doctrine’s very foundations”. There was nothing fair, just and reasonable about imposing secondary liability on a defendant in such a situation.

He noted that the relationship between the employer and the independent contractor is the “very antithesis” of such a relationship and that the fact that the tortfeasor is an independent contractor “will generally be sufficient, it itself” to exclude the application of vicarious liability. He explained that while the law does not confine the relationship to the employment relationship, there needs to be sufficient closeness such as to make it fair, just and reasonable to impose vicarious liability. He observed that where courts have done so, it was in situations which were closely analogous to the employment relationship and which had many of its features.

Applying the law to the facts, Menon CJ noted that Esthetix was an independent contractor carrying out a project for its own gain. He rejected the claimant’s argument that the property was an enterprise which belonged to the claimant and hence the claimant should bear the risks of the enterprise, explaining that “but for” causation was an insufficient reason to impose vicarious liability. The Chief Justice did not think that the relationship between the defendant and the tortfeasor created or significantly increased the risk of the harm that ensued.

Second Stage of Vicarious Liability Inquiry

Previously, at the second stage of the inquiry, the question or test was whether the tort was committed “in the course of employment”, which post-Lister v Hesley Hall (and, in Singapore, Skandinaviska) metamorphosed to whether there was a sufficiently close connection between the employee’s scope of duties and the tort he committed. After Christian Brothers and Cox, the test is further refined and as clearly stated by the Chief Justice:

The second inquiry… is whether there is a sufficient connection between the relationship between the defendant and the tortfeasor on the one hand, and the commission of the tort on the other. Has the relationship created or significantly enhanced the risk of the tort being committed? This is the second and distinct part of the analysis …

On the facts, since the first hurdle of special relationship was not crossed, the second inquiry did not arise.

Comment

The extension of vicarious liability to the Christian Brothers and Cox scenarios is to be welcomed and certainly provided the innocent victims with a deserved remedy. In terms of legal reasoning, the higher level of abstraction – in terms of reference to what is fair, just and reasonable – and the deeper analysis – in terms of the Lord Phillips’ five features – are indeed a “more open-textured” and “more fine-grained” method for discerning which relationships should attract the imposition of vicarious liability. For now, it is clear that the line is drawn to include situations where the tortfeasor is within the defendant’s organisation or enterprise and may be regarded as quasi-employees or persons whose relationship is akin to or analogous to that of an employee. But it would not extend to where the tortfeasor is an independent contractor.

Selection of Contractor

It is undisputed law that the employer has to exercise reasonable care in his selection of the independent contractor.
contractor. What was alleged in the Court of Appeal was that the High Court judge had erred in taking into account the fact that the “turnkey” approach was an accepted industry practice in the building and renovation of homes in calibrating the relevant standard of care in making the selection. It was further alleged that the defendants should have made independent assessments as to the suitability of the contractors.

On this issue, Menon CJ noted that industry standards and common practice are important but not necessarily conclusive as to the requisite standard of care and that “negligent conduct does not cease to be so simply on account of repetition and normalization”. However, he found no evidence either generally or on the facts to suggest that the turnkey approach was inappropriate. In his view, by ascertaining that the contractor was licensed by the Building and Control Authority to carry out the works, the defendants had “gone a considerable way” in demonstrating that they had not breached their duty of care. Further, the claimants did not present anything to suggest that the defendants “should be found to have known that … Esthetix was in fact not competent to undertake the demolition works …”

In the writer’s view, the negligent selection issue is quite straightforward. In contrast, if on the facts a quick online search would have surfaced allegations of incompetence or other imperfections, then the position would have been different. Ng Huat Seng reinforces the established expectation that the defendant is required to do such due diligence as a reasonable home owner would have done.

Non-delegable Duty

Essentially, on non-delegable duty, Menon CJ restated and applied much of what was stated by the Court of Appeal in Tiong Aik and, in addition, commented on the exception of ultra-hazardous activity.

In essence, according to the Tiong Aik framework:

1. Under the tort of negligence, a person is generally liable for his own carelessness and not for the carelessness of others;

2. Vicarious liability is a form of secondary liability whereas non-delegable duty is primary liability for the personal duties of the duty-bearer;

3. In determining whether there is a non-delegable duty, a two-stage test is used, the first being whether the case fell within one of the established categories and the second being whether the case possessed all of the five Woodland features;

4. The Woodland features are only threshold requirements. The Court still has to consider whether it is fair and reasonable to impose a non-delegable duty in the particular circumstances, having regard to relevant policy considerations. Further, the creation of new categories of liability should be done with caution and by clear analogy to a recognized category; and

5. Non-delegable duty remains exceptional because, in many instances, it would be “unrealistic or even impossible” for the duty-bearer to fulfil the duty in question.

Applying the two-stage test, Menon CJ first considered the category of ultra-hazardous activity and whether such a category of non-delegable duties should be recognised under Singapore law. The Chief Justice noted that there has been trenchant criticism made against the doctrine and observed two contrasting approaches to the idea of ultra-hazardous activity.

Under the broader approach taken in Honeywill and Stein, Limited v Larkii Brothers (Honeywill), the concept envisages activities which are inherently or intrinsically dangerous. In contrast, the English Court of Appeal in Biffa Waste Services Ltd v Maschinefabrik Ernst Hese GmbH (Biffa Waste) preferred the idea of activities which are “exceptionally dangerous whatever precautions are taken”, thus significantly reducing the ambit of the doctrine. Chief Justice Menon found the Biffa Waste approach “attractive” as it showed a keen appreciation of the difficulties which such a doctrine may present. As the learned judge observed, if the doctrine were broadly defined, even the most mundane of daily activities can turn out to be ultra-hazardous. In contrast, he continued, with the exercise of reasonable care, most of these activities would be regarded as tolerably safe, giving examples of driving, charging of electronic devices and using kitchen appliances.

Elaborating upon the Biffa Waste conception of ultra-hazardous activities, Menon CJ quoted, approvingly, Burnton LJ’s explanation that the doctrine takes into account:

1. the persistence of a material risk of exceptionally serious harm to others arising from the activity in question;

2. the potential extent of harm if the risk materializes; and

3. the limited ability to exclude this risk despite exercising reasonable care.
The Chief Justice explained that because the doctrine imposes an “extremely stringent” duty, it should be limited to “very limited” circumstances. To quote the learned Judge:

It is the persistence of such a risk despite the exercise of reasonable care makes it fair, just and reasonable to hold the defendant liable for any negligence ... even if the negligent conduct was on the part of an independent contractor.... (emphasis original)

Applying the Biffa Waste interpretation of the doctrine, the learned judge found that the demolition work in the case before him was not ultra-hazardous.

However, it should be noted that the Chief Justice chose to leave open the question of whether the doctrine should be recognized as part of Singapore law. In effect, he decided that even if it were part of Singapore law (and to that end, he preferred the Biffa Waste position), the application of the doctrine would lead to the conclusion that the activity in question was not ultra-hazardous. The reader may wonder at the learned judge’s reluctance to make a decision on the law.

The parting words of the Chief Justice on non-delegable duty for ultra-hazardous activities, are particularly significant:

But — and this is important to note — the basis of liability remains negligence. In other words, the doctrine of ultra-hazardous acts does not create or impose liability in the absence of negligence. What the doctrine does is ... to ensure that the party who is actually performing the activity does so with reasonable care.

In effect, the Chief Justice is confining non-delegable duty for ultra-hazardous activities to situations of negligence. The learned Judge reiterated:

If the principal fulfills its duty... [by ensuring that the party performing the activity takes care] but some harm nonetheless ensues, there will be no liability on the basis of negligence on the party performing the activity, nor will there be liability for breach of non-delegable duty on the principal’s part. (emphasis added)

Thoughts on Ultra-hazardous Activity Doctrine

Earlier, it was noted that Menon CJ preferred the Biffa Waste definition of ultra-hazardous activity to the Honeywill definition. Upon closer scrutiny, it will be realized that the learned Judge’s formulation is in fact wider than that of Biffa Waste — exceptionally dangerous “even if reasonable care is taken” instead of exceptionally dangerous “whatever precautions are taken”. Obviously, the ambit of the latter situation is broader. Accordingly, more activities can be considered ultra-hazardous in Singapore than in the UK.

The second difference is more far-reaching. As mentioned above, the Chief Justice concluded the discussion of the doctrine with clear statements that the basis of liability for ultra-hazardous activities remains in negligence. The defendant’s primary duty is to ensure that care is taken. If care is indeed taken, there will be no breach of non-delegable duty. Such a position is no doubt correct where the wrongful conduct in question is a negligent one. However, it is respectfully submitted that there should be liability for harm caused by an ultra-hazardous activity even where the conduct is non-negligent; the tort, though, would not be negligence but some other applicable tort, such as the rule in Rylands v Fletcher or (strict) liability for wild animals.

Take the example of a nuclear power station. Quite clearly, the activity of operating such a power station is an exceptionally dangerous one even if reasonable care is taken or, for that matter, all precautions are taken. Under English law, there will be non-delegable duty even if the person to whom the task is delegated had taken all care. According to the Chief Justice, there will not be a breach of a non-delegable duty since reasonable care had been taken. The reason for such radical departure from the English position is not apparent from the judgment.

Justice on the Facts

The outcome of the Ng Huat Seng decision is that the plaintiff land owner is limited to his claim against the contractor. If his claim is not satisfied or not fully satisfied by the contractor, he has no remedy against the defendant land owner. The question is whether such a legal position is fair and just.

Certainly from the point of corrective justice it is the contractor who should compensate the plaintiff. However, as between the plaintiff and the defendant, surely the plaintiff is innocent or, at least, more innocent. The notions of benefit of defendant and risk creation suggest that a remedy should be afforded the plaintiff in the Ng Huat Seng scenario. The tort law objectives of distributive justice and deterrence also support giving a remedy.

The Ng Huat Seng scenario highlights a fundamental inadequacy in tort law: the inability to moderate or reduce a claim on account of the defendant’s mitigatory conduct, such as the taking of reasonable care, or the defendant’s innocence (or helplessness). Contributory negligence...
(which takes into account the plaintiff's conduct) aside, the law delivers a binary outcome – the plaintiff receives his full claim or gets nothing. If there is a concept of mitigatory diligence or innocence, a fairer outcome, and one that is more in line with what rough justice would require, can be achieved. For example, perhaps the plaintiff land owner in *Ng Huat Seng* should receive half or two-thirds of his claim. Of course this requires a very radical change to the current law.

**Armes v Nottingham County Council**

Mention should also be made of the very recent *Armes* decision. A detailed analysis of the complexities and implications of the decision is not practicable or appropriate within the confines of this article; instead, a summary overview will be given.

The case concerns sexual abuse of children placed in foster care by the local authority. There was no issue of the authority being negligent in the selection or supervision of the foster parents. The question was whether the local authority was liable either on the basis of non-delegable duty or on the basis of vicarious liability.

Let us pause for a moment. There are several possible outcomes in this scenario. The first is that the local authority is not liable on either basis. The second is that it is liable on both bases. The third is that it is liable on one basis but not on the other. The outcomes have serious implications on the true nature of each of the two doctrines and how they interact.

The High Court and the Court of Appeal chose the first outcome - the local authority was not liable on either basis. The Supreme Court (Lord Hughes dissenting) chose the third outcome – the local authority was liable on one basis but not on the other; more specifically, the English apex court decided that the local authority was vicariously liable for the foster parents’ sexual assaults but was not in breach of a non-delegable duty.

Lord Reed, delivering the judgment of the majority, dealt with non-delegable duty first. Essentially, the learned Judge reasoned that since statute had clearly delineated the local authority's specific duties in respect of placement and supervision, it cannot be that there is also a general non-delegable duty for the safety of the children. Such a duty would be “too broad” and “too demanding”.

As regards vicarious liability, Lord Reed referred to Lord Philips’ five factors in *Christian Brothers* for determining if the relationship between the defendant and the tortfeasor was one onto which vicarious liability should be imposed. He then referred to and endorsed the view he had earlier expressed in *Cox* that factors two to four of the Phillips factors reflect the “principal justifications” of vicarious liability and the resultant reformulation of the test for relationships other than employment as follows:

... where harm is wrongfully done by an individual who carries on activities as an integral part of the business activities carried on by the defendant and for [the defendant's] benefit ... and where the commission of the wrongful act is a risk created by the defendant .... [emphasis added]

Applying such a test to the facts at hand, and considering the relevant policy arguments as well as the importance of deterrence, Lord Reed concluded that it was appropriate to impose vicarious liability on the local authority for the sexual abuse committed by the foster parents.

Two other points should be noted. First, Lord Reed explicitly disagreed with the position taken by Burnett LJ in the Court of Appeal that if there is no vicarious liability, there cannot be non-delegable duty, and the actual Supreme Court decision dispels the converse notion - that if there is no non-delegable duty, there cannot be vicarious liability – as well. Secondly, Lord Reed also disagreed with Burnett LJ's view that there cannot be non-delegable duty for intentional torts.

The key takeaways, so far as English law is concerned, of the *Armes* decision are:

1. as vicarious liability and non-delegable duty are separate bases for imposing liability, the fact that one basis does not apply does not mean the other cannot apply;
2. the *Cox* reformulation of the *Christian Brothers* factors is an appropriate one for deciding vicarious liability as regards non-employment relationships; and
3. deterrence is a principal justification for imposing vicarious liability.

But the *Armes* decision is not without difficulties or controversies, the foremost of which is – if indeed the reason for not imposing non-delegable duty is that legislation has defined and delineated the specific duties and liabilities of the local authority, how could it be right to impose liability via another approach (namely, vicarious liability)?

Another important point is that the *Armes* case illustrates that apart from selection and delegation, there is another zone of
liability – supervision. More specifically, the Supreme Court observed that the local authority, apart from approving the foster parents, exercised powers of inspection, supervision and removal. On the facts, the authority had not been negligent in their exercise of these powers. The point is that the typical approach of the courts in non-delegable duties cases has been that as long as the defendant had appointed the independent contractor with care, there is no further liability. Such an approach ignores the reality that in many situations, including the Tiong Aik scenario, there should be a primary duty of supervision, the ambit of which depends on the context and the actual circumstances.

**Armes Case and Singapore Law**

It cannot be assumed that the Armes scenario would be decided in the same way in Singapore. There are at least two reasons. First, much depends on the specific delineation of duties under the relevant Singapore statutes. Secondly, the degree of immunity accorded to public bodies depends on the language used in the incorporating statute; a common stance is that a public body acting in good faith has no legal liability.47

A more immediate question is – how does Armes and the law there expressed affect the Ng Huat Seng type scenario? The short answer is that the two scenarios are very different ones. However, if we apply the Cox reformulation, the two factors of defendant’s benefit and risk creation are probably satisfied whilst the third – integral part of the defendant’s business activities - appears, technically at least, not to be satisfied. In any case, Singapore courts would next apply, quite robustly, the test of just, fair and reasonable. Further, the courts may have a different view as to the importance of deterrence in this scenario.

**Concluding Remarks**

The doctrines of non-delegable duty and vicarious liability have entered an era of substantial re-examination and evolution.48 Whilst this is taking place, there is a determination to keep the ambit of each of them from growing too quickly as well as persistence to keep the two apart.

For non-delegable duty, it has become clear that the claimant has to show that his case comes within one of the recognised categories or to satisfy the Woodland framework as well as the test of fair, just and reasonable.

For vicarious liability, the concept has in recent times expanded beyond relationships of employment to those akin to employment. With Armes, it has been extended even further.

Whilst each of these doctrines evolves, courts in England and in Singapore have vigorously defended the distinctions between the two doctrines even though the two are becoming even more similar. Certainly, the overarching objectives of each of the doctrines seem to converge.

As for what is a fair outcome in the Ng Huat Seng scenario, opinion will be divided; this writer leans towards giving the plaintiff land owner a remedy49 against the defendant land owner, and there are enough legal principles and tools as well as policy arguments to justify such a position if a court is so minded. Legal technicalities and subtleties aside, the scenario is basically about the defendant asking the tortfeasor to perform a task on his behalf.

The two theoretically distinct yet practically intertwined doctrines of vicarious liability and non-delegable duty have reached a level of complexity, subtlety and sophistication that perplexes the legal expert let alone the man in the street. This Gordian knot awaits unraveling.50

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*In writing this article, I benefitted from discussions with Aaron Yoong and Nicholas Liu respectively. Errors and deficiencies are mine alone.

**Notes**

1. [2012] 3 WLR 1319.
2. [2016] 2 WLR 806.
3. [2017] UKSC 60.
4. [2013] 3 WLR 1227.
8. The other members were Chao Hick Tin JA, Andrew Phang Boon Leong JA, Judith Prakash JA and Tay Yong Kwang JA.
9. At [41].
10. At [16] and [42] respectively.
11. At [41].
12. At [54]. See also [49].
13. At [62].
14. At [64].
15. At [62].
16 At [54] and [56].
17 At [55].
18 At [59] and [64]. The learned judge added, at [64], that he could not see how vicarious liability could possibly be extended to tortious acts committed by an independent contractor, ‘who, by definition, is engaged in his own enterprise’.
19 At [63].
20 At [64].
21 At [64].
22 At [64].
23 At [64].
24 Especially after Christian Brothers and Cox.
25 At [69] to [70].
26 At [70].
27 [2002] 1 AC 215, HL.
28 At [44].
29 At [17], quoting the High Court judge.
30 At [64].
31 In this approach, the contractor takes responsibility for all aspects of the project, and this usually covers architectural design, engineering, materials selection, construction and project management.
32 At [74].
33 At [76].
34 See [80]-[86] of the judgment.
35 [1934] 1 KB 191.
36 In Honeywill, the English Court of Appeal (at 200) used the words ‘a dangerous operation in its intrinsic nature’.
37 [2009] 3 WLR 324.
38 At [94].
39 At [94].
40 At [95].
41 Which we will return to later.
42 At [107].
43 In contrast, where the performing party is negligent, he is liable for negligence and the principal is liable for breach of non-delegable duty: [107].
44 And also in contract law.
45 Such a result, the writer submits, is preferable to the current all or nothing approach.
46 According to the High Court, there was no vicarious liability as the relationship between the defendant and the tortfeasor was not akin to an employment relationship and there was no non-delegable duty because even though the case possessed all the Woodland features, it would not be fair, just and reasonable to impose liability. The Court of Appeal held there was no vicarious liability as there was insufficient control and that there was no non-delegable duty (although the three judges gave different reasons).
47 See eg. s 16 of the Agri-food and Veterinary Authority Act and s 32 of the Building Control Act.
48 As Lord Phillips remarked in the Christian Brothers case (at [19]), the law of vicarious liability is ‘on the move’ and, as Lord Reed noted in Cox (at [1]), ‘it has not yet come to a stop’.
49 An alternative would be to create a fund from which innocent victims could be compensated.
50 This writer had proposed elsewhere the radical solution of making the non-delegability of a duty of care the general rule and delegability the exception: see KY Low, ‘Non-delegable Duty of Care: Woodland v Swimming Teachers Association and Beyond’, Singapore Law Gazette, March 2015 16 at 24.
Deputies, Donees and Disputes: Cases on the Mental Capacity Act

Introduction

Since the Mental Capacity Act (Cap. 177A, 2010 Rev. Ed.) (“MCA”) came into force, there has been significant judicial clarifications on various issues on the Act. This commentary surveys the significant cases for practitioners and relevant individuals to note the issues, pitfalls and judicial guidance on this area of law, which will no doubt continue to develop over time especially with an increasingly ageing Singapore society.

Court of Appeal’s Guidance on Evidence to Determine Mental Capacity Generally and in Circumstances of Undue Influence

Facts and Holding

1. In the only reported Court of Appeal decision on the MCA, Re BKR [2015] 4 SLR 81 (CA), the Court had to determine an application under the MCA for a declaration that an elderly individual (“BKR”) was unable to make decisions as to her property and affairs because of an impairment or disturbance of functioning of her mind, and for a consequential order that deputies be appointed to make all decisions on her behalf. The application was made by BKR’s sisters (the appellants). The appellants alleged that BKR was under the undue influence exercised by her youngest daughter and that daughter’s husband (the 2nd and 3rd respondents respectively). BKR herself and the 2nd and 3rd respondents opposed the application. The parties are from a wealthy and prominent family.

2. The Court had to determine the approach it should take in MCA proceedings concerning the mental capacity of a person where there was an interaction between (a) mental impairment afflicting that person and (b) allegations that the person had come under the undue influence of other persons.

3. On the facts, a few key events were central to the dispute: (a) BKR set up a trust which appeared to bring benefit to the 2nd respondent but not to herself; (b) BKR’s issuing successive contradictory instructions to her bankers regarding assets in her banks; and
(c) BKR moving to live overseas with the 2nd and 3rd respondents, and cutting off contact with her siblings and other children despite their efforts to reach her.

4. The Court found that the evidence suggested that BKR’s mental impairment was situated somewhere along the continuum between “Mild Cognitive Impairment” (MCI) and dementia. Further, the Court found that BKR was been acting under the undue influence of the 2nd and 3rd respondents. The actual circumstances of BKR’s life had positive hindrances to her decision-making independence. Thus, the Court held that the combination of BKR’s mental impairment and circumstances led to an inability to make decisions on setting up the trust or transfer of assets in her banks. The Court also held that the statutory test for lack of capacity under the MCA was fulfilled, and her decisions to set up the trust and transfer her bank assets were set aside, and deputies were appointed to make decisions on her behalf.

**Significant Points**

5. In coming to its decision, the Court made several important points of guidance and clarification.

**Functional and Clinical Components to Test for Capacity**

6. The test for capacity in s 4(1) of the MCA may be thought of as having:

a. a functional component: that the person who is alleged to lack mental capacity (“P”) must be unable to make a decision; and

b. a clinical component: P’s inability must be caused by a mental impairment.¹

These two components were adopted from the equivalent United Kingdom legislation.

7. The courts will require the assistance of expert evidence, i.e. medical professionals, when addressing the clinical component of the test to determine whether P has a mental impairment based on the observable symptoms and any other diagnostic tools available, and if so, what that impairment is, and what effect it has on P’s cognitive abilities.²

8. As for the functional component, it is a question for the Court, with limited scope for the involvement of the medical experts. The courts are able to form their own assessment from the evidence, including a cross-examination of P and the clinical interviews, as to the degree to which her mental functioning is compromised.³ The requirement for a functional inability is focussed on P’s decision-making process rather than the outcome of her decision.

**Actual Circumstances and Effective Cause**

9. Where there was an interaction between mental impairment and allegations of undue influence, the court has to consider the actual circumstances in which P lived, and not adopt a theoretical analysis.⁴ In coming to this conclusion, the Court considered English cases (arising from the English Court of Protection) under the UK Mental Capacity Act 2005 (c 9).⁵

10. There must be a causative nexus between P’s mental impairment and her inability to make decisions. There is no need for her mental impairment be the effective cause of the inability to make decisions. The MCA will apply so long as one of those causes is P’s mental impairment.⁶

**Actual Circumstances Assessed**

11. Applications under the MCA can become very contentious, adversarial, long-drawn and costly. The Court of Appeal has posited the guideline that cases involving questions of mental capacity under the MCA should be better dealt with in a more inquisitorial and less adversarial mode, with the court directing the inquiry, assisted by an assessor if need be.⁷

12. The court may direct parties on the evidence, especially expert evidence, that it requires in order to reach its decision. Also, in any inquiry into a person’s mental capacity, she should be independently examined in consultation with her own doctor rather than have her capacity assessed under cross-examination, and the court ought to appoint the independent expert should parties be unable to agree on the appointment of the expert. There is no need for multiple experts traversing the same ground.⁸

**Deputies Making Investments**

13. In the decision by Colin Tan DJ in Re TQR [2016] SGFC 98, the Court had to consider whether to grant deputies powers to make investments with P’s assets and if so, the extent of those powers. Section 24(9)(b) of the MCA permits the court to grant such powers to deputies. The Court then made several observations and pointers on deputies’ powers to make investments.
14. Given that a deputy has to act in best interest of P, a deputy making an investment decision for an incapacitated person must consider what the incapacitated person would have done in the same circumstances, but also has to consider other factors as well and cannot make a decision on the sole ground that the incapacitated person would have done the same if he had mental capacity.9

15. Citing the English case of The Public Guardian v C [2013] EWHC 2965 (COP), the Court observed that a deputy must always consider the issue of preserving P's assets for his maintenance as first priority.10

16. A deputy cannot base his decisions solely, or even mainly, on how this would increase the asset pool and benefit P's heirs in future.11

17. When deciding whether to grant deputies power to make investment decisions, the court must consider the following matters:-12
   a. Whether P has enough assets to permit some of them to be used for investment?
   b. What is the relationship between P and the deputy?
   c. What are the safeguards that should be put in place to protect P's assets from bad investment decisions?

18. Investments come with risks. So if P has very little assets, there is very little buffer if anything goes wrong with the investments and the court would therefore be slow to permit a deputy to invest those assets because of the risk of loss.13 Conversely, if P has significant assets that are more than sufficient for his needs, then the court may be more willing to permit investment since such P would still have enough assets for his maintenance even if the investments resulted in significant losses.14

19. As regards the relationship between P and the deputy, presumably close relatives would be more likely to be concerned with P's interests. And potential heirs would subconsciously think about their future inheritance.15 The relationship between a deputy and P is akin to the fiduciary relationship between a trustee and a beneficiary.16 So potential heirs should not be influenced by their future inheritance in making investment decisions.

20. As regards safeguards against loss of assets, the aim is to limit the extent of possible loss and ensure that there is a reserve of funds or assets for P's use no matter what happens to the investments. Such safeguards could potentially differ greatly from case to case.17

21. In that case, P had over $6 million worth of assets. The Court granted the deputies investment powers on condition of the following safeguards:
   a. they would maintain a minimum sum of $200,000 as a reserve fund which would not, under any circumstances, be invested;
   b. they would seek advice from qualified persons in relation to proposed investments;
   c. all investment decisions would be taken by both deputies jointly;
   d. in the event that P's investments fall in value by more than 30%, the deputies would be personally responsible to P for the loss and would reimburse P for the loss sustained;
   e. the deputies were to furnish the Public Guardian with a list of P's assets and their current value every 6 months in addition to the annual report that they had to submit to the Public Guardian.

22. This decision therefore helpfully illuminates the principles governing the Court's approach to granting deputies investment powers, as well as deputies' exercise of those powers.

Contested Application to make a Statutory Will: The Fall of the Infamous Fraudster

23. TCZ v TDA, TDB and TDC [2015] SGFC 63 concerned one aspect of the saga involving an infamous fraudster who was formerly a tour guide from China. The fraudster was later charged and convicted for, inter alia, criminal breach of trust and falsification of receipts. In this case, the plaintiff applied under section 23(1)(i) of the MCA for court sanction to make and seal a statutory will on the part of a wealthy elderly widow who lacked testamentary capacity and whose estate was estimated to be $35 million. A draft statutory will was presented to the Court for endorsement.

24. The fraudster was a tour guide to the widow in China and remained in contact with her thereafter. He subsequently came to Singapore and set up a company naming him and the widow as directors. He stayed in her home until her niece removed her to live with her.
Later, the widow was diagnosed with dementia, and the niece found out that a Lasting Power of Attorney ("LPA") was registered two years ago appointing the fraudster as the widow's donee. The niece also discovered a will executed by the widow four years prior, bequeathing all her assets to the fraudster. This did not square with the widow's commitment to charitable causes. It was later found that there were no longer any funds in the widow's foreign currency accounts held with OCBC. There were also many missing pieces of jewellery and art work belonging to the widow which could not be accounted for.

25. A series of legal proceedings was then started by the niece. The niece successfully applied for limited powers to institute legal proceedings against the fraudster in the widow's name for, inter alia, breach of his fiduciary duties under the LPA and for damages arising from the misappropriation of the widow's assets. The niece also successfully obtained a Mareva injunction from the High Court in August 2014 prohibiting the fraudster from disposing the widow's assets worldwide. In 2014, the application in the name of the widow to revoke her LPA appointing the fraudster was granted.

26. The Court heard evidence on former executed and unexecuted wills of the widow, which "provided the court with an insight into the mind of [the widow] when she was in relatively better health".18 Further, the unchallenged expert evidence of a psychiatrist was adduced proving that the widow did not have the capacity to renounce her previous wills nor make a new one by that time of the proceedings.19

27. The Court considered that in determining the best interests of the widow, it had to consider the non-exhaustive list of factors in section 6 of the MCA, including in this case, the need to ascertain the widow's past and if ascertainable, present wishes, her feelings, beliefs and values which would likely have influenced her decision if she had the capacity.20

28. A procedural point was highlighted at the hearing of the application, one which would be of significance subsequently on appeal. Paragraphs 46 and 57(1) of the Family Justice Court ("FJC") Practice Directions 2015 provided that evidence for the MCA application, which is to be made by way of Originating Summons ("OS"), is given by way of affidavit. During the Pre-Trial Conference ("PTC") of the matter, parties raised the possibility of calling witnesses for cross-examination given the allegations of undue influence. However, the fraudster decided not to do so to support his defence.

29. The Court examined the affidavit evidence and found that the fraudster had exercised undue influence over the widow.21 The Court found that the timing between the fraudster's entry into the widow's life and the execution of the will in his favour; the hurried pace at which things were done; the fact that he introduced himself as a staff of the Chinese Embassy to the widow's former lawyers and that no one knew about the wills save for the fraudster, makes any suggestion that the widow freely chose to execute a will in favour of the fraudster a distortion of the evidence. The Court observed that "the motivations of any beneficiary of a will who involves himself so deeply in the execution of that will are in [its] view, suspect".22 The Court also gave significance to the fact that "that the LPA has since been revoked by [the widow] signifying her position that she [did] not want [the fraudster] to be in charge of her and her assets".23

30. In the circumstances, the Court allowed the application for the execution of a will on behalf of the widow but made amendments to the amounts the niece's mother (the widow's sister) and the widow's close family friend would benefit under the statutory will. The Court took cognizance of the fact that the draft statutory will was "in perfect alignment" with the widow's 1989 will and an unexecuted 2009 will.24

31. The fraudster then appealed against this decision on the basis that the decision should not have been summarily decided and should thus be set aside and the matter remitted for a retrial at which witnesses could be called and cross-examined. In TDA v TCZ, TDB and TDC [2016] SGHC 63, Judith Prakash J (as she then was) threw out his appeal.

32. Prakash J considered Rule 512 of the Family Justice Rules 2014 ("FJR") which addresses conversion of an OS to a writ action, Rule 590(3) of the FJR which addresses cross-examination of witnesses who gave affidavits without conversion of the OS to a writ, and Rule 575 of the FJR which concerns the court's discretionary power to call witnesses. Given that there was no prior case law on the Court's exercise of discretion under these rules, Prakash J compared them with Order 28 rule 8 of the Rules of Court ("ROC").25 However, Prakash J observed that, drawing from Re BKR,26 "a judge hearing an MCA matter should be

At the hearing, the fraudster's counsel submitted that the Court could and should on its own volition, call on certain witnesses who were alleging that the fraudster had exercised undue influence over the widow. The Court declined to do so.
accorded a greater degree of discretion than a judge hearing an ordinary civil matter in which the parties are, by and large, the masters of the litigation.27

33. After considering various authorities,28 Prakash J observed that generally, allegations of undue influence or fraud will strongly incline a court toward ordering conversion to a writ provided there is, first, controversy concerning the facts per se and, second, at least a credible matrix of facts supporting the allegations or denials.29

34. However, Prakash J also observed that a party can lose the ability to ask the court to order such a conversion by way of its election.30 Such election not only pertained to forgoing an opportunity to apply for conversion of an OS to a writ action, but also whether that party had elected to forgo an opportunity to call and cross-examine witnesses. The rationale is that any potential prejudice from non-conversion to a writ action could be prevented by allowing the calling and cross-examination of witnesses, even if there was no conversion.31

35. On the facts of the case, Prakash J found that the fraudster had elected to forgo the opportunity to call and cross-examine witnesses32 and failed to establish at least a credible matrix of facts to support his position.33

Revoking LPA, CPF Nomination and Property Transfer: Dementia, Depression and Alzheimer’s

36. In two different cases, the applicants applied to revoke an LPA and a CPF nomination on the ground of lack of mental capacity due to dementia and depression respectively; the former failed and the latter succeeded. In a third case, the plaintiffs failed in applying to set aside a transfer of property on the ground of lack of mental capacity due to Alzheimer’s disease.

37. In the case of TEB v TEC [2015] SGFC 54, P executed an LPA in late 2012, appointing the defendant, P’s nephew, as donee and granting him various powers to manage P’s affairs for her. The plaintiff, the nephew of P’s late husband, applied under section 17 of the MCA to revoke the LPA on the basis that P lacked capacity at the time of its execution and that the defendant was behaving in a way that is not in the best interests of P.

38. The Court held that the plaintiff had failed to discharge his burden of proof. While it was clear from the evidence (and there were a total of 13 expert witnesses34) that P had dementia and other medical conditions and therefore the first limb of the test of mental capacity had been satisfied,35 a diagnosis of dementia (or any other medical condition) is not sufficient, in itself, to support a conclusion that P lacked mental capacity. The plaintiff would still have to prove that the dementia (or other medical condition) had caused P to be unable to make decisions for herself in relation to the matter in question.36

39. The Court was of the view that the plaintiff had failed to prove that P lacked mental capacity at the time of the execution of the LPA, in the light of the presumption in section 3(2) of the MCA i.e. that P “must be assumed to have capacity unless it is established that he lacks capacity”.37 The Court considered the thirteen expert witnesses’ evidence and observed that several of these expert witnesses did not personally assess P;38 one had “strong preconceived ideas about the entire situation involving P and the Defendant [so] there was a very real possibility that these views may have affected his objectivity in assessing P’s mental capacity”;39 P’s long-time general practitioner appeared to “not know the criteria for diagnosing dementia or he had applied the wrong criteria in diagnosing dementia in P or he had been correct in his diagnosis but simply could not be bothered to provide accurate information in his first affidavit”40; three of them were family physicians, and so their possible lack of credentials compared to specialists like psychiatrists and geriatricians in this respect had to be given weight;41 four others were not testifying as to P’s mental capacity;42 two of them could not testify as to P’s mental capacity at the time of her execution of the LPA;43 one had his methodology of scoring P on a Severe Impairment Rating Scale questioned;44 one showed a lack of familiarity with LPAs;45 the expert who had personally assessed P closest to the time of the execution of the LPA testified that he came to an assumption about P’s dementia based on another doctor’s diagnosis.46

40. The Court found that while it was clear that there were various ways in which the Defendant could have better handled matters involving P, there was no evidence that he had acted so badly in terms of P’s interests. Hence, the plaintiff had failed to prove that the defendant was behaving in a way that was not in P’s best interests.47 In any case, the plaintiff had failed to prove that P lacked capacity to revoke the LPA on her own and therefore the court would not have jurisdiction to revoke the LPA on the basis of the defendant’s actions that were allegedly not in P’s best interests.48

41. In Leow Li Yoon v Liu Jiu Chang [2016] 1 SLR 595 (HC), Aedit Abdullah JC granted an appeal against the District Court's judgment that the Court had no jurisdiction to revoke the LPA. The case involved an application to revoke the LPA of a 90-year-old man who had been suffering from a severe head injury that had left him unable to make decisions about his life and affairs. The Court found that the plaintiff had failed to prove that the defendant had acted in a manner that was not in the best interests of the plaintiff. However, the Court noted that the plaintiff had failed to prove that the defendant lacked capacity to make decisions about the plaintiff’s affairs. The Court therefore granted the appeal and remitted the matter back to the District Court for further proceedings.
Court’s decision to dismiss the applicant’s application to declare null and void a Central Provident Fund (“CPF”) nomination.

42. The deceased, who was in the midst of divorcing his wife, nominated someone other than his immediate family members as the beneficiary of the funds in his CPF account. The wife and some of the rest of the family took issue with the nomination, as there were indications that the deceased was not of the right mind when the nomination was made.

43. Aedit Abdullah JC ordered that the CPF nomination be set aside and that the deceased’s CPF monies be distributed in the manner prescribed in the Intestate Succession Act and in accordance with section 25(2)(a) of the CPF Act. Following Wong Meng Cheong v Ling Ai Wah [2012] 1 SLR 549 (HC) at [27], the Court held that the statutory test for mental capacity, found in sections 4 and 5 of the MCA, does not differ from the position at common law. Given that the test, and hence the result, should be the same whether the MCA or common law standard is applied, it did not matter which is used. Thus the MCA formulation of mental capacity can be adopted in dealing with CPF nominations.52

44. After examining the expert evidence, the Court found that the available evidence did raise a real possibility that the deceased’s depression might have left him functionally incapable of making a decision in relation to the CPF nomination at the material time.53 The defendant however did not call expert evidence to controvert the plaintiff’s, so she failed to discharge her burden of proof. The Court however observed that the decision in this case does give rise to a proposition that depression will always affect testamentary capacity in the same way. Much will depend on the specifics of each case.54 It was significant here that the plaintiff’s expert evidence was uncontroverted.

45. Next, Wong Meng Cheong and another v Ling Ai Wah and another [2012] 1 SLR 549 (HC) involved a three-person committee of the person and estate of Wong Yip Chong (“WYC”) appointed under section 9 of the now repealed Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed). After the introduction of the MCA, the committee was deemed to be deputies appointed under the MCA. The two plaintiffs, the two sons of WYC and his wife, applied to declare null and void a property transfer to include WYC’s long-time partner Ling Ai Wah as a joint tenant. They claimed that he lacked mental capacity to execute the transfer as he had Alzheimer’s disease. They also applied to sever the joint tenancy and sell the property if the transfer was found valid. The son of Wong and Ling Ai Wah, Wong Meng Weng, however applied to, inter alia, revoke the appointment of the two plaintiffs as deputies.

46. Lai Siu Chiu J (as she then was) dismissed the plaintiffs’ claim and revoked the appointment of the two plaintiffs as deputies. Lai J held that the MCA test for capacity applied even though it was not in force at the material time; this was because its concept of mental capacity and autonomy was no different from that of the common law’s.55 Lai J found on the evidence that WYC did not lack mental capacity to execute the transfer at the material time. She found that WYC did not suffer from Alzheimer’s disease at that time. Even if he did, WYC was still able to make a decision for himself regarding the transfer.56 It was significant that the plaintiffs’ experts evidence failed to fulfil the requirements in Order 40A rule 3(2) of the ROC in that: (i) the experts had a close relationship with the plaintiffs; (ii) their evidence displayed partiality towards the plaintiffs’ case and only highlighted material supportive of the plaintiffs’ case; (iii) their evidence did not attempt to explain the contradictory objective medical evidence which Lai J found to be highly relevant on the basis of the defendant’s expert’s evidence; (iv) they were not able to give a reliable expert opinion on the issue of WYC’s mental capacity at the time of the transfer.57

47. Further, Lai J refused the plaintiffs’ application to sever the joint tenancy because there was no evidence that WYC felt any differently at the time of the transfer with respect to how the property should be held as compared to his earlier decision. Hence, to promote WYC’s best interests, much weight had to be given to WYC’s expressed intentions in relation to the property while he was still able to decide for himself.58

48. Having also considered that the plaintiffs were not acting in WYC’s best interests by, inter alia, making mala fide applications to the court without disclosing material facts to then take the defendant’s properties, depleting WYC’s cash reserves, putting money out of WYC’s reach, wrongfully wrote off debts owed to WYC, and doing these things to benefit their own interests at the expense of WYC’s wellbeing, Lai J found that they had breached sections 6(7), (8) of the MCA and paragraphs 9.8.7 and 9.8.9 of the Code of Practice: Mental Capacity Act 2008 (section 41(5) of the MCA). Lai J thus ordered that their appointments as deputies be revoked under section 20(8) of the MCA and for an account of WYC’s assets and liabilities to be provided
to the sole remaining deputy who was in the committee of the person and estate.  

Awarding Costs in MCA Disputes

49. *Wong Meng Cheong and another v Ling Ai Wah and another* [2012] 1 SLR 549 (HC) was also significant for its decision on the order of awarding costs in MCA disputes. Lai J observed that the court ultimately has discretion on costs in such disputes: Order 99 rule 13 of the ROC provided that the costs of proceedings under the MCA would be paid by the deputised person or charged to his estate, unless the court otherwise directed; and section 40(2) of the MCA provided that the court had full power to determine by whom and to what extent the costs were to be paid. The general rule that a trustee who sued for the protection of trust property against a third party would be indemnified against his costs applied to MCA disputes because the fiduciary relationship between a deputy and the deputised person was akin to that of trustee and beneficiary. However, the rule was qualified.  

50. It is established that a trustee is entitled to full indemnity out of a trust estate against all his costs, charges and expenses if they were "properly incurred" in an action respecting the trust estate. For costs to be considered "proper", the trustee had to satisfy two tests, reasonableness and *bona fides*. A trustee should avoid all litigation unless there was such a chance of success as to render it desirable in the interests of the estate that the necessary risk should be incurred. The trustee who was uncertain about the desirability of litigation could take out an originating summons, state the point under discussion, and ask the Court whether the point was one which should be fought out or abandoned (referred to as a *Beddoe* application).  

51. Applying the aforementioned principles to the facts, Lai J found that the plaintiffs had clearly not acted properly in commencing the litigation. It was not *bona fide* and was also patently unreasonable. The costs of commencing the action were also entirely out of proportion to the amount of liquid funds available in WYC’s estate at the time the proceedings were initiated. The plaintiffs failed to make a *Beddoe* application and did not pay heed to their co-deputy’s well founded objections. Lai thus ordered the plaintiffs to pay the defendant’s costs on an indemnity basis, and the co-deputy’s costs on a standard basis, while the shortfall between the co-deputy’s standard basis costs and the solicitor and client costs was to be paid out of WYC’s estate as he had acted reasonably in the proceedings as a deputy.  

52. Colin Tan DJ also considered the issue of awarding costs in MCA disputes in *TRD v TRE and others* [2016] SGFC 55. The Court surveyed section 40, MCA; and Rule 190, 852(2), 854(b) and (c), and 856 of the Family Justice Rules and observed that:  

a. generally P’s estate would bear the costs of proceedings because such proceedings are normally for the benefit of P and it is only fair that P pays for the proceedings (in line with section 9 of the MCA which provides that if necessary goods and services are provided to P then P must pay a reasonable price for these);  

b. this norm however should be departed from if the circumstances of the case warrant it, e.g. where the conduct of parties or unnecessary claims have contributed to making the proceedings more protracted and more costly;  

c. in contested cases, costs generally follow the event, but if the parties who may otherwise have to pay costs can demonstrate that they have acted reasonably and in P’s best interests, it may, depending on the facts of the case, be appropriate for the costs of the unsuccessful party to also be borne by P’s estate.  

53. In that case, the Court considered that there were no wasted costs due to improper or unreasonable acts. The Court took into account the nature of the claims as well as the conduct of the parties and also the size of P’s estate, for reasonable costs of the proceedings to be paid by P. The Court observed that if payment of costs would be a great burden to P, then it may be necessary to decline to order that P’s estate bears the costs even though the party or parties may be “entitled” to this. Further, the Court would take into account work done, proportionality between costs and outcome or benefit to P, and the reasonableness of conduct of the parties (including whether a more conciliatory approach should have been taken).  

The author is grateful to Tedric Chai, Daniel Foo, and Mark Lim for their helpful assistance. All errors are the author’s.
parties had no objections to Colin Tan DJ hearing the matter.

Teo Meng Cheong and another v Ling Ai Wah and another [2012] 2 SLR 549 (HC) at [27].

Wong Meng Cheong and another v Ling Ai Wah and another [2012] 1 SLR 549 (HC) at [25].

Wong Meng Cheong and another v Ling Ai Wah and another [2012] 1 SLR 549 (HC) at [58], [62]–[63], [69]–[70], [73].

Wong Meng Cheong and another v Ling Ai Wah and another [2012] 1 SLR 549 (HC) at [109].

Wong Meng Cheong and another v Ling Ai Wah and another [2012] 1 SLR 549 (HC) at [184].

Wong Meng Cheong and another v Ling Ai Wah and another [2012] 1 SLR 549 (HC) at [192].

Wong Meng Cheong and another v Ling Ai Wah and another [2012] 1 SLR 549 (HC) at [193], citing In re Bellwood, Dunwe v Catan (1993) 1 Ch 547 (CA).

Wong Meng Cheong and another v Ling Ai Wah and another [2012] 1 SLR 549 (HC) at [194].

Wong Meng Cheong and another v Ling Ai Wah and another [2012] 1 SLR 549 (HC) at [195]–[199], [203].

TRD v TRE and others [2016] SGFC 55 at [6]–[8].

TRD v TRE and others [2016] SGFC 55 at [10]–[11].

TRD v TRE and others [2016] SGFC 55 at [14]–[21].
Five Quickfire Questions and Tips to Form Your Law Firm’s Branding Strategy

Over the last few years, we have seen more foreign law firms setting up offices on our shores. This has led to greater competition for law firms in terms of hiring employees and getting clients.

It is now critical for law firms to diversify service offerings and create flexible fee agreements to boost client retention. At the same time, firms need to have a strong focus on practice specialties to differentiate themselves. Not only that, as corporate companies are focused on internationalization as a key growth strategy for their businesses, legal work naturally becomes more cross-border in nature.

The time has come for law firms to take a more active approach in differentiating themselves and making themselves known through branding and marketing initiatives.

But what exactly is branding and marketing? A common misconception is that they are both the same. However, they are not. Here is a simple illustration of each term.

Branding is what comes to mind when people think of your company. It is what they expect from working with you, and it is what they tell others about you.

Marketing is the set of processes and tools that assist you in promoting your business. This could include online methods such as search engine optimization (“SEO”), social media management and traditional promotional methods such as print advertisements.

In order to get optimized business results, branding should precede any marketing efforts. Branding is not a push, but a pull. Here are five quickfire questions and tips for you to start planning your firm’s branding strategy.

1. Do you know your firm’s purpose? The first thing you need to clarify is why you do what you do. Is there a specific problem you want to solve or a specific group of people that you want to help? This could be expanded further to your firm’s mission and the values that the firm stands by and wants to be known for. Defining a good set of values will serve as your firm’s guiding principles for work.

2. Do you know why your customers choose to work with you? Many might not pay much attention into this, but these golden nuggets of information from your customers are valuable to help in validating your strengths and understanding the positioning that you have in your customers’ minds.

3. What do you want to communicate to both internal and external stakeholders? Your integrity as a firm depends heavily on the culture that you cultivate. Happy employees are productive
and cohesive, making your business stronger. Do invest time in having bonding sessions and establishing communication channels to update employees on your firm’s happenings or for employees to provide their feedback.

As for external stakeholders, do not try to be everything to everyone. Identify a target audience and find the single most important thing that they value.

4. How would my brand appeal to my audience?
First impressions do count. Imagine when you meet a potential client for the first time, the client will take into account how you introduce yourself and your firm. Your dressing and mannerisms would form a certain impression in his or her mind. Similarly, how your logo, brand colours and corporate stationery look will set the tone and personality of your brand and it can be used to evoke specific feelings in your audience.

5. How does my audience remember my brand?
Having brand consistency goes a long way in not only recruiting new clients but also building long lasting relationships with current clients. The copy on your firm’s website, the logo and visuals on your printed collaterals and even the office scent that greets your visitors should all be consistent.

Being consistent in communicating your firm’s values, visual identity and written identity will benefit your brand in:

1. Creating the connection. The language and imagery of branding humanizes your firm and make it easier for potential clients to feel an association with your firm without having met you

2. Making you memorable. People who hear and see the same messages delivered in the same tone from the same firm will remember, even subconsciously, who you are and what you stand for.

Do keep in mind that consistency has to be maintained across all touchpoints and platforms (online and offline).

Case Study

Fortis Law Corporation is a medium-sized law firm in Singapore. Although the firm was growing its practice rapidly, it was lacking proper brand communications. Within the law firm and externally, there was no consensus on what the brand stood for.

Through comprehensive interviews and surveys, we uncovered previously unaddressed issues that employees had. We had a series of discussions with the management team and the firm’s plans were made more inclusive.

To close the gap between the management’s ideals and external perception, we identified a positioning that was aligned to the firm’s plans and also focused on the strengths of the law firm as a whole instead of just the founder himself. We also brought employees on board through further engagements, where they were updated on the business direction and the new brand identity and messages.

After Fortis Law completed its branding exercise, and within a year, the firm doubled its team, including several senior lawyers and middle management hires.

Branding is not a one-time thing that you do. It is an on-going effort that permeates your business goals, processes and culture. The measure of your branding success is in earning loyal customers who become your brand ambassadors, which rings true to this quote by Jeff Bezos, Founder of Amazon, “Branding is what people say of you when you are not in the room.”

Fuelled by a passion to bring distinction to every business, Winnie Lim started a career working with the UBS Business University (APAC region) team to promote the brand internally and after which joined an international management consultancy where she supported numerous local companies to bring their brands beyond our shores.

As Winnie’s desire to help local businesses grew, she co-founded boutique branding agency PIQUANT four years ago. The agency is recognized as a finalist (Brand Consultancy of the Year) in Marketing Magazine’s Agency of the Year Singapore 2017 Awards.

Working closely with brands in sectors such as law, manufacturing, retail, F&B, cosmetics, education and government agencies, Winnie has crafted unique brand stories and experiences. When she’s not brand-storming, Winnie works out, reads and hunts for good food.
Electronic Discovery and Cross-border Data Transfer: New Frontiers in Singapore, China, and Japan

Increasingly multi-national corporations in cross-border disputes are caught in a double bind – between the obligation to disclose information to an overseas authority under a legal request, and the duty to comply with domestic data transfer restrictions. Improper disclosures could attract serious criminal penalties. This article highlights the legal risks and case management practices relating to cross-border electronic data transfer (commonly known as "electronic discovery" or "eDiscovery") involving Singapore, China, and Japan.

I. Transfer Restrictions in Singapore, China, and Japan

Singapore, China, and Japan diverge considerably in their approaches to regulating cross-border data transfer. Singaporean and Japanese laws protect data privacy and cybersecurity, while recognising the business needs for cross-border transfer. Indeed, Japan has several data privacy initiatives to enhance the efficiency of cross-border dataflow.

Chinese laws, by contrast, while protecting personal privacy, emphasize national security interests and regulate data transfer with stringent but often vaguely worded laws. Many sets of implementation rules have been drafted but not yet commenced. The facts that China’s state-owned enterprises (“SOE”) dominate the economy and their data is often treated as state secrets heighten the compliance risks.

A. Singapore

1. Personal data privacy laws

In Singapore, the individual’s privacy right is well-recognized, as indicated in the recent public consultation by the Personal Data Protection Commission of Singapore (“Singapore Privacy Commission”). Singapore’s current regime comprises of the Personal Data Protection Act 2012 (“PDPA”) and the Personal Data Protection Regulations (“PDPR”), which became effective on 2 July 2014, the latter of which specifically expanded on, inter alia, requirements regarding cross-border data transfer. The PDPA defines “personal data” as data, whether true or not, about an individual who can be identified from that data, or from that data and other information to which the organisation has or is likely to have access. Personal data may exist in electronic or other forms.

(a) Collection, use, and disclosure

The PDPA applies extraterritorially to all organisations, whether or not formed or recognised under the laws of Singapore or resident or having an office or a place of business in Singapore, unless specifically exempted.

Under Article 13 of the PDPA, an organisation shall not collect, use, or disclose personal data unless the data subject gives, or is deemed to have given, his consent. Any collection, use, or disclosure shall be for purposes that a reasonable person would consider appropriate and has been informed of. Efforts shall be made to ensure that the personal data collected is accurate and complete, as well as secured to prevent unauthorized access, collection, and use, etc.

(b) Transfer of personal data outside Singapore

The default rule is that no organization shall transfer any personal data outside of Singapore except in accordance with the PDPA or exempted by the Singapore Privacy Commission upon application. The PDPR expands on the requirement and allows cross-border data transfer, provided that the transferring organization takes appropriate steps to (i) ensure compliance with Parts III to VI of the PDPA; and (ii) ascertain that the
recipient is bound by legally enforceable obligations of a jurisdiction with privacy protection standards comparable to that of Singapore. Criterion (ii) may be satisfied if the data subject consents to transfer to the said recipient in that jurisdiction.

(c) Anonymization/de-identification of data

According to the Advisory Guidelines on the Personal Data Protection Act for Selected Topics as issued by the Singapore Privacy Commission, data that has been anonymized is not personal data, and the general privacy requirements in Parts III to VI of the PDPA do not apply to the collection, use, or disclosure of such data. Data would not be considered anonymized if there is a serious possibility that an individual could be re-identified. Examples of anonymization techniques include pseudonymization, aggregation, replacement, data suppression, data recoding or generalization, data shuffling, and masking. Organizations are responsible for their choice of techniques in anonymizing personal data.

2. Cybersecurity laws

The amended Computer Misuse and Cybersecurity Act (“CMCA”) became effective on 1 June 2017. Under section 8A, a new section of the amended CMCA, it is an offence to obtain, supply, or transmit personal information that was obtained by an act done in contravention of some of the prohibitions under the CMCA, such as via unauthorized access to or modification of computer material. The amendment also applies extraterritorial effect to the provisions of the CMCA, expanding its scope to cover any person, whatever his nationality or citizenship, both outside and within Singapore.

B. China

1. State secrecy laws

China’s current Law on Guarding State Secret (中华人民共和国保守国家秘密法) (“PRC State Secret Law”) and its Implementation Regulation became effective in 2010 and 2014, respectively.

“State secret” is defined broadly, as matters having a vital bearing on state security and national interests, such as “national economic and social development”. Operational and technical information of central enterprises could also be classified as state secret. Compliance with state secrecy laws in China is challenging because of its retroactive application, ambiguous procedures, and serious criminal penalties.

In the Xue Feng case, Xue was incarcerated in China for nearly eight years. Xue was found guilty for disclosing information to a U.S. company, which was classified retroactively as a “state secret” after he made the disclosure.

Under the PRC State Secret Law, no organisation or individual shall transfer state secret abroad without the approval of the governing department. While the approval procedures are not clearly stated, the Implementation Regulation provides that individuals involved in the transfer of state secret must be PRC nationals. China does not recognise dual nationality.

2. Cybersecurity laws

Under the PRC Cybersecurity Law (中华人民共和国网络安全法), which became effective on 1 June 2017, any “personal information” and “important data” collected and produced by “critical information infrastructure operators” during their operation in China shall be stored within the jurisdiction, and any necessary cross-border provision arising from business needs shall be assessed pursuant governmental measures. The draft Measures for Security Assessment of Cross-Border Transfer of Personal Information and Important Data (个人信息和重要数据出境安全评估办法), if enacted in its current wording, will extend this requirement from “critical information infrastructure operators” to “network operators” or even all persons and entities, depending on its construction.

“Personal information” is defined as all information, whether electronically recorded or otherwise, and whether taken alone or together with other information, that may identify a natural person. “Important data”, on the
other hand, can be entirely anonymous — it is defined as data relevant to national security, economic development, and public interest of the society. In the draft Guidelines for Data Cross-Border Transfer Security Assessment (数据出境安全评估指南) circulated on 25 August 2017, industry-specific guidelines on the scope of important data have been set out.

3. Personal data privacy laws

In China, Article 40 of the Constitution of the PRC (中华人民共和国宪法) and several sets of laws and regulations expressly protect privacy. Both the PRC Criminal and Civil Law prohibit the unlawful sale or provision of personal information.

The National Information Security Standardization Technical Committee (also known as "TC260") has also circulated a draft Personal Information Security Specification (个人信息安全规范) (draft "PI Security Specification") and Guide for De-Identifying Personal Information (个人信息去标识化指南) on 29 May 2017 and 15 August 2017 respectively. Under the draft PI Security Specification, "personal information" and "personal sensitive information" have been defined extensively for the first time, the handling of which shall follow the principles of (1) consistent rights and responsibilities, (2) clear purpose, (3) choice and consent, (4) minimal and necessary uses, (5) openness and transparency, (6) security assurance, and (7) data subject participation.

C. Japan

1. Personal data privacy laws

The amended Act on the Protection of Personal Information (個人情報の保護に関する法律) ("APPI") became fully effective on 30 May 2017, and clarified the definition of "personal information" to mean information relating to a living individual including those containing his name, address, or date of birth, and those containing an individual identification code.

Information relating to race, creed, social status, medical history, criminal record, the fact of having suffered damage by a crime, or other descriptions prescribed by cabinet order has been classified as "personal information requiring special care" ("PISC"). The obtaining of PISC requires prior consent from the data subject.

(a) Third-party provision

Business operators shall not provide personal data to a third-party without prior consent of the data subject, unless they have informed the data subject of the following and notified the Personal Information Protection Commission of Japan ("Japan Privacy Commission"): (1) one of the utilization purposes is third-party provision; (2) the categories of personal data to be provided; (3) the method of third-party provision; (4) the right of the data subject to request for the cessation of third-party provision; and (5) method for making the said request ("Opt-out Regime"). Note that the Opt-out Regime is inapplicable to PISC. Any third-party provision shall be recorded.

(b) Cross-border data transfer

For cross-border data transfer, the amended APPI provides that the data subject’s prior consent is required, except for transfer to a third-party with a system conforming to standards prescribed by the Japan Privacy Commission, or to a jurisdiction with privacy protection standards equivalent to that of Japan. The said requirement has extraterritorial effect and applies to a business operator in a foreign jurisdiction who has acquired personal information in the course of supplying goods or services to a person in Japan.

(c) Anonymization/de-identification of data

In order to enhance dataflow, the amended APPI provides a new framework regulating "anonymously processed information". The amended APPI, defines anonymously processed information as personal information that upon processing can neither be used to identify a specific individual nor to restore the personal information. The said processing shall meet the standards as prescribed by the
A business operator may provide anonymously processed information to a third-party, provided that it (1) discloses to the public in advance the categories of personal information contained in the anonymized data; and (2) notifies the receiving party of the anonymization under the rules of the Japan Privacy Commission.

2. Cybersecurity laws

Japanese cybersecurity laws regulate data transfer. Under the Basic Act on the Formation of an Advanced Information and Telecommunications Network Society (高度情報通信ネットワーク社会形成基本法), actions shall be taken to ensure the security and reliability of advanced information and telecommunications networks and protect personal information. The Basic Act on Cybersecurity (サイバーセキュリティ基本法) obliges critical information infrastructure operators, cyberspace related business entities, and other business entities to ensure cybersecurity and corporate with applicable government authorities. The Basic Act on the Advancement of Utilizing Public and Private Sector Data (官民データ活用推進基本法), which primarily aims to advance the appropriate use and effective circulation of data, also protects individuals’ rights to data privacy.

3. Trade secret laws

The amended Unfair Competition Prevention Act (不正競争防止法) (“UCPA”) became effective on 1 January 2016. The amended UCPA defines “trade secret” as technical or business information useful for business activities, such as manufacturing or marketing methods, that is kept secret and that is not publicly known. No one shall use or disclose trade secrets obtained through wrongful means.

II. Risk Management Approaches

Each cross-border eDiscovery case has its own nuanced set of challenges: the storage location of the data; the variety of devices for preservation and collection; the data volume and file types for processing; the technical, linguistic, and other qualifications of experts handling and reviewing the information; the production requirements of requesting authorities and parties, etc. These impact on a party’s ability to meet cost and time constraints, and it is common for counsel to instruct eDiscovery specialists to conduct, with forensically sound practices, the collection, processing, review, and production. While addressing the relevant data laws and factors above, in our experience, clients and their counsel adopt broadly one of two approaches to manage risks where cross-border data transfer is necessary in their eDiscovery:

A. In-Country Solution

For projects where the data is located in a jurisdiction with transfer restrictions (“transferring jurisdiction”) and production of the same is required in another jurisdiction (“receiving jurisdiction”), a conservative approach is to conduct the collection, processing, and review within the transferring jurisdiction. Before transferring to and producing in the receiving jurisdiction, the disclosing party’s counsel, who are duly qualified in the transferring jurisdiction, would sign off on transfer of the reviewed documents for relevancy (with any applicable redaction and anonymization), and withhold documents subject to legal claims against disclosure. This approach is typically termed an “in-country solution” (see Exhibit 1), and data is hosted on servers local to the transferring jurisdiction. Where the risk level warrants a securer treatment, any or all the steps within the transferring jurisdiction could be conducted strictly within the disclosing party’s premises with offline mobile eDiscovery technologies.

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<th>Exhibit 1 – In-Country Solution</th>
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<tr>
<td>Collection and Processing</td>
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<td>Transferring Jurisdiction</td>
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<td>Receiving Jurisdiction</td>
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<td>Production</td>
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B. “Mix and Match”

It is not uncommon in eDiscovery cases where only the data collection is completed in the transferring jurisdiction (see Exhibit 2). Some eDiscovery vendors could provide cost efficiencies if particular processing and review steps were completed offshore or near-shore before production in the receiving jurisdiction. With counsel advising and eDiscovery specialists assisting, certain disclosing parties might internalize some of the review, transfer, and other eDiscovery steps, especially if they have offices in both the transferring and receiving jurisdictions. Cloud-based eDiscovery technologies support the de-localization of data, which provide further cost efficiencies. However, the degree of flexibility in managing eDiscovery workflow and dataflow ultimately depends on the applicable laws. Certainly, local counsel’s advice on key concepts, rules, and exemptions are essential in preparing the eDiscovery case; for example, how does the applicable law treat data processing and what kinds of action constitute transfer, access, and use, etc.

Exhibit 2 – Out-Country Solution

<table>
<thead>
<tr>
<th>Collection</th>
<th>Transferring Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Processing</td>
<td></td>
</tr>
<tr>
<td>Review and Analysis</td>
<td>Receiving and/or Other Jurisdictions</td>
</tr>
<tr>
<td>Production</td>
<td></td>
</tr>
</tbody>
</table>

III. Conclusion

Data transfer laws are complex and diverse, and further legislative reforms in Singapore, China, and Japan is expected. These trends will require extra vigilance in conducting eDiscovery, because any breach could result in severe penalties. When conducted with compliance and efficiency, eDiscovery solutions could help save costs and time, reduce human error, and help counsel find the needle in the proverbial – multi-jurisdictional – haystack.

► Sebastian Ko
Regional Director, Document Review & Expert Services, and Legal Counsel Asia
Epiq

► Nga Man Poon
Associate, Document Review & Expert Services
Epiq

Notes
1 In this article, “China” and “PRC” are used interchangeably and refer to the People’s Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau.
4 Article 2 of the PDPA.
6 See Article 2 of the PDPA for the definition of “organisation” and Article 4 (1) of the PDPA for the application of the PDPA.
7 Article 13(a) of the PDPA.
8 Article 18 of the PDPA.
9 Article 23 of the PDPA.
10 Article 24 of the PDPA.
11 Article 26 of the PDPA.
12 Article 9(1) of the PDPR.
13 Article 9(3)(a) of the PDPR.
15 Section 3.3 of the Advisory Guidelines on the Personal Data Protection Act for Selected Topics.
17. Section 3.10 of the Advisory Guidelines on the Personal Data Protection Act for Selected Topics.
18. Note that “personal information” is not defined under the CMCA, and it is uncertain whether the definition of “personal data” in the PDPA could be relied on as reference in construing the same.

19. Article 8A of the CMCA.
20. Article 11(1) of the CMCA.
21. In China, only the official Chinese versions of legislations have the force of law. All English translations is provided for the reader's understanding and reference only.

22. Article 9 of the PRC State Secret Law.


27. Article 3 of the PRC Nationality Law (中华人民共和国国籍法).

28. Article 37 of the PRC Cybersecurity Law.

29. The draft Measures for Security Assessment of Cross-Border Transfer of Personal Information and Important Data was circulated for public consultation by the Cyberspace Administration of China on 11 April 2017, and it has been said that a revised draft has been presented for discussion on 19 May 2017 (see <https://www.cov.com/-/media/files/corporate/publications/2017/05/china_releases_neat_final_draft_of_regulation_on_cross_border_data_transfers.pdf>). Since no official version of the revised draft has been made available, any discussion on the draft Measures in this article is based on the version released on 11 April 2017.

30. Articles 2 and 16 of the draft Measures for Security Assessment of Cross-Border Transfer of Personal Information and Important Data.

32. Article 17 of the draft Measures for Security Assessment of Cross-Border Transfer of Personal Information and Important Data.
33. Article 253-1 of the PRC Criminal Law (中华人民共和国刑法) and Article 111 of the PRC General Provisions of the Civil Law (中华人民共和国民法总则).

34. Article 4 of the draft Personal Information Security Specification.
35. Article 2(1) of the amended APPI.
36. Article 2(3) of the amended APPI.
37. Article 17(2) of the amended APPI.
38. Article 23(1) of the amended APPI.
39. Article 23(2) of the amended APPI.
40. Article 17(2) of the amended APPI.
41. Article 25 of the amended APPI.
42. Article 24 of the amended APPI.
43. Article 75 of the amended APPI.
44. Article 29(2) of the amended APPI.
45. Article 36(1) of the amended APPI.
46. Article 37 of the amended APPI.

47. Article 22 of the Basic Act on the Formation of an Advanced Information and Telecommunications Network Society.
48. Articles 6 & 7 of the Basic Act on Cybersecurity.
49. Article 3 of the Basic Act on the Advancement of Utilizing Public and Private Sector Data.
50. Article 2(6) of the amended UCPA.
51. Article 2(1)(iv) and Chapters 2 & 5 of the amended UCPA.
Leaving the Law for Mediation

In the March 2017 issue of the Law Gazette, we spoke with lawyers who took the leap early in their careers, leaving life as employees to start their own law firm. In this issue, we chat with a law school graduate who started his career by taking over ownership of a mediation company, Peacemakers Consulting Services.

His name is Sean Lim, and he graduated from National University of Singapore with his law degree in 2015.

Alicia Zhuang (AZ): Sean, when I go to Peacemakers’ website, there are three words in big font: “mediation”, “dispute resolution” and “peace”. Can you tell us more about Peacemakers, and the significance of these words?

Sean Lim (SL): Peacemakers is a private mediation company. We hope to play our part in increasing awareness of mediation as a useful dispute resolution mechanism, and to create a more peaceful society. This is all part of our wider goal to improve social harmony and access to justice. Peacemakers is currently focused on delivering conflict management training courses to corporate clients, customised for their specific industries and corporate cultures. We also offer standardised courses for individual professionals who wish to pick up mediation and dispute resolution skills. Additionally, Peacemakers teaches secondary school students in Singapore how to resolve conflicts amicably at the annual Peacemakers Conference.

Besides our training services, Peacemakers also connects people with quality mediators in our network who are the best fit for your dispute resolution needs. We also have an “Appropriate Dispute Resolution” conference (name subject to change) in the pipeline for 2018, so please keep a lookout for that!

AZ: What is the history behind Peacemakers?

SL: Peacemakers was set up in 2011 with the vision of teaching secondary school students conflict management skills through peer mediation training. We believed that age was no barrier to being an agent of peace, and we wanted to equip and empower youth with the necessary skills for that.

With the assistance of A/Prof Joel Lee, A/Prof Lim Lei Theng, and Mr Aloysius Goh, this vision materialised into an annual not-for-profit event called the Peacemakers Conference, which is still running. We just ran the 8th edition of the Conference earlier in June!

The Conference consists of a mediation training workshop and a friendly competition segment. To date, we have trained about 500 secondary school level students from Singapore and the region. Schools pay a nominal fee of $120 per student for the 3-day Conference (and that is inclusive of us feeding and clothing them!). Interested schools can find out more from our website at http://peacemakers.sg/events/PMC/, or email us at <mediate@peacemakers.sg>.

Since taking over the helm at Peacemakers, I have been building it up into a training-focused company. While that also means that we are now a commercial entity, my personal commitment is that the Peacemakers Conference will still run every year on a not-for-profit basis.

AZ: How did you become the big boss at Peacemakers?

SL: This is a really long story. It all started with my admittance into NUS Law, which I was encouraged to apply to by my parents despite my personal desire to read Business instead. To date, law school is still one of the most mentally, emotionally, and spiritually challenging times of my life.
AZ: Okay I’m going to butt in here ... this is definitely different from the usual stories. I’m sure everyone has heard of these in some form or other: “I studied Law because my family / friends / some respected person [delete as appropriate] thought that I was good at arguing with people and should therefore study law”. Or “because I was in my school’s debating team and represented my school in 1001 competitions”. Or simply, “because my JC results were good enough to get into law school”.

Why did you want to do Business? Why did your parents want you to do Law? And why was law school one of the most challenging times of your life?

SL: I grew up with parents that are both involved in business, so my personal desire to also be a businessman one day was cultivated from there. My parents, however, believed that a career as a lawyer would be more lucrative and comfortable, and a law degree would put me in better stead to do business anyway should I choose not to practice, so they encouraged me to read law instead.

I struggled a lot with my purpose and calling in law school. I was struggling to understand legal concepts, struggling to make legal analyses, and struggling to remain interested in the subject matter – basically I was a terrible law student. What made matters worse however, was that I could not see God’s purpose for sending me to law school. That lack of clarity caused me to constantly question and doubt both God and myself, and that’s not the healthiest of mindsets to work with every single day.

AZ: How did the switch to mediation happen?

SL: In Year 3, I had the privilege of taking the Mediation Workshop under A/Prof Joel Lee and Mr Aloysius Goh. That class, together with the Negotiation Workshop I took earlier that same academic year, provided me some much-needed encouragement and hope to get through that difficult period of my life. Later that same year, I was offered the chance to be a student facilitator at the Peacemakers Conference – an opportunity that I gladly took.

AZ: Why did you find the Mediation and Negotiation Workshops encouraging in comparison?

SL: The workshops provided a welcome reprieve to the rest of the “hard law” modules of law school. Classes were always fun (thanks to A/Prof Joel Lee) – so that helped! I think the thing I am most grateful for is learning the importance of self-mastery, and starting on this lifelong journey towards attaining a higher degree of control over my responses and reactions to any/every conflict situation I face. Beyond the mere equipping of the skills taught, this change of mindset towards conflict helped me to reconcile my own personal convictions with what I was learning in law school, and that was hugely encouraging for me.

AZ: So what happened when you graduated from law school?

SL: I was having great difficulty securing a training contract (“TC”). I think a lot of it could be attributed to my innate lack of interest in legal practice, despite my outward efforts to convince myself and others otherwise. I remember one particular firm’s managing partner, who was also a Christian, asking me at my interview, “Do you think God is trying to tell you something if you haven’t been offered a TC despite all your applications?” My response was that since I hadn’t heard anything from God telling me otherwise, I was just going to keep the faith that God knew what God was doing in sending me to law school, and to take the traditional route that law graduates take in getting called and entering practice. (P.S. I wasn’t offered a TC by that firm either.)

Two weeks before I was scheduled to begin the Part B course, Aloysius texted all the student facilitators from the last Peacemakers Conference to ask if we were interested in a full-time position doing mediation-related work with him at his place of employment. Since I had some flexibility of time during Part B and no TC, I agreed to help.

During the time we worked together, Aloysius and I got along so well both professionally and personally that we became good friends. I became heavily involved in all subsequent editions of the Peacemakers Conferences, and eventually ended up taking over as the Overall-In-Charge.

Subsequently, Aloysius and I left the company that both of us were at, to pursue other opportunities. Although I explored other opportunities in the mediation industry before I left, nothing seemed to be a good match. At some point, someone (jokingly) suggested that perhaps I should take over Peacemakers from Aloysius and grow it as a private mediation service provider. After both Aloysius and I gave it some thought, it didn’t actually seem like that crazy an idea. So here we are!

AZ: You do sound different when you talk about mediation and negotiation as compared to law-law. What is it about mediation that interests you so much really?

SL: Imagine if you were sick, and went to see a doctor. If the doctor told you about a drug out there with a 70% chance of curing your illness, failing which you could pursue other forms of treatment anyway, would you take a chance on it? If you’re anything like me, you’d say yes.
That’s one of the ways that I view mediation – as a tool that we can use to solve many real world problems. Admittedly, mediation is not a panacea, and there are disputes that are not appropriate for mediation. But for most other disputes, I sincerely believe mediation can help in some way or form, even if the dispute isn’t settled at mediation itself.

What really appeals to me is that mediation is the only process that takes parties’ relationship into account. The mediator endeavours to not worsen the relationship further, and even strives to improve parties’ relationship when the opportunity to presents itself!

The world is already rife with conflict. We all have a role in shaping society’s mindset when a dispute arises. At the risk of sounding like a beauty pageant contestant, if we can move away from a confrontational approach towards something more conciliatory, we would be building a better and more peaceful society for everyone to live in. That is one of the reasons why I believe mediation is the way forward.

AZ: What has running Peacemakers been like? Tell us about the good and bad.

SL: I know this term is overused, but it’s really been a huge challenge.

Despite already having existed for a number of years, Peacemakers is essentially still a start-up. Coupled with the fact that I am running the company alone, and on my own funds – it’s really been quite the struggle. I didn’t really have the personal contacts or professional network to provide Peacemakers with a jumpstart either, so I have had to build almost everything from scratch.

My relative youth compared to my peers in the mediation industry also counts against me. Hence, I have to work harder to make up for these underlying prejudices and prove my competency. (On that note, that is also why I grew a stubble.)

AZ: Hah! Yup, I know what you mean. Many people mistake me for being much younger than I am. Boon in non-legal life. Bane in legal practice. Well … I can’t grow stubble. Some friends joked that I should put powder in my hair for that salt and pepper look. And I know someone who was wearing non-prescription glasses just so that he would come across as older and more serious.

SL: Me too! We work with what we have I suppose.

Other than the age issue, the mediation industry is also not one you’d associate with great potential for revenue generation, so that’s always a challenge for any commercially-minded entity. That said, I am grateful for supportive friends and mentors, without whom I would not even have lasted to this point.

AZ: That’s the same thing I’ve heard from other mediators. With the push for people to explore mediation before going to trial, one might think that the number of mediation cases in Singapore would have skyrocketed, and there would be many more cases for mediators. But what I have been hearing from mediator friends is that actually, mediation cases rarely land on their plate. Why is this so?

SL: I believe there are a number of reasons for this phenomenon. In terms of the absolute number of cases, I
do believe that it has been increasing steadily. Singapore Mediation Centre (SMC) reported a record high of almost 500 cases last year, and I am fairly certain that there are similar increases in various other mediation bodies and schemes, especially those under the courts or other ministries. This is a testament to the amount of work everyone has been putting into growing the mediation industry, and are the fruits of their labour.

That said, I believe that the majority of cases fall under the court system (which include family cases and small claims, etc). Only specific individuals and panels are allowed to mediate those cases under the court system, and most of these schemes have stopped taking volunteer mediators. That leaves the rest of us with a much smaller remainder of cases to mediate. Of these remainder cases, the majority are referred to the established mediators in the country, which leaves an even smaller percentage for the rest of us. The reality is that there are a couple hundred mediators in the market waiting for the remainder of those cases. With that in mind, you can understand why it is not unusual to hear of recently accredited mediators only receiving a case every 2 years or so. Hopefully, as the industry continues to grow and further efforts are made to professionalise mediation, that the entire ecosystem will scale accordingly, and there will be a decent volume of work for all our professional mediators in Singapore.

AZ: Then how are you finding the money to keep the company running and support yourself?

SL: Hahaha, I’m not! I am running Peacemakers on my savings alone, and there is no safety net or backup plan. Thankfully, I also have no real dependants to support at this time. So, Peacemakers will continue to operate for as long as I have the finances to keep this going … or until my parents decide to kick me out of the house.

AZ: Ouch. Given all these factors, why’d you decide to take over the company? Why not start out by joining an established mediation service provider?

SL: Not being affiliated with any one particular mediation institution has also allowed me to befriend and collaborate with all of them. I have also been enjoying the flexibility associated with being my own boss, especially in terms of how I can choose to spend my time. For instance, I am also the head of the Worship Ministry in my church, and running the ministry takes up a lot of my time and attention – scarce resources which I am less likely able to afford if I had to account to someone other than myself.

Not being in practice has also allowed me to support my friends who are practising lawyers, because that way they do not have to burden a learned friend with their woes, but still obtain some semblance of mental and emotional support from someone who knows a bit of their struggles at work.

AZ: Now that you have finished your law degree, ever thought of studying Business?

SL: I would be lying if I said I hadn’t thought about it! But instead of learning about it in a classroom, now I’m learning from the school of hard knocks. Some might say the lessons taught by the latter are more effective too.

AZ: Do you think you will ever practise law?

SL: In the timeless words of Joe Cocker: Who knows what tomorrow brings? Perhaps one day God will tell me to finally get called to the Bar and to enter practice. For now though, Peacemakers is my priority.

AZ: Where do you see yourself and Peacemakers in 5 years?

SL: This is a question I often get, and one I always have difficulty answering.

My honest response is … I have no idea. I sincerely hope that I will still be involved in the mediation circle, and that I would have established some form of credibility through my work with Peacemakers. By then, hopefully Peacemakers will be established as a reputable private dispute resolution service provider, driving the growth of Singapore’s mediation industry alongside our established mediation institutions.

My dream is also for Peacemakers Conferences to be held not just in Singapore but in our neighbouring countries as well, and that the seeds of peacemaking are sowed in our youth in the hopes of leaving behind a better world for the future.

Simultaneously, I am cognisant of the commercial realities and the real possibility that this venture might not succeed, which may force me to explore something else eventually so that I can feed myself and my family. Perhaps a better time to ask me this question again would be in 3 years, when I can answer you with 2020 vision instead!

► Alicia Zhuang
Australian Lawyer
Advocate & Solicitor
The International Bar Association ("IBA") was established in 1947 to be the world’s leading organisation for legal practitioners, bar associations, and law societies. It seeks to influence the development of international law reform and shape the future of the legal profession globally. To this end, an annual conference is organized to discuss global legal issues and trends.

This year’s IBA annual conference took place at ICC Sydney from 8 October 2017 to 13 October 2017. Situated at the ICC Sydney beside the picturesque Cockle Bay and a stone’s throw away from the Central Business District, the venue was ideal. I was privileged to be able to attend the conference through the generous sponsorship of the Law Society of Singapore.

The conference boasted an attendance of more than 4,000 lawyers from about 130 countries. Unsurprisingly, the abundance of legal experience that each delegate had meant there were more than 200 sessions scheduled throughout the week-long conference on diverse areas of law. I was therefore grateful for the orientation programme, which reinforced a simple message for new attendees like myself: maintain the courage and curiosity to have meaningful conversations with other participants from different countries and backgrounds so as to form lasting friendships and networks.

True enough, I found myself over the next few days meeting lawyers from all over the world. Each would have interesting stories to tell about their journey in the law and the legal developments taking place in their countries.

The opening ceremony of the conference featured various performances showcasing the cultural diversity of Australia. My personal highlight was a performance by the Wurunuri Aboriginal dance group, which presented the heritage and traditions of Australia’s Aboriginal people through a dance performance. Other performers also included the Sydney Lawyers Orchestra, Yantri & Gavi (a pianist and didgeridoo duo), and the Australian Girls’ Choir.

Following the opening ceremony, delegates were treated to a ferry ride across the Darling Harbour to Luna Park, an amusement park on the north shore of the harbour, where further networking activities took place over fresh seafood and wine.

The conference began proper on Monday morning. Several sessions featured prominent Singapore lawyers as facilitators and speakers discussing areas of law in which rapid developments were taking place both in Singapore and across the world.

Three areas stood out in particular where Singapore is concerned: (a) shipping and insolvency; (b) third party funding; and (c) international arbitration.

**Shipping and Insolvency**

The session entitled “Avoiding that sinking feeling: navigating shipping insolvencies” addressed issues arising from the confluence of the insolvency and shipping spheres. While the initiation of insolvency proceedings against companies typically results in courts granting a stay on all
legal proceedings against companies so that the winding up process takes place in an orderly fashion, shipping law permits ship arrests for maritime liens. A key question that arose was whether ship arrests are wrongful when they take place after insolvency proceedings have been commenced against their owner companies or their parent companies.

The session was well attended by many shipping and insolvency practitioners across the world, and featured Mr Edwin Tong SC as a panelist. Unsurprisingly, a key topic discussed was the insolvency of Hanjin Shipping Co. Ltd ("Hanjin"), the largest shipping company in Korea, where the initiation of Korean insolvency proceedings led to numerous Hanjin vessels being arrested across the world and in Korea itself. Singapore saw its fair share of this massive cross-border insolvency, which resulted in the landmark decision of Re Taisoo Suk (as foreign representative of Hanjin Shipping Co Ltd) [2016] 5 SLR 787. In that case, the Singapore court granted an application through its inherent powers for (a) Hanjin’s Korean rehabilitation proceedings to be recognized; (b) all pending, contingent or fresh proceedings against Hanjin to be restrained; and (c) all present proceedings against Hanjin to be stayed.

The panelist from Korea was especially engaging and provided much insight into the reasons for why Hanjin failed to avoid insolvency proceedings and why its smaller competitor, Hyundai Merchant Marine ("Hyundai"), managed to remain a viable going concern. A key reason for Hanjin’s insolvency was attributed to the reluctance of Hanjin’s majority shareholders to give up control of Hanjin so new financing could be raised, and Hanjin’s majority shareholders spending too much time negotiating with Hanjin’s creditors. In contrast, Hyundai’s shareholders agreed to capital reduction and moved swiftly to restructure Hyundai’s debt, thus obtaining a critical first mover advantage vis-à-vis Hanjin. As a result, while insolvency proceedings were commenced against Hanjin, the same did not happen for Hyundai, indicating the need for lawyers to be highly attuned to the commercial aspects of insolvency work to assist clients with staving off insolvency.

Third Party Funding

The next significant session was entitled “Sell your judgment/award! Third-party funding for litigation and arbitration proceedings, including funding of enforcement of judgments and arbitral awards”. Singapore’s recent legislative amendments to allow third party funding for arbitration proceedings and decision in Re Vanguard Energy Pte Ltd [2015] 4 SLR 597 did not go unnoticed and were discussed alongside developments in Hong Kong and Canada.

A common consensus emerged that while litigation funding was previously frowned upon, it is increasingly seen as being beneficial to their legal sectors in promoting access to justice. A panelists from a litigation funder remarked that litigation funders would typically only fund a case which would give rise to damages as a remedy, but not specific performance or injunctions; litigation funders were interested primarily in the proceeds of the litigation. The learning point from this was that allowing greater scope for litigation funding may not necessarily open the floodgates for litigation as feared, but instead, could promote the bringing of legitimate claims to the Court which would not be otherwise brought.

Pertinently, an in-house counsel from Saipem S.p.A from another session discussing litigation in the natural resources sector shared his experience in an ICSID proceeding where instead of seeking litigation funding, his company brought...
legal proceedings against a State through a contingency fee arrangement. The resultant judgment, *Saipem S.p.A. v. The People's Republic of Bangladesh*, ICSID Case No. ARB/05/07, was ground-breaking in holding that judgments of a court may amount to acts of expropriation if an arbitral award was invalidated by a national court on less than justified grounds.

Given that Singapore law firms are presently prohibited from entering into contingency fee arrangements vide r 18 of the Legal Profession (Professional Conduct) Rules 2015, Singapore law firms would not have been able to attract the kind of work from Saipem S.p.A. The abovementioned example provides the Singapore legal community with food for thought as to whether the viability of contingency fee arrangements for Singapore law firms should be reconsidered in light of its potential to improve Singapore’s international competitiveness as a legal hub.

**International Arbitration**

The third significant session I attended was entitled “Changes in national law and their role for promoting alternative dispute resolution (ADR)”. Ms Koh Swee Yen from Singapore chaired the session, which was an extremely interactive one where delegates discussed various areas of developments in alternative dispute resolution.

It was heartening during the discussions to note that Singapore’s efforts to market the Singapore International Commercial Court has borne fruit as delegates from various countries were aware of the initiative. In this context, the group viewed the development of international courts as bringing greater competition against arbitral tribunals as speedier, cheaper and more reliable forums to resolve commercial disputes.

Of significance is India’s initiative to pass section 29A of the Arbitration and Conciliation Act 2015, which requires all arbitrations in India to be completed within 12 months with a one-time extension of 6 months permitted subject to the consent of the parties. Thereafter, court approval would be required for a further time extension for the completion of the arbitration, and the arbitrator’s fees would also be reduced if the arbitration’s completion were delayed. Anecdotally, Indian lawyers seem to be divided on this initiative due to the hard timelines which they now have to meet, but almost all acknowledge that the legislation has helped to improve the speed by which disputes in India are resolved.

**Conclusion**

There is much to be learnt from the collective wisdom of the global legal community, of which Singapore plays a significant role by virtue of her status as a regional hub for legal work. But the conference also shows how countries across the world are constantly looking to the future and making improvements to their respective systems. To stay ahead of the game, it is imperative that the Singapore legal profession continues to work together to ensure Singapore remains at the forefront of legal innovation. The continued presence of Singapore-qualified lawyers at the IBA is one way of furthering this aim.

Jonathan Muk
Tan Kok Quan Partnership
Recipient of YLC Sponsorship Scheme

Jonathan was one of the four recipients of the Law Society’s sponsorship for young lawyers to attend overseas conferences in 2017. As part of the sponsorship, the recipient must submit a paper on the conference that he or she attended.
The Inner World

As the year was ending, the Wife wanted to look back at the events of the year together. She had one word to describe it - interesting.

For me, the year was about myself and both of us. As lawyers, we are always giving to others. We have little time for ourselves. We are busy spending most of our waking hours at work and engaging in many other activities that matter to us. In the process, we forget about ourselves and the people around us.

Focusing on myself started with being kind to myself. I realised that my life is more than tending to clients, to the Courts or to others around me. Treating oneself well is as important as treating others. Acknowledging feelings and understanding the reason for those feelings is the beginning of dealing with them. Spending time alone creates a silence within ourselves, an opportunity to listen to the inner self, to our thoughts and feelings. Listening to myself and being kind to my feelings and thoughts was soothing. Responding to my thoughts and feelings creates a sense of balance within myself. I stopped being a perfectionist, as I am then hard on myself. I embraced chaos and felt less of a need to have total control over my life. I also started to value time and getting the most out of it. Every single minute counts in a lawyer’s busy life. Planning is halfway to completing a task.

It is a journey of revelation to accept things which do not go the way I want them to or when loved ones, friends and colleagues do not act in the manner I expect them to.

My mother said, “Do not act as a lawyer or mediator. Just be my son.” Being a problem solver, I found it difficult to just be a mere son to my parents. My relationship with my parents has always been difficult for me, as much as it must be for them to have a short tempered and rebellious child. We have expectations of each other, which both did not fulfill. Accepting them the way they are has been difficult but is important for the future of the relationship.

Making time for each other has become more important to the Wife and I. As busy professionals caught up in the whirlwind of life, this has always been difficult and we forget
each other's needs and feelings. When and how do we give priority to our lives over our work and others? Why do we work so hard? Though we complain about work, we love, no, like, the work we do. We need to work less hard, we concluded. More leave and holidays next year? This discussion which led to decisions took place during lunch in Kruger National Park in South Africa earlier this year, done out of jurisdiction as always and decisions hardly enforced when we return home. Clearly, even taking life easier needs planning.

The perspective towards work has also changed this year. There is much talk about how lawyers should conduct themselves in their practice. There is hardly any consideration of the pressure and difficulties we face at work. Law practice is like climbing a mountain. It is continuously hard and a misstep will bring upon us client complaints and disciplinary proceedings. I got a clearer understanding why lawyers quit practice or why we behave in a certain way towards our clients. There were several occasions after leaving Court or after having dealt with a very difficult client over a long period of time when I felt that I was done with practice. Making an error in practice is so easy and it could happen to any of us. It is not a reflection of the lawyer personally but rather a reflection of how difficult practice is for us sometimes. There were some clients I decided to cease acting for to preserve my sanity.

We lament in our own circles about the little respect and understanding shown towards us by clients. Yet we keep on going and doing our best. We are competitive and operate in a taxing legal environment. Closer support and collaborating together to check and share information on clients and staff who move from a law firm to the other will help us to run our practices better and lessen work stress.

Complaints allow us to destress. Acceptance enables us to move on in life. This is the last issue of the print version of the Law Gazette and it goes online from 2018. Like many, I too feel sad about the end of the print version which was part of my entire law practice. I like to touch and feel what I read, which is why online reading or shopping is a big no for me. It is said that change is the only constant which life is full of.

And yes, I agree 2017 has been an interesting year, one full of discoveries and learning. I am excited about 2018 which will allow the Wife and I to live the life we wish to.

May 2018 be a happy and meaningful year to one and all.

Rajan Chettiar
Rajan Chettiar LLC
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A Casual Travel Essay by an Unlikely Traveller

I have been tasked to write a “travel” article but I do not consider myself an expert on travelling. In fact, I hardly travel although I love travelling. I know some of my peers have a need to travel at least twice a year – which is my aim, but I have never achieved that aim. There are always obstacles thrown my way – finances (being the key), leave (a huge sigh) and other family commitments. I cannot claim to dispense any advice, and everything shared here must be taken with a huge pinch of salt.

When I was deciding where to go on honeymoon in December 2016, I had just joined the world of litigation a few months earlier. As I did not have any background in litigation, the getting up at work was a steep learning curve to say the least. As such, I did not devote much time to my honeymoon planning. In fact, I did it very quickly. I simply went to TripAdvisor, and decided by price. I chose Kurumba Maldives, not because the resort looked exotic or enchanting, but because the price was a sweet point for a peak holiday season. In addition, as I was really busy with work, I did not want to have to plan for a trip. I decided lounging in a resort doing nothing was perfect compared to planning a long and event packed holiday. I just wanted a nice break. My sweet fiancé agreed with my plan.

Now the huge irony is – I actually do not like the sun, sand or sea. In fact, I have a huge phobia of the sea as I had previously nearly drowned twice. I know – all my friends and colleagues were baffled by my choice of honeymoon destination. However, like I said, I liked the idea of simply chilling against the backdrop of the charming beaches and the sea. It must be the result of extensive marketing by Maldivian resorts.

Against all odds, I managed to enjoy myself. When I first reached Kurumba, I realised it was the oldest and first resort in the Maldives. They had an enormous number of staff from Russia as Russians were their main target tourists. Their service was of course charming and courteous.

I went for “safe” outings at the beginning. I tried my luck to see if I could spot the dolphins out in the ocean. My husband and I were tremendously bored because we did not spot any dolphins for a long while. They offered us wine, and other sweet drinks on board the boat for us to hydrate ourselves. The guide told us to cheer and clap loudly as he claimed that the dolphins would be attracted to such sounds – although I secretly suspected he wanted to kill our boredom. Lo and behold, after an excruciating long wait, the dolphins did appear. Everyone on board – in particular, ironically, it was the adults who started screaming, and not the young children. The men were busy with their huge cameras trying to capture the dolphin jumping up. I did not bother with such shots as I did not have a particularly good camera with me, and I was busy holding on and trying not to fall in the rocky boat. I wanted to see the dolphins, not swim in the ocean with them. The palpable excitement among the passengers on the boat got me into an excitable mood as well. As such, the boat ride which appeared interminably boring at the beginning was hugely rewarding at the end with the visit from the dolphins.

On the second day, I decided to try snorkelling. This was a remarkable achievement for me as I had a huge phobia of the water. I decided to conquer my fear because during my boat ride, I was enticed by the incredibly crystal-clear waters, and the gorgeous fishes swimming around. I felt a strong urge to see them in closer proximity, and decided to take the plunge into the deep
end. I did it alone without my husband because he could not swim. All of us wannabe-aspiring snorkelers had to first undergo an hour long lesson in a pool. I made fast friends with another lady in the pool as both of us were snorkelling alone while others were in pairs. When we were ready to take off to the beach, my husband came with me. He was worried about my safety, so throughout my snorkelling session, he walked along the beach under the 3pm unforgiving and unrelenting Maldives sun to keep a look out for me. He told me it was not too hard to keep track of me because I was wearing a pink swimsuit, and that stood out like a sore thumb in the sea.

When I first started waddling towards the sea, I realised I had huge difficulty moving with my fins. Certainly, we just had an hour-long lesson in the pool, but practical reality is always a stark contrast from theory. I tumbled around clumsily, and for an instant panicked and thought I could not breathe. Thank goodness, I could still stand up and start again. However, once I overcame my fear, I managed to swim and move rather easily among the group. I was, however, incredibly disappointed that not all parts of the sea were crystal-clear. Nonetheless, this did not mar my overall enjoyment as I was rather pleased that I managed to snorkel the entire planned stretch without any hiccups. I must thank the experienced guide for being there with us, and giving me comfort that they were swimming alongside us.

On the third day, my husband and I went parasailing. Again, this may sound rather tame to the adventurous but it was another feat for me, to be able to conquer my fear of heights. I had many fears and thoughts before we took off. I deliberated if I should wear my goggles lest I fell into the sea. Then I decided I should not wear my spectacles because I could not afford to lose them. The overall experience was extremely thrilling. We took off on the boat itself. We simply had to sit on the deck, and a guy would release the sail slowly till we were up and away in the air. I admit that timid me was screaming my lungs out. My husband reached out to hold my hands to calm me down, but that made me even more hysterical. I yelled back at him to hold on tight and not be concerned about holding me. However, once I was up there, the view from above took my breath away and I did not want to go back down. I could see the alluring sea beneath me, and the stunning beaches close by. I would love to do it again, and again. When we got back into the boat, we were on an all-time high. I volunteered to take photos and videos for everyone who went after us.

The resort threw in a free honeymoon dinner on our last night there. It was the most fine-dining restaurant on the island – of which name slipped my mind. It was not as refined as fine dining restaurants I experienced in Singapore, but I still enjoyed the experience. At the beginning, I did not enjoy my meal. We were seated in an extremely dark corner on the beach, and I was bitten by mosquitoes. Thereafter, after hearing our concerns, the wonderful waiters seated us in an area that was better lit. I pretty much enjoyed the new seating area because I was on a strip of board that stretched out into the sea. I could see the sea on my left and right side. It was very thrilling to see small sharks swimming around me while I consumed my dinner. At the same time, I was haunted by the thought of meeting these sharks during my snorkelling trip – which thankfully did not happen.

Overall, it was an enjoyable three-and-a-half-day trip for me. I definitely felt I made the right choice to go to the Maldives despite the fact that I was not into the sun, sand or sea. It was super leisurely. All the activities were planned for us, and all I needed to do was to open the activity book and pick my choice. I would love to go back there again, some day.

► Laurelle He
Prasanna Devi LLC
Member, Young Lawyers Committee
E-mail: laurelle.he@gmail.com
The most striking memory of Mr Lim Choon Mong ("LCM") for most lawyers must be the sight of LCM holding court at the Subordinate Courts Bar Room, telling war stories to a circle of captive lawyers, with plumes of smoke rising from his cigarette.

LCM certainly had war stories to tell.

LCM was called to the Bar in 1976, when his eldest child was already 11, after going to London to do his Bar exams and fulfill the obligation to dine at the Inns. Such a mid-career switch to the legal profession was not uncommon in those days. Many senior lawyers today can identify with the same external LL.B path, which enabled the less privileged to “upgrade” themselves and enter the legal profession.

LCM started life poor, and joined the Police Force in the 1950s, khaki shorts and all. His crime-busting assignments were no simulations. Singapore was not a safe place in the 1950s and 60s, with tense race and labour relations, organised criminals carrying firearms, and active secret societies. In one particular stake-out in 1965 to arrest an infamous robber and kidnapper, Morgan Teo, LCM shouted to Morgan in Teochew through the loud-hailer to surrender. Morgan was defiant. LCM and his police colleagues, led by the late JS Khosa, were then caught in a fierce exchange of bullets and grenades. They eventually killed Morgan, but at the tragic loss of their colleague Inspector Allan Lim. This episode was dramatized and can be viewed on Toggle TV under the Series “True Courage” Season 2, Episode 7 - “Shootout in Singapore”, where a 60+ year old LCM was interviewed as he recounted those dangerous days.

When the British started withdrawing troops upon Singapore’s independence, Singapore needed its own defence forces. LCM, then an Assistant Superintendent of Police, was seconded to the Singapore Armed Forces to be one of SAF’s first batch of officers. Then Major LCM led various projects to build the foundations of the SAF. In the commemorative book by the SAF Military Institute entitled “One of a Kind: Remembering SAFTI’s First Batch”, there is a letter at page 95 dated 9 May 1966 signed by LCM for Officer-in-Charge, Procedure & Selection, Manpower Division, Ministry of the Interior & Defence; the letter informed the recipient that he had been selected for Officer Training and would be required to serve the SAF for an initial period of 12 years from 1st June 1966. Among LCM’s other assignments was to be the first Commanding Officer (“CO”) of the Provost Unit, and his photograph still hangs alongside succeeding COs in the Officers’ Mess today.

Upon admission to the Singapore Bar, LCM was engaged mainly in criminal practice. He defended hundreds of clients, facing charges from road traffic violations to capital cases. He trained countless pupils and lawyers, who enjoyed his dramatic personality and colourful language. He built up a successful practice, M/s Lim & Lim, at which he devoted more than 20 years.

LCM enjoyed life, and enjoyed himself as much as he could. From bantering with strangers over drinks, to singing to any audience who would listen, there was never a dull moment with him. When he needed to take trial dates, he would ask the Court not to schedule certain periods as he would be “in Wimbledon watching tennis”. When he could not remember the name of the DPP conducting a trial, he would refer to the DPP in his oral submissions as “the red-haired DPP”. In mitigating for a client who was pleading guilty, he submitted that his client was “remorseful to the marrow of his bones”.

LCM went into semi-retirement and finally stopped working fully in 2006. He enjoyed his days travelling, drinking wine and struggling with golf, until 2010, when he suffered two debilitating strokes, in March and June 2010. Dementia soon set in, and LCM became increasingly home-bound. After a series of medical emergencies due to heart problems, he finally collapsed at home on 16 August 2017 and died at Ng Teng Fong Hospital at 1.40am on 17 August 2017, without gaining consciousness.

LCM leaves behind his wife, Marie, and his children, Sylvia, Sharon and Arthur, and three grandchildren.

Peter Cuthbert Low
Managing Director
Peter Low & Choo LLC
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<td>Koh Kim Hock (M)</td>
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<td>Blk 15 Hougang Avenue 3 #12-105 Singapore 530015</td>
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<td>Naranjan Singh s/o Bachan Singh (M)</td>
<td>S1071978Z</td>
<td>22 October 2017</td>
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<td>Mallal and Namazie 6225 6511</td>
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<td>9 June 2017</td>
<td>Blk 406 Yishun Avenue 6 #05-1314 Singapore 760406</td>
<td>Tng Soon Chye &amp; Co 6438 3133</td>
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Law practices are encouraged to submit their Information on Wills requests via the online form available at our website www.lawsociety.org.sg > For Lawyers > Services for Members > Information on Wills. Using the online form ensures that requests are processed quicker and details published with accuracy.

Effective 1 January 2017, the rates for Information on Wills will be revised to S$107 per entry for law firms. All submissions must reach us by the 5th day of the preceding month.
Dear Reader,

For 25 years now, since 1992, the Law Society has been publishing and distributing our official journal the *Singapore Law Gazette* (“Law Gazette”) in hard copy format. For many readers, receiving a copy of the Law Gazette on their desk each month was a welcome package.

Your Publications Committee worked hard all these years to negotiate with various commercial publishers to have the Law Gazette printed in hard copy form and distributed to all members at no cost to the Society or to members. This was no easy feat.

However, with technological advancements and rising costs, this model is unfortunately no longer a viable option. As many of you know from our AGM and prior member briefings, our current publisher, LexisNexis has decided not to renew our contract to publish hard copies of the Law Gazette.

Having studied various options and associated costs, your Publications Committee and Council have reluctantly come to the conclusion that given LexisNexis’ decision, it will not be viable or sustainable for the Society to bear the costs for hard copies of the Law Gazette, going forward. However, this situation represents a valuable opportunity. As we enter into the 51st year of the Society’s existence, with effect from January 2018, the Law Gazette will be published fully online only, at <www.lawgazette.com.sg>

We have been working with a web designer to design a bespoke new Law Gazette website that is modern, interactive and user friendly. This electronic version will be compatible across different platforms, from mobile telephones to tablets and desktops. It will include features which are unfeasible in hard copy form, such as:

1. Key word searches
2. Sharing of articles
3. Printing of articles
4. Article recommendations
5. Listing of articles by popularity

We assure readers that we remain committed to publishing quality content that is relevant and informative. We will also be brainstorming creative new ideas for columns, features and content post- transition.

We are excited to unveil the new website and look forward to sharing with readers a brand new identity and user experience. Do check out <www.lawgazette.com.sg>. All feedback, ideas and suggestions as we embark fully on this online adventure are welcome.

We encourage readers to continue to read and support the Law Gazette in its new electronic and more environmentally-friendly iteration.

While we reminisce on the past with fondness and a little nostalgia, we aim to move forward positively in 2018 to embrace an advanced technological future for the Law Gazette.

Yours faithfully,

**Gregory Vijayendran**  
President

**Malathi Das**  
Chair, Publications Committee
Having the Last Word

“It is with sadness and hope that I see the Law Gazette moving into online publishing. Sadness because an old-fashioned lawyer like me will not be able to carry a hard copy wherever, anymore. Twenty-five years ago, in 1992 – when I was on the editorial board and Law Society vice-president – the Gazette was conceived as a handy publication containing news in and about the legal profession. But four years later, in 1996, the Internet was introduced to Singapore. Little did I know then that the day will finally arrive when the Gazette will have to go online. Nevertheless, I am hopeful for the future of the Gazette and that it will continue to be read – everywhere – by the legal community.”

Peter Cuthbert Low
Past President
Managing Director
Peter Low & Choo LLC

“My best memory of the Law Gazette is writing a column called “Obiter” which reported on interesting and humorous stories relating to the law. I also enjoyed coming up with designs and taglines for the front cover of the Law Gazette, although it was often difficult capturing the abstract. One of the other memorable things about the Law Gazette was doing a monthly thematic issue. This eventually morphed into a 3-4 times a year effort to have a dedicated thematic issue.

I pay tribute to the past Chairs of the Publications Committee: the late Palakrishnan SC, who was instrumental in negotiating the first contract with LexisNexis that saw the Law Society benefit from this monthly publication for the past 17 years, as well its online archive, and for his vision; Elizabeth Wong and Gregory Vijayendran for their leadership in maintaining the standard of the SLG to where it is today; and the steadfast support of Tracey Yeo, Sharmaine Lau and Shirin Kamsir at the Secretariat.

The end of hardcopy Law Gazettes will see a new era emerge of a greener, more easily accessible and portable publication. As with all change, it will first require a mindset change before it sees acceptance. Please continue to support our efforts.”

Malathi Das
Chair, Publications Committee

“The launch of a glossy monthly written publication that reached the desk of every practising lawyer was a watershed moment for the Law Society. It marked the evolution of the Society from a developing Bar Association to a mature Bar Association. The Law Gazette gave a face and voice to the Bar. The Gazette’s feature articles provided a platform for the profession to promote law reform or explore varied or emerging areas of law. Regular columns, such as the “Young Lawyers’ Amicus Agony” and “Alter Ego” provided a window to the unique joys and challenges of being a member of the Bar. The Law Gazette has most of all served as a “meeting place”, where each month around the official publication of the Law Society we received and exchanged the news and happenings of our legal fraternity.”

Yasho Dhoraisingam
Former CEO
Private Practice

**Litigation Partner**  
**Singapore** 10-18 PQE  
Global firm with a growing regional practice is looking for a Litigation Partner to join their Singapore practice. The partner will assist in spearheading their Disputes Resolution practice in Singapore and the region. The ideal candidate should be Singapore qualified, with at least 10 – 18 years of experience advising both local and international clients on a range of commercial litigation and/or arbitration matters, and a good understanding of the Singapore market. A portable book of business is required. (SLG 15805)

**Corporate Partner**  
**Singapore** 10-18 PQE  
International law firm with a strong international platform seeks a corporate partner to expand its corporate practice. The ideal candidate should be Singapore qualified with 10 – 18 years PQE with strong corporate M&A experience and good commercial business acumen. A portable book of business is required. (SLG 14870)

**Regulatory Funds Partner**  
**Singapore** 10-18 PQE  
A well-established international firm is looking for a regulatory funds partner to join their growing regional practice based in Singapore. The partner will focus on managing and growing a portfolio of clients within the asset management and financial intuitions space. The ideal candidate should be qualified in Singapore with at least 10 – 18 years of experience acting for domestic and international clients on a broad range of fund related products, including the structuring, establishment, registration and marketing of onshore and offshore funds. A portable book of business is required. (SLG 15804)

**TMT Associate**  
**Singapore** 4-7 PQE  
Top international firm is looking for a senior associate to join their TMT team in Singapore. The lawyer will assist the partners in managing a broad range of TMT related transactional and regulatory work. The ideal candidate should be Singapore qualified with at least 4 – 7 years of experience in advising on telecoms, IT or media related contracts or regulations. They are open to consider lawyers from private practice or in-house. (SLG 15881)

**Banking Finance Associate**  
**Singapore** 2-5 PQE  
Global firm with strong regional presence is looking for a mid level banking finance associate to join their practice in Singapore. The lawyer will be part of a dynamic team of lawyers advising global financial institutions on a broad range of cross border finance transactions, and have the opportunity to gain top quality experience across a diverse range of work. The ideal candidate should have excellent academic credentials, with at least 2 – 5 years PQE with strong banking finance experience gained in a top tier local or international law firm. (SLG 15984)

**Debt Capital Markets Associate**  
**Singapore** 2-5 PQE  
Global firm with strong regional presence is looking for a Debt Capital Markets lawyer to support the team on advising on English laws aspects of cross border debt capital markets transactions in the global finance practice; working on complex off-shore transactions with leading lawyers in the market and be part of a well-regarded and expanding team. The ideal candidate should be UK qualified with 2 – 5 PQE with extensive experience in general debt capital markets. (SLG 15595)

In-house

**Head of Legal**  
**Singapore** 12-18 PQE  
A leading regional investment firm is looking for a senior legal counsel to manage and oversee its legal affairs based in Singapore. The lawyer will be solely responsible for advising the business on a broad range of matters across several jurisdictions, with a focus advising on joint ventures and acquisitions, corporate strategy as well as general dispute matters. The ideal candidate should have at least 12 – 18 years PQE with strong experience in M&A transactional work. Due to the nature of the role, Singapore qualification is required. (SLG 15957)

**Senior Disputes Counsel**  
**Singapore** 10-15 PQE  
Major conglomerate in commodities trading is looking for a Senior Legal Counsel to join their team in Singapore. The counsel will be principally responsible for managing and overseeing all dispute matters globally as well as advise on general corporate commercial and regulatory matters. The ideal candidate should have at least 10 years PQE with good commercial and shipping litigation experience currently working in private practice or in-house. The successful candidate must be able to operate fairly independently, be commercially savvy and work in a dynamic environment. (SLG 15705)

**Commercial Counsel**  
**Singapore** 3-6 PQE  
Global leader in insurance and risk management consulting is looking for a junior to mid-level lawyer to join their team in Singapore. The lawyer will be responsible for providing legal support to the business team on their commercial contracts across most parts of the APAC region. Due to the nature of the work, there is a strong preference for the counsel to be Singapore qualified with at least 3 – 6 years PQE, ideally with a background in corporate commercial work or insurance litigation work. (SLG 15993)

**Corporate Governance / Secretary (2-year Contract)**  
**Singapore** 3-5 PQE  
Top tier investment bank is looking for a junior lawyer to provide support to a regional on-going project on a 2 years contract. The lawyer will be involved in matters relating to real estate and/or private equity within the bank. The ideal candidate should have corporate, M&A and transactional experience, preferably with experience in corporate secretarial, corporate governance, compliance and risk management. (SLG 15994)

**Regulatory Counsel**  
**Singapore** 2-4 PQE  
Major investment company is looking for a corporate regulatory lawyer to join their legal regulatory team based in Singapore. The lawyer will work closely with the business and transactional team to provide regulatory advice on a broad range of regulatory matters including anti-bribery, anti-trust, takeover code, and financial regulations relating to the company’s global investments. The ideal candidate should be Singapore qualified with at least 2 – 4 years PQE in either corporate finance or regulatory work gained from a top tier law firm. (SLG 15831)

**Regulatory & Compliance Support**  
**Singapore** 2-5 PQE  
Major investment company is looking for a regulatory and compliance support personnel to provide support to their legal and regulatory team based in Singapore. The ideal candidate must have a diploma in law, business, accounting or related disciplines, with around 2 – 5 years of prior experience in a similar role at an investment bank or other corporate institution. (SLG 15948)

To apply, please send your updated resume to the following consultant in Singapore:

**Jason Lee**  
Tel: +65 6557 4158  
Email: j.lee@alsrecruit.com

**Sunil Gopwani**  
Tel: +65 6557 4179  
Email: s.gopwani@alsrecruit.com
Every month, JLegal examines the PQE of a senior in-house counsel. This month we speak with the creative Gupinder Assi, whose tolerance for slow walkers is entirely location-dependent.

- **What is on your mind at the moment?**
  This questionnaire.

- **What secret talent do you have?**
  I design posters and t-shirts for my children’s school.

- **If you weren’t a lawyer you would be ...**
  an architect. I have always liked the idea of designing my own house to my family’s specifications.

- **Where is the best place you have ever been to?**
  I love the Caribbean, because I find it so relaxing. Beautiful beaches, sunshine, Caribbean rum and one of the slowest paces of life I have come across.

- **Top 3 favourite movies of all time?**
  Very tricky as I like so many movies - I would have to say the original Star Wars Trilogy (I know that’s already 3); Jerry Maguire; and Rocky.

- **What is the strangest thing you have seen?**
  A snake having its head cut off with a pair of rusty scissors on the Mekong Delta so that they could drain its blood for tourists (not me) as well as cut out its heart. It was such a barbaric way to kill the snake.

- **What do you consider the most overrated virtue?**
  Prudence - sometimes to experience life you have to jump in with both feet!

- **What irritates you?**
  Slow walkers (except in the Caribbean); nepotism; arrogance; hypocrisy.

- **What was your last Google search?**
  Is the iPhone 8 waterproof?

- **If you could time travel, where would you go?**
  Into the future to see if the paperless office will ever exist and if lawyers will still bill on an hourly basis!

- **Which of the Seven Dwarfs is most like you?**
  I’m not that short!

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**Gupinder Assi**
Vice President and Senior Counsel (Asia)
First Data Asia Pte Ltd
Seasons Greetings from Pure Search

We wish you a Happy Christmas and a prosperous New Year.

Established in 1999, Pure Search is a privately-owned international recruitment firm with specialist divisions covering:
- Compliance
- Legal
- Tax
- Finance
- Risk
- Treasury
- Global Markets
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