Singapore Law Review
(2024) 41 Sing L Rev

SINGAPORE'S INFORMAL JUSTICE EXPERIENCE: EVALUATING THE PRACTICE OF THE SMALL CLAIMS TRIBUNALS

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The Small Claims Tribunals were the first of Singapore's specialist tribunals specifically set-up with informal processes. With 9,113 cases filed before them in 2022, they also play an outsized role in the dispensation of civil justice. Despite their unique and consequential role in Singapore's legal system, they have received scant academic attention over the years. The present article details the author's observations from eight consultation sessions and three tribunal hearings in the Small Claims Tribunals, which provide the basis for an assessment of the tribunal's settlement facilitation processes as well as the substantive and procedural aspects of its adjudicatory functions. It is argued that the Small Claims Tribunals' facilitative processes promote pragmatic, interest-based dispute resolution and serve the interests of efficiency and accessibility. Conversely, their adjudicatory processes adopt a substantively rule-based, procedurally orthodox approach that emphasises judicial neutrality and principled decision-making, thus enhancing predictability and certainty of outcomes.

I. INTRODUCTION

Established in 1985 as "a speedy and inexpensive machinery to handle small claims arising from disputes between consumers and suppliers",[1] the Small Claims Tribunals ("SCTs") were post-independence Singapore's first experiment with informal justice.[2] As the informal justice landscape in Singapore evolved with the establishment of other specialist tribunals and informal courts,[3] the SCTs have also grown in scale and jurisdictional scope. Beginning life as a forum that

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* LLB, National University of Singapore, Class of 2024. The author extends his deepest gratitude to the State Courts for their generous support in facilitating the observations that form the basis of this paper. He also expresses his heartfelt thanks to Associate Professor Helena Whalen-Bridge (National University of Singapore) and Toh Ding Jun for their invaluable guidance, as well as his friend, Wong Kok Chee, for inspiring this study through conversations about the Small Claims Tribunals. Finally, the author would also like to express his apprecation to the Centre for Asian Legal Studies and the Thammasat University Faculty of Law for the support provided, and the opportunity to participate in the CATPLI Writing Project. All errors remain his own.

[1] Parliamentary Debates Singapore: Official Report, vol 44 at col 1999 (24 August 1984) (Professor S. Jayakumar) [Parliamentary Debates (24 August 1984)].

[2] "History of the Courts" *Singapore Courts* (9 December 2021), online: <https://www.judiciary.gov.sg/who-we-are/history-courts>.

[3] These include the Community Disputes Resolution Tribunals (established in 2015), the Employment Claims Tribunals (established in 2017), and the Protection from Harassment Court (established in 2021).

predominantly resolved consumer protection cases,[4] the tribunal's jurisdiction has since expanded to cover, *inter alia*, disputes concerning residential lease agreements, tortious claims for property damage, and a litany of statutory claims.[5] The monetary limits for claims have also risen tenfold from $2,000 in 1985 to $20,000 today, with an extended limit of $30,000 if both parties consent.[6] Moreover, the tribunal's procedural rules underwent significant revisions in 2019, including the notable adoption of a judge-led approach.[7]

The SCTs play an integral role in Singapore's informal justice landscape as well as its civil justice processes generally. In 2022, 9,113 cases were filed in the SCTs, constituting about 75% of all cases filed in the Community Justice and Tribunals cluster.[8] The number of cases filed in the SCTs exceeds the 6,885 civil originating processes commenced in the High Court and is only edged-out by the 12,086 civil originating processes commenced in the State Courts.[9] Yet despite their relatively conspicuous role in the delivery of civil justice in Singapore, the SCTs have received scant academic attention, particularly with respect to its post-2019 revisions. This paper attempts to fill this gap by observing and evaluating the SCTs' law and practice.

A. Primer on the Small Claims Tribunals' Processes

Before delving into the details and findings of this study, this primer orients the reader via an overview of the life cycle of a claim in the SCTs.

Filing, serving, and responding to a small claim: The claimant fills in a pre-filing assessment on the Community Justice and Tribunals System ("CJTS"),[10] which informs them whether the claim falls within the SCTs' jurisdiction. The CJTS is an online platform for parties to file and manage cases before courts or tribunals in the Community Justice and Tribunals Cluster. The

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[4] Parliamentary Debates (24 August 1984), *supra* note 1 at col 2000-2001.

[5] *Small Claims Tribunals Act 1984*, Schedule [SCTA].

[6] *Small Claims Tribunals Act* (Cap 308, 1985 Rev Ed Sing), s 5(1)(a); *Ibid*, s 2(1).

[7] *Small Claims Tribunals Act* (Cap 308), 1988 Rev Ed Sing), as amended by *Small Claims Tribunals (Amendment) Act* 2018.

[8] "Caseload Statistics 2022" *Singapore Courts* (6 September 2023), online: <https://www.judiciary.gov.sg/who-we-are/statistics/caseload-statistics-2022>.

[9] *Ibid.*

[10] The CJTS is an online platform through which claims and other matters concerning the Community Justice and Tribunals Cluster are administered.

claimant proceeds to file a claim through the CJTS and serve it on the respondent through personal delivery or registered post.[11] Through the CJTS, the respondent then admits to or disputes the claim, and files a counterclaim if necessary.[12]

eNegotiation and eMediation: The parties may attempt to resolve the dispute online through eNegotiation on the CJTS.[13] The respondent may begin eNegotiation by proposing a settlement arrangement, which the claimant may respond to. Parties are given five rounds to negotiate, with each proposal and response constituting one round. Parties may also request for eMediation, which involves an online chat session with a court-appointed mediator.

Consultation sessions: Parties must attend a consultation session at the State Courts before an assistant registrar ("AR").[14] At the consultation session, the AR invites parties to give an account of their position and attempts to mediate a settlement. Several consultation sessions may be scheduled. The AR may issue a default order (if the respondent does not appear) or consent order (if the parties reach a settlement), ending the proceedings there.[15]

Tribunal hearing: If the parties do not settle at the consultation sessions, the case is set down for hearing.[16] Parties may upload witness statements and documentary evidence onto the CJTS and generate hearing bundles electronically. A tribunal magistrate ("TM") presides over the hearing, which is conducted without legal representation for either party.[17] Parties may still reach a settlement and obtain a consent order any time before the TM renders a decision. Otherwise, the TM renders a decision and issues an order, ending the proceedings.[18]

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[11] "How to File and Serve a Small Claim" *Singapore Courts* (13 May 2024), online: <https://www.judiciary.gov.sg/civil/how-to-file-serve-small-claim>.

[12] "Respond to a Small Claim" *Singapore Courts* (30 January 2024), online: <https://www.judiciary.gov.sg/civil/respond-small-claim>.

[13] "Settle a Tribunal or Protection from Harassment Dispute Online: eNegotiation or eMediation" *Singapore Courts* (3 April 2024), online: <https://www.judiciary.gov.sg/alternatives-to-trial/enegotiation-emediation>.

[14] SCTA, *supra* note 5, s 17(1); "At Your Small Claims Consultation" *Singapore Courts* (30 January 2024), online: <https://www.judiciary.gov.sg/civil/at-small-claims-consultation>.

[15] SCTA, *supra* note 5, ss 17(5) and (6).

[16] "At Your Small Claims Hearing" *Singapore Courts* (30 January 2024), online: <https://www.judiciary.gov.sg/civil/at-small-claims-hearing>.

[17] SCTA, *supra* note 5, s 23(3).

[18] SCTA, *supra* note 5, s 35(1).

B. Methodology

In the present study, the author observed eight consultation sessions (C1-C8) administered by the same AR, and three tribunal hearings (T1-T3) presided over by the same TM, all involving different sets of parties. All observations took place in 2023. In order to provide some background information regarding the cases but preserve confidentiality regarding cases and litigants, the table below sets out basic information regarding the category of dispute and the type of parties involved in each proceeding. Additionally, the author conducted interviews on several occasions with the AR and TM overseeing the observed proceedings, collectively referred to here as "tribunal officials". Questions were asked about the tribunal's general practice as well as specific incidents from the observed proceedings.

Designation	Type of Claim	Nature of Parties (Claimant vs Respondent)
Consultation Sessions		
C1	Dispute over contract for goods/services	Individual vs Entity
C2	Dispute over contract for goods/services	Individual vs Individual
C3	Dispute over contract for goods/services	Entity vs Entity
C4	Dispute over contract for goods/services	Entity vs Entity
C5	Dispute over contract for goods/services	Entity vs Entity
C6	Tenancy dispute / Property damage	Individual vs Entity
C7	Tenancy dispute	Individual vs Entity
C8	Tenancy dispute	Individual vs Individual
Tribunal Hearings		
T1	Dispute over contract for goods/services	Entity vs Entity
T2	Dispute over contract for goods/services	Entity vs Entity
T3	Dispute over contract for goods/services	Entity vs Entity

C. Overview of Findings and Conclusions

This study found that the SCTs maintain a marked separation between the twin roles of facilitating settlements and adjudicating disputes. The paper begins by discussing the tribunal's primary function of facilitating settlements in Part II. The facilitation of settlements serves two key functions. Firstly, it aims to promote pragmatic resolutions to the dispute, without necessarily

being circumscribed by the legal merits of the case, so as to satisfy both parties' practical interests as far as possible. Secondly, it is the main way by which the SCTs promote the interest of expeditious dispute resolution, by ensuring only the most intractable or contentious cases are set down for hearing.

Turning to the tribunal's adjudicatory function, Part III discusses the substantive basis for the tribunal's decision-making framework. It is submitted that section 12(4) of the Small Claims Tribunals Act ("SCTA") arguably permits the tribunal to refer to quasi- or extra-legal principles in determining disputes. However, the tribunal's adjudicatory approach in the observations consisted of strictly applying black-letter law, in contrast to the pragmatic, solutioning posture taken in its settlement facilitation role. It is argued that the tribunal's rule-based adjudicatory approach is desirable because it enhances the predictability and consistency of outcomes, moderates inter-party tensions, and burnishes the tribunal's prestige as an avenue from which litigants can expect cogently decided outcomes, rather than what has been characterised as "slovenly" justice dispensed on an "assembly-line basis".[19] Notwithstanding these advantages, the apparent disjunct between the tribunal's actual practice and the wording of section 12(4) may cause confusion for lay-litigants, suggesting that clarification could be considered.

Finally, Part IV discusses the tribunal's procedural aspects, both in its case management and adjudicatory functions. It observes that after inquiring into last minute settlement prospects, the observed TM made very limited use of their expansive quasi-inquisitorial procedural powers and conducted hearings essentially in the adversarial mould. This reveals a near-singular focus on the interest of judicial neutrality. The countervailing interests of informal justice, *viz*, efficiency and increased accessibility to civil justice, were given relatively little weight in the observed adjudicatory proceedings. Rather, those interests appeared to be chiefly served at the consultation stage. In that setting, the facilitation of settlements promotes efficiency, while the AR's facilitated discussions and neutral observations at consultation sessions serve the interest of accessibility by helping lay-litigants focus on, and prepare for, engagement with the relevant legal issues. The SCTs' heavy focus on judicial neutrality is desirable because it maintains the tribunal's perceived and actual impartiality and enhances litigant satisfaction.

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[19] UK, HC, *Law Reforms*, vol 24, col 259 (29 April 1830) (Mr. Brougham) [UK, HC, *Law Reforms*]; George Adams, "The Small Claims Court and the Adversary Process: More Problems of Function and Form" (1973) 51:4 Can Bar Rev 583 at 608 [Adams, "The Small Claims Court and the Adversary Process"].

II. FACILITATING SETTLEMENTS: THE TRIBUNAL'S PRIMARY FUNCTION

Section 12(1) of the SCTA provides that the tribunal's "primary function" is to "attempt to bring the parties … to an agreed settlement".[20] Only when it is apparently "impossible to reach a settlement" does the tribunal "proceed to determine the dispute".[21] If the parties reach a settlement, the AR or TM will make a consent order upon the parties' request.[22] This Part argues that the tribunal's facilitation of settlements promotes the interest of efficiency whilst safeguarding the procedural fairness of its adjudicatory processes. It also encourages the pragmatic resolution of disputes by uncovering solutions to underlying concerns or striking compromises for practical benefits, avoiding the rigidity and zero-sum character of a legal decision.

A. Facilitation of Settlements in the Small Claims Tribunals

The tribunal's role in facilitating settlements involves two distinct stages. At the consultation stage, the AR actively mediates the parties' dispute and assists them in finding a practical solution. If a settlement is not reached and the case proceeds to the hearing stage, the TM attempts, in a more limited fashion, to facilitate a settlement by nudging the parties toward a last-ditch compromise and reminding them of the win-lose, zero-sum character of a judicial decision.

1. *Finding solutions: facilitating settlements at the consultation stage*

Facilitating a settlement between the parties is the AR's "primary purpose" at the consultation stage.[23] The AR in the proceedings observed by the author made this clear to the parties at the first consultation session and informed them that instructions to prepare a case for hearing will only be given if a settlement cannot be reached.

At this stage, the AR focuses on finding a practical solution to the dispute. In the author's observations, the AR invited both parties to speak about their positions on the dispute, before asking probing questions to uncover potential resolution paths. In Case C1, the AR asked the claimant how they felt the dispute could be resolved, to which the claimant replied that they would

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[20] SCTA, *supra* note 5, s 12(1).
[21] *Ibid*, s 12(3).
[22] *Ibid*, ss 235 and 17(2).
[23] SCTA, *supra* note 5, s 17(1).

be willing to pay the agreed sum if certain defects to the purchased goods were rectified. The AR then asked the respondent's representative whether the respondent would be amenable to making such repairs. As the representative was open to the proposal, the AR mediated the details of this arrangement, getting the parties to fix a date, exchange contacts, and arrange for proper oversight of the repairs. In a more difficult case, Case C3, the parties raised a number of what appeared to be legally irrelevant and contentious grievances. The AR honed in on the respondent's offer to immediately make payment if the claimant produced certain documents showing how the invoiced sum was calculated. Even as the parties continued ventilating unrelated grievances, the AR focused on the issue of documentation for the invoiced sum, exploring with the parties how the invoice was compiled and what documents could prove this. The consultation session ended with the AR instructing the claimant to bring the necessary documentation to the next consultation session. These examples demonstrate the observed AR's commitment to finding practical solutions aligned with the parties' interests, both pecuniary and otherwise, emphasising pragmatic resolution over purely legal rights and remedies.

The observed consultation sessions thus reflected a "facilitative-broad" approach to mediation under Riskin's taxonomy of mediator orientations.[24] The AR described their approach as attempting to understand and address the parties' underlying concerns, adopting a "big picture" view instead of a purely contractual approach. They expressed openness to exploring extra-legal solutions that may go toward resolving the underlying conflict(s). For instance, in Case C3, the AR further explored the possibility of inviting the claimant's contracted managing agent to provide their own account of events as a neutral third-party in order to "clear the air" about the parties' expressed grievances. While different ARs may employ varied mediation styles, there may be a degree of similarity between them, since, according to the AR interviewed by the author, all ARs attend a mediation course on strategic conflict management conducted by the Singapore Mediation Centre. It is therefore likely that the broad interest of exploring practical solutions for the parties' underlying concerns is generally served at the consultation stage.

2. *Reaching compromises: facilitating settlements at the hearing stage*

The settlement facilitation function persists in the adjudication stage, albeit in a more restricted

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[24] Leonard Riskin, "Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed" (1996) 1 Harv Negot L Rev 7.

manner. It is confined to a numerical discussion over a potential settlement sum, instead of assessing the merits of the dispute or exploring solutions that could address the parties' underlying concerns.

In Case T1, the TM began the hearing by expressing their desire to help the parties reach a settlement, noting that the TM would proceed to render a decision only if no settlement could be reached. The TM reminded the parties that the control of the outcome was still with them at this juncture, whereas any decision rendered is final and may go either way. The TM proceeded to facilitate a settlement through a discussion regarding numbers, asking the claimant's representative about their willingness to negotiate the claimed figure, and whether a "deduction or discount" was conceivable. The TM then solicited proposed figures from each party and nudged the parties toward a settlement by reframing their proposed figures in terms suggesting that their positions were not far off. For instance, after the parties each proposed a figure for settlement, the TM remarked that "we are a lot closer than we were five minutes ago", noting that the respondent was suggesting to pay 25% of the claimed amount, compared to the claimant's suggestion of 75%. Following some discussion and alterations to the figures proposed by both sides, the TM noted, "we are $[X] apart". The TM remarked to the parties that "it is not the biggest amount", but acknowledged that the difference was not insignificant, before asking them if they were willing to "meet somewhere in between". The parties eventually reached a settlement.

Throughout this process, the TM avoided discussions about the substance of the dispute. When the respondent's representative expressed grievances about the parties' prior business arrangement, the TM re-centred the discussion around the proposed figures; the TM told the claimant's representative that they did not need a response to the grievances expressed by the respondent, and asked only for the claimant's position on the respondent's proposed sum, along with any counter-proposals. The approach toward facilitating settlements at the hearing stage is thus markedly different from the approach at the consultation stage. In the observed proceedings, the TM sought only to give parties a last chance to strike a compromise, reaching a settlement that may not fully satisfy either side, but which would avoid the zero-sum consequences of a legal decision. Unlike the AR, the observed TM steered clear of discussions on the substance of the dispute or the parties' grievances and interests; they sought only to nudge the parties toward agreeing on a sum the alleged payor is willing to pay, and which the alleged payee is willing to receive in settlement of the claim.

B. Evaluation of Tribunal Practice in the Observations

By aiming to facilitate settlements as a first port-of-call, the interest of expeditious dispute resolution is promoted. The facilitation of settlements at the consultation stage serves as a filter that ensures only the most intractable or contentious cases proceed to adjudication. The interest of efficiency is thus achieved not by modifying adjudicatory processes or imposing time and filing limits on parties. Rather, it is chiefly promoted by minimising the number of cases that even reach the adjudicatory stage. This approach ensures maximal procedural fairness at the adjudication stage, as the parties' ability to present their case is largely not interfered with.

The facilitation of settlements also serves the substantive purpose of promoting pragmatic resolutions to disputes, attempting to avoid the zero-sum outcome of a decision and to secure the interests of both parties – whether by uncovering a solution to their underlying contentions, or by reaching a middle-of-the-road compromise. This interest is advanced in three ways.

Firstly, mandatory consultation sessions tend to impel parties to exchange frank views about their grievances, when they otherwise may not have bothered to engage with the other side. Occasionally, these mandated conversations are sufficient for the parties to uncover a solution to their dispute, such as in Case C1, where a tentative settlement was reached at the first consultation session. The efficacy of compelled engagement may be augmented by the mere presence of the AR, which influences parties to present their grievances civilly and induces them to entertain the possibility of a settlement.[25]

Secondly, both the AR and the TM serve as "agents of dispute transformation".[26] The AR's mediative remarks may narrow the contours of the dispute by focusing on pertinent facts, thereby organising the events behind the dispute in terms that clarify the parties' underlying concerns,[27] providing a basis on which settlements can be reached. Moreover, the normative framework of problem-solving was introduced into the dispute when the AR reframed points made by the

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[25] Laurence Boulle & Nadja Marie Alexander, *Mediation Skills and Techniques*, 2nd ed (Chatswood, NSW: LexisNexis Butterworths, 2012) at 15.

[26] Lynn Mather & Barbara Yngvesson, "Language, Audience, and the Transformation of Disputes" (1980-1981) 15:3/4 Law & Soc'y Rev 775 [Mather & Yngvesson, "Language, Audience, and the Transformation of Disputes"] ; William L.F. Felstiner, Richard L. Abel & Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming…" (1980-1981) 15:3/4 Law & Soc'y Rev 631.

[27] Mather & Yngvesson, "Language, Audience, and the Transformation of Disputes", *supra* note 26 at 783.

parties, using the discourse of exploring solutions as opposed to vindicating rights.[28] The observed TM's approach to settlement similarly narrowed and reframed the dispute, in particular, by translating it from a web of grievances and unvindicated rights into a negotiation over numbers.[29] Accordingly, the AR and TM "shape" the dispute without forcing a value choice on the parties by (re)framing the facts in such a way that norms relating to solutioning and compromise seem to relate to them almost inevitably.[30] This enables parties to consider the dispute in pragmatic terms, allowing them to better assess whether a compromise or negotiated position is viable.

Thirdly, the observed AR's case management processes entailed making neutral, tentative observations about aspects of the parties' cases.[31] These observations assist the parties in understanding what a fair outcome may look like, thereby providing reasonable parameters within which to negotiate as they "bargain under the shadow of the law".[32] The parties' negotiations do not take place in a vacuum. Rather, the possibility of a hearing, where the dispute will be determined by law, hangs in the background. By offering neutral observations on the issues and the parties' positions, the AR offers a limited "reality test" of what the possible outcome may be if the case was decided by law. This shared understanding circumscribes the range of feasible negotiated outcomes,[33] causing the parties' negotiations to become more focused and their proposals more reasonable. It induces a party on the backfoot to be more open to a settlement, and provides the stronger party with "bargaining chips"[34] with which to negotiate more favourable terms, thus causing them to also be more open to a settlement.

However, the tribunal's facilitation of settlements raises the longstanding question of whether mandatory mediation or negotiation mechanisms have any place in civil justice procedure. Detractors like Fiss have argued that such schemes are inevitably coercive, and that compromises

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[28] *Ibid* at 777.

[29] *Ibid* at 783.

[30] Michael Barkun, *Law Without Sanctions: Order in Primitive Societies and the World Community* (Connecticut: Yale University Press, 1968) at 145; Lynn Mather & Barbara Yngvesson, "Courts, Moots, and the Disputing Process", in Keith O. Boyum & Lynn Mather, eds, *Empirical Theories About Courts* (New Orleans: Quid Pro Books, 2015), 51 at 67.

[31] This point is explored more fully in Part IV, Section B.2 below.

[32] Robert H. Mnookin & Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce" (1979) 88:5 Yale LJ 950.

[33] *Ibid* at 969.

[34] *Ibid* at 968; Marc Galanter, "Worlds of Deals: Using Negotiation to Teach about Legal Process" (1984) 34:2 J Leg Educ 268 at 269.

struck in such circumstances prioritise the convenience of avoiding litigation at the expense of doing justice.[35] The force of these criticisms is elevated by suggestions that small claims processes elsewhere have been treated more as an administrative step in collecting sums owed (*viz*, by obtaining an enforceable court order) rather than as avenues for dispute resolution.[36]

These criticisms are arguably not borne out in Singapore's small claims experience. Firstly, Fiss' suggestion of power imbalances between parties to settlements[37] does not appear to reflect the profile of parties before the SCTs. The most common types of claims are tenancy disputes (individual-against-individual) and contractual disputes between businesses (entity-against-entity), where the parties are on roughly equal footing. In the author's observations, no significant imbalance arose even in cases involving an entity and an individual, as the businesses appearing before the tribunal were usually smaller enterprises whose representatives were indistinguishable from individual laypersons. It is acknowledged, however, that the observations may not provide the full picture, as business entities may have an advantage due to greater access to counsel or more experience with the SCTs' process.

Secondly, it is probably a stretch to call the SCTs' settlement facilitation process "coercive". While the observed AR and TM impressed upon parties the practical benefits of a settlement and facilitated negotiations between them, they maintained a neutral and facilitative posture, being careful not to suggest, explicitly or otherwise, that either party should accept a settlement proposal. Moreover, settlement facilitation does not necessarily take the form of a distinct phase of the proceedings that parties are required to put up with before the possibility of resolution by adjudication emerges. Rather, discussions about possible settlements arise organically in the course of the consultation sessions based on points or suggestions by either side. The level of institutional coercion therefore appears low, as the observed AR did little more than provide the opportunity for discussions and moderate them, without gatekeeping recourse to adjudicatory resolution. Likewise, at the hearing stage, the preparations for a full hearing had been made, and the observed TM simply gave parties a final chance to reach a compromise before a binding decision was rendered.

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[35] Owen M. Fiss, "Against Settlement" (1984) 93:6 Yale LJ 1073 at 1075 and 1086 [Fiss, "Against Settlement"].

[36] Iain Ramsay, "Small Claims Courts in Canada: A Socio-Legal Appraisal" in Christopher J. Whelan, ed, *Small Claims Courts: A Comparative Study* (Oxford: Clarendon Press, 1990), 25 at 42; T. C. Puckett, "Credit Casualties: A Study of Wage Garnishment in Ontario" (1978) 28:2 UTLJ 95.

[37] Fiss, "Against Settlement", *supra* note 35 at 1076.

There remains the question of whether it is appropriate to facilitate a settlement when the merits of the claimant's case are clear or undisputed, and they seek only to vindicate their rights by obtaining an order to enforce against the respondent. Arguably, facilitating a possible settlement in such cases is still desirable for practical reasons, especially since such cases often arise due to the respondent's admitted inability to make payment. A settlement enables the parties to craft an instalment plan on their own terms. This allows the claimant to receive at least part of the sums owed speedily and increases the odds that the respondent can make payment as sums fall due. While the tribunal may itself provide for instalment payments without a settlement agreement,[38] there is no guarantee that it would do so. The tribunal officials interviewed noted that a TM may be hesitant to order an instalment plan if no such plan was envisioned in the parties' contract, because decisions are rendered according to law. The key benefit offered by a settlement is a flexible and pragmatic resolution, based on the parties' interests and circumstances at that particular point in time. It is hence unsurprising that empirical studies of small claims courts have found rates of compliance with mediated settlements to be higher compared to decisions reached after a trial, along with greater party satisfaction and a stronger sense that a fair outcome was reached.[39] The facilitation of settlements is thus arguably appropriate and practically desirable.

III. SUBSTANTIVE INFORMALITY AND THE BASIS OF DETERMINATION

Moving away from the tribunal's settlement facilitation function, this Part explores the tribunal's adjudicatory framework and, in particular, the substantive basis for its rendered decisions. Pound famously suggested that legal history reveals a pendulum-like oscillation between wide judicial discretion on one hand, and strict adherence to detailed rules on the other.[40] As one of the most dynamic arenas of innovation in the legal landscape, the global small claims movement has also reflected this phenomenon. The small claims procedures of different jurisdictions reflect

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[38] SCTA, *supra* note 5, s 35(1)(a), which provides that the tribunal may impose conditions as to the time for, or mode of compliance on an order it makes.

[39] Craig A. McEwen & Richard J. Maiman, "Small Claims Mediation in Maine: An Empirical Assessment" (1981) Me L Rev 237; Austin Sarat, "Alternatives in Dispute Processing: Litigation in a Small Claims Court" (1976) 10:3 Law & Soc'y Rev 339; Christopher J. Whelan, "Small Claims Courts: Heritage and Adjustment" in Christopher J. Whelan, ed, *Small Claims Courts: A Comparative Study* (Oxford: Clarendon Press, 1990), at 221 [Whelan, "Small Claims Courts"].

[40] Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice" (1964) 10:4 Crime & Delinquency 355.

contrasting views regarding the extent to which cases should be decided strictly according to law. Some courts, as in Victoria, Australia, apply the law exactly when determining the merits of the case,[41] while others, as in Quebec, Canada, adopt an almost "Solomon-like"[42] procedure of "imposed compromise".[43]

Where does Singapore's small claims procedure lie on this spectrum? This Part submits that the ambiguous text and legislative history of the SCTA arguably suggest that, when determining claims at the hearing stage, the tribunal is required to consider the law, but is not bound to apply it and may determine disputes according to quasi-legal normative principles. However, the limited observations conducted by the author suggest that in practice, the tribunal may tend to determine disputes entirely according to legal principles, reflecting a marked contrast to the consultation stage, where pragmatic solutions are explored. Such an approach is preferable for the benefits it brings to transactional certainty and for reasons involving case management and the tribunal's prestige. However, the mismatch between the tribunal's practice and the legislative text results in potential litigants not being informed of the tribunal's approach as accurately as they could be, suggesting that reform could help to clarify the tribunal's mission.

A. Section 12(4): Contested Interpretations and Curious Legislative History

Section 12(4) of the SCTA provides that:[44]

> A tribunal must determine the dispute according to the substantial merits and justice of the case, and in doing so must have regard to the law but is not bound to give effect to strict legal forms or technicalities.

Commentators have interpreted this provision as saying that the tribunal need not decide claims strictly according to law.[45] Indeed, a textual reading of section 12(4) indicates that the tribunal must

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[41] Chin Nyuk Yin & Ross Cranston, "Small Claims Tribunals in Australia" in Christopher J. Whelan, ed, *Small Claims Courts: A Comparative Study* (Oxford: Clarendon Press, 1990) 49 at 60; *Walsh v Palladium Car Park Pty Ltd* [1975] VR 949.

[42] Adams, "The Small Claims Court and the Adversary Process", *supra* note 19 at 614.

[43] John Coons, "Approaches to Court Imposed Compromise – The Uses of Doubt and Reason" (1964) 58 Nw UL Rev 750.

[44] SCTA, *supra* note 5, s 12(4).

[45] Ho Peng Kee, "The Small Claims Tribunals Act" (1984) 26:2 Mal L Rev 287 at 296 [Ho, "The Small Claims Tribunals Act"].

consider and, when appropriate, apply legal principles, although it is not obligated to do so. It may have cognisance of, and even decide disputes according to, extra- or quasi-legal considerations.

Firstly, the very existence of a provision explicitly enunciating the standards by which the tribunal should decide disputes suggests that said standards differ from those in the State Courts' ordinary civil jurisdiction. Secondly, the provision's text suggests that deciding disputes "according to the substantial merits and justice of the case"[46] is not the same as deciding them according to law. The conjunctive clause's stipulation to "have regard to the law"[47] implies that deciding disputes according to the substantive merits and justice of the case may entail considering legal principles, but the two approaches cannot be equated. Considering legal principles is, at best, a subset of "determin[ing] the dispute according to the substantial merits and justice of the case"[48] rather than a necessary and sufficient condition of the latter. Thirdly, the phrase "*have regard to* the law"[49] suggests that the tribunal need only consider the law and accord it such weight as is appropriate. Furthermore, applying the constructive canon of *expressio unius*, the stipulation to merely "have regard to the law"[50] excludes a more stringent *requirement* to decide disputes according to law.

The legislative history of section 12(4) contains points that both support and complicate the conclusion that the tribunal need not decide claims strictly according to law. Although local parliamentary debates offer limited insight on the interpretation of section 12(4), it is noteworthy that section 12(4) was almost certainly derived from the New Zealand Small Claims Tribunals Act 1976, section 15(4).[51] The two provisions are nearly identical, and Parliament had referred to the small claims legislation of New Zealand (among other common law jurisdictions) in drafting the SCTA.[52]

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[46] SCTA, *supra* note 5, s 12(4).

[47] *Ibid.*

[48] *Ibid.*

[49] *Ibid* [emphasis added].

[50] *Ibid.*

[51] Small Claims Tribunals Act 1976 (NZ), s 15(4) [NZSCTA]. This act has since been replaced by the Disputes Tribunal Act 1988 and the provision in question is reflected in s 18(6). The provision reads: "The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities".

[52] Parliamentary Debates (24 August 1984), *supra* note 1 at col 2002.

The New Zealand provision was intended by its drafters to be a "clean and explicit break with any requirement to follow the law".[53] In explaining this, the New Zealand Department of Justice cited cases observing that judicial officers must "[have regard] to the terms of any contract", and "must *consider* but not be bound to *apply* the matters to which they have regard".[54] The legislative history of the New Zealand provision thus suggests that the wording of section 12(4) was meant to relieve the tribunal of any requirement to determine disputes according to law.

Crucially, however, section 12(4) differs from its New Zealand precursor in one significant respect. Whereas section 12(4) provides that the tribunal is "not bound to give effect to strict legal forms or technicalities",[55] the New Zealand provision states that the tribunal "shall not be bound to give effect to *strict legal rights or obligations* or to legal forms or technicalities".[56] It therefore appears that, in importing the New Zealand provision, Parliament deliberately removed the proviso that the tribunal need not give effect to legal rights and obligations. The significance of this omission is, however, ambiguous. On one hand, it may imply Parliament's intention for the tribunal to give effect to legal rights and obligations – in essence, determining the merits of disputes only according to law. On the other hand, the plain text of section 12(4), even without the proviso, still suggests that the tribunal need not determine disputes according to law, but need only to consider it. Under the rules of statutory interpretation, extraneous material, including a provision's legislative history, cannot be used to give a provision a sense which is contrary to its express text.[57]

B. The Tribunal's Adjudicatory Basis in Practice

Despite the ambiguities concerning the interpretation of section 12(4), the practice of the SCTs in the observations seems settled on the question of the basis for determination. The observed TM determined disputes according to law, giving effect to the parties' rights and obligations without considering extra-legal factors.

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[53] Alex Frame, "Fundamental Elements of the Small Claims Tribunal System in New Zealand" in Christopher J. Whelan, ed, *Small Claims Courts: A Comparative Study* (Oxford: Clarendon Press, 1990) 73 at 76 [Frame, "Fundamental Elements"].

[54] *Ibid* at 77 [emphasis in original]. *Horner v Franklin* [1905] 1 KB 479; *Stuckey v Hooker* [1906] 2 KB 20.

[55] SCTA, *supra* note 5, s 12(4).

[56] NZSCTA, *supra* note 52, s 15(4) [emphasis added].

[57] *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [47]-[50] [*Tan Cheng Bock*].

In the observed hearings, the TM determined liability or lack thereof solely by applying legal principles to the facts, as evidenced by the oral judgment the TM delivered at the close of the hearings. For instance, in their oral judgment for Case T2, the TM applied only contract law principles to determine liability, referencing the law on implication of terms, the condition-warranty distinction (together with its implications for contractual termination), and the inoperativeness of a limitation clause after a breach of an implied fundamental condition.

The tribunal officials interviewed by the author readily affirmed that any rendered decision must be based on legal principles, and that the tribunal did not apply "rough and ready justice". The interviewed tribunal officials did not think that section 12(4) relieved them from determining disputes according to law or allowed extra-legal considerations. They noted that parties could appeal against the tribunal's order on questions of law,[58] suggesting that the tribunal's decisions must be based on law. However, commentators reconcile this ground of appeal with section 12(4) by asserting a limited avenue of appeal on the ground of an error in law, due to the quasi-legal nature of the decision-making process.[59] Hence, it is section 12(4) which constrains the right to appeal, not *vice versa*. This interpretation is sensible. The existence of an option to appeal based on errors of law presupposes only that the law may be applied in some disputes or issues; there is no logical necessity to suppose that all disputes and issues must be determined by law. Holding that the right to appeal is practically limited because of the plain meaning of section 12(4) does no violence to the statutory text. Conversely, reading a requirement to decide cases according to law, and only law, into section 12(4) disregards the statutory text's common-sense meaning.

When asked what section 12(4) positively provides, the interviewed tribunal officials offered different, but not mutually exclusive, responses. The AR suggested that section 12(4) empowers the tribunal to exercise flexibility in procedural matters, such as the parties' adherence to forms and directions, e.g., granting extensions of time for submissions even without the consent of both parties, or excusing a party from attendance even if they do not have a medical certificate ("the procedural flexibility view"). The TM opined that it enjoins the tribunal to adopt a "purposive approach" to interpreting legislation and the parties' intentions in a contract, but does not permit broad-brush flexibility in determining the merits of a case ("the purposive interpretation view"). However, these interpretations are not without difficulty. With respect to the procedural flexibility

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[58] SCTA, *supra* note 5, s 38(1)(a).

[59] Soh Kee Bun, "Small Claims Jurisdiction" (1996) Sing JLS 389 at 390; Ho, "The Small Claims Tribunals Act", *supra* note 45 at 296.

view, section 12(4) evidently concerns the basis of determination rather than case management; it speaks of the standards "according to" which the tribunal must "*determine* the dispute" and mentions the "*merits* … of the case".[60] Moreover, the tribunal's procedural flexibility already finds its basis in other provisions concerning the judge-led approach and evidential rules.[61] As for the purposive interpretation view, it is unclear how this differs from ordinary statutory and contractual interpretive principles, as the purposive approach is already the cornerstone of statutory interpretation,[62] and current judicial expositions of contract interpretation principles frequently mention the parties' purposes.[63] Furthermore, section 12(4) expressly permits the tribunal to disregard "strict legal forms or technicalities"[64] in determining the dispute, a liberty that rules of purposive interpretation do not extend to.

C. Evaluation of the Tribunal's Practice in the Observations

In any case, a practice of determining cases according to law is arguably preferable to a quasi-legal or discretionary approach where potentially subjective notions of practical fairness and good conscience supplant or refashion the application of black-letter law. At its most extreme, the latter approach lacks a rational basis for judgment, reflecting what Weber terms *khadi* justice.[65] The adoption of informal bases of determination generally results in the erosion of substantive legal rights[66] because broad discretion often leads adjudicators to "split the difference" between the parties' respective positions.[67] While bargained compromises voluntarily reached by the parties may be desirable, compromises imposed by an adjudicator are arguably inappropriate. Parties whose cases reach the SCTs' adjudication stage would have been unable to settle even after eNegotiation and mediated consultation sessions, and they would arguably expect an objective,

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[60] SCTA, *supra* note 5, s 12(4) [emphasis added].

[61] SCTA, *supra* note 5, ss 23 and 28. The tribunal's procedural powers and the flexibility they afford will be discussed in Part IV.

[62] Interpretation Act 1965, s 9A; *Tan Cheng Bock*, *supra* note 57 at [36]-[38].

[63] *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029; *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50. See also Andrew Robertson, "Purposive Contractual Interpretation" (2019) 39:2 LS 230.

[64] SCTA, *supra* note 5, s 12(4).

[65] Max Rheinstein, ed, *Max Weber on Law and Economy in Society* translated by Edward A. Shils (Cambridge: Harvard University Press, 1954) at 351.

[66] Whelan, "Small Claims Courts", *supra* note 39 at 228.

[67] Alex Frame & Paul Harris, "Formal Rules and Informal Practices: A Study of the New Zealand Rent Appeal Boards" (1977) 7 New Zealand Universities Law Review 213; Frame, "Fundamental Elements", *supra* note 53 at 79.

final determination based on their rights. Having already considered and rejected compromises, they would not be satisfied by having one foisted upon them.

Additionally, jurisdictional studies reveal that adjudicators in informal courts display varying and divergent conceptions of their function, the nature of law, and decision-making models,[68] thus diminishing the consistency of decision-making across cases. Consistency, in the sense that similarly-situated litigants should receive similar treatment and outcomes, is fundamental to the legal system's integrity[69] because it directly implicates such elementary principles as equality before the law and judicial impartiality.[70] Greater consistency obtains in adjudicatory approaches based on the law, as opposed to more discretionary formulae. Although consistency has sometimes been criticised as being a value-neutral principle,[71] even its critics acknowledge its instrumental benefit of enhanced predictability for litigants.[72] Predictability is critical in the SCTs because they handle mainly commercial or transactional disputes, unlike, for instance, the Community Disputes Resolution Tribunals or the Protection from Harassment Court, which adjudicate relational and interpersonal disputes. The SCTs' jurisdiction is expressly limited to specified claims in the SCTA's Schedule,[73] most of which concern contractual disputes or recovery of monies. In practice, the vast majority of cases filed are claims relating to contracts for goods/services[74] or tenancy disputes.[75] Predictability of outcomes and the overall stability of relevant legal frameworks are vital for commercial and transactional relations because parties negotiate and execute agreements based on their understanding of objective rules.[76] Furthermore, the ability of advisers to provide legal and practical advice in the event of contractual breaches or disputes hinges on the predictability of outcomes and, by extension, the judicial decision-making framework behind them.[77]

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[68] John M. Conley & William M. O'Barr, "Fundamentals of Jurisprudence: An Ethnography of Judicial Decision Making in Informal Courts" (1988) 66 NCL Rev 467; John Baldwin, *Small Claims in the County Courts in England and Wales: The Bargain Basement of Civil Justice* (Oxford: Clarendon Press, 1997) at 48-77 [Baldwin, *Small Claims in the County Courts in England and Wales*].

[69] Yoav Dotan, "Making Consistency Consistent" (2005) 57:4 Admin L Rev 995 at 996.

[70] Michael Foran, "The Cornerstone of Our Law: Equality, Consistency, and Judicial Review" (2022) 81:2 Cambridge LJ 249.

[71] John Coons, "Consistency" (1987) 75:1 Cal L Rev 59.

[72] *Ibid* at 107.

[73] SCTA, *supra* note 5, s 5(1)(a).

[74] SCTA, *supra* note 5, Schedule, 1(a).

[75] SCTA, *supra* note 5, Schedule, 1(c).

[76] Roy Goode, "The Codification of Commercial Law" (1988) 14 Monash UL Rev 135 at 150.

[77] Ji Lian Yap, "Predictability, Certainty, and Party Autonomy in the Sale and Supply of Goods" 46:4 Comm L World Rev 269 at 270.

Additionally, the tribunal's subject-matter jurisdiction has expanded significantly since its inception, and the prescribed monetary limit of claims has risen to $20,000 ($30,000 if both parties consent).[78] These jurisdictional changes have brought a larger range of commercial disputes before the tribunal, arguably raising the complexity of cases. The higher prescribed limits have also increased the likelihood of parties' arguments being more technical or legalistic[79] and have made the SCTs a more viable option for significant claims featuring well-advised parties. Accordingly, a broad-brush discretionary approach to adjudication becomes less tenable,[80] and the predictability and certainty produced by rule-based adjudication becomes all the more necessary.

Adjudication according to law offers a third benefit: it assists parties in focusing on relevant issues and has the potential to moderate inter-party tensions hindering the examination of salient issues. The law provides a normative vocabulary that crystallises transactional customs and sets expectations for fair dealing.[81] The language of breaches and compensation narrows disputes to specified grievances and actionable remedies. The focusing effect this affords is much needed, as the observations indicated that parties may bring emotive and legally irrelevant grievances to the table. For instance, the parties in Case C3 raised a panoply of unrelated issues, from the betrayal of trust following a decades-long business relationship to allegations of conflicts-of-interest between the claimant and an unrelated party. According to the tribunal officials interviewed, this phenomenon most frequently arises in tenancy disputes, which, according to them, comprise the largest proportion of cases reaching the hearing stage. Beyond focusing the issues in dispute, the application of a legal framework can have a civilising effect on emotively-charged parties. According to Kidder, the "imposition" of a legal framework onto disputes introduces an "external", intervening layer of "organizational complexity" to the parties' relationship. Under this paradigm, "any conflict introduced into it … will take on meanings not originally relevant to the conflicting parties".[82] Hence, the application of legal principles to emotionally-charged disputes draws parties away from emotive sources of conflict, redirecting their focus to more technical legal

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[78] SCTA, *supra* note 5, s 2(1).

[79] Soh Kee Bun, "Recent Changes to the Small Claims Process: The Small Claims Tribunals (Jurisdiction) Order 1997 and The Small Claims Tribunals (Amendment) Rules 1997" (1997) Sing JLS 585 at 589.

[80] *Ibid* at 590; Baldwin, *Small Claims in the County Courts in England and Wales*, *supra* note 68 at 158.

[81] Stewart Macaulay, "Elegant Models, Empirical Pictures, and the Complexities of Contract" (1977) 11:3 Law & Soc'y Rev 507 at 519.

[82] Robert Kidder, "Toward an Integrated Theory of Imposed Law" in Sandra B. Burman & Barbara E. Harrell-Bond, eds, *The Imposition of Law* (Cambridge: Academic Press, 1979), 289 at 297.

issues. This is preferable to a more broad-based adjudicatory approach, where contested ideals of what the justice of the case entails make for a less focused and more conflict-driven paradigm.

Finally, adjudication according to law maintains the tribunal's prestige, enhancing the public's esteem for it and expanding access to justice, as more litigants avail themselves to its apparatus with the assurance of obtaining a cogently decided result. Small claims courts elsewhere have been perceived as dispensing "slovenly justice"[83] by way of "assembly-line" decision-making.[84] Their processes have been called "inspired guesswork"[85] that "produce[s] an approximation of justice" rather than conducting an "impeccable analysis of legal rights".[86] Furthermore, jurisdictional studies reveal that litigants sometimes perceive small claims courts as being biased towards either individual litigants[87] or business entities.[88] Determining disputes according to law wards off accusations of arbitrariness, subjective bias, and conjectural decision-making. Additionally, the tribunal's practice of providing a detailed oral judgment, including an explanation of the legal principles applied, assures parties of its objectivity and impartiality, together with a sense that the decision was a carefully deliberated and adequately reasoned one. On a broader scale, the retention of substantive formality counters the impression that informal justice "downgrades" the problems faced by ordinary persons and small businesses to second-class forms of justice.[89]

D. The State of the Law and Suggestions for Reform

Despite its appropriateness, the tribunal's apparent practice of determining disputes only according to law creates tension with section 12(4), which arguably empowers the tribunal to consider extra-legal factors and apply the law selectively, or not at all. It is likely that section 12(4) was introduced to protect the work of the tribunal by authorising them to deal with gaps in the arguments and evidence before them – which are produced by unrepresented laypersons – in their decisions.

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[83] UK, HC, *Law Reforms*, *supra* note 19.

[84] Adams, "The Small Claims Court and the Adversary Process", *supra* note 19 at 608.

[85] Baldwin, *Small Claims in the County Courts in England and Wales*, *supra* note 68 at 158.

[86] Frame, "Fundamental Elements", *supra* note 53 at 88.

[87] Baldwin, *Small Claims in the County Courts in England and Wales*, *supra* note 68 at 102.

[88] Barbara Yngvesson & Patricia Hennessey, "Small Claims, Complex Disputes: A Review of the Small Claims Literature" (1975) 9:2 Law & Soc'y Rev 219 at 235.

[89] Richard Abel, "The Contradictions of Informal Justice" in Richard Abel, ed, *The Politics of Informal Justice* (New York: Academic Press, 1982).

However, a liberal construction of section 12(4) may give potential litigants the false impression that the tribunal can offer recourse beyond what the law provides and entertain claims built on extra-legal conceptions of justice. Qualitative studies have found that lay notions of duty, causation, proof, and remedies differ significantly from legal doctrines concerning the very same.[90] Moreover, the procedural informality of tribunals can mislead parties into thinking that the merits of their cases will be decided on substantively informal grounds, creating a trap of "hidden legalism".[91] Indeed, jurisdictional studies report that tribunal applicants often request adjudicators to deviate from strict law, making arguments based on the inequity of their situations.[92] This finding aligns with the author's observations. In Case C2, the claimant lamented that they had failed to obtain recourse from an industry-based dispute resolution scheme, and the claimant had filed a claim with the tribunal seeking so-called equity justice because the claimant considered the SCTs a more equitable justice system unconfined by the application of strict law. The AR later mentioned that such sentiments were "not uncommon" among claimants.

The liberal wording of section 12(4) potentially exacerbates this persistent issue in the informal justice landscape. Litigants unfamiliar with the SCTs might reasonably assume, based on section 12(4), that disputes are determined according to quasi-legal standards that may depart from the strict legal position. Such parties may be disadvantaged if this misconception leads them to present arguments without sufficient legal justification,[93] although guidance at the consultation stage would hopefully correct misconceptions and help them prepare adequately. Additionally, as seen in Case C2, misconceptions about the tribunal's basis of determination may lead parties to bring legally untenable cases before the tribunal, hoping for so-called equity justice. Not only would such claimants be disappointed at not receiving their desired recourse, time and resources would be wasted for the claimant, respondent, and tribunal alike. In particular, the tribunal, with its

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[90] John M. Conley & William M. O'Barr, "Lay Expectations of the Civil Justice System" (1988) 22:1 Law & Soc'y Rev 137 at 155-156, 160; John M. Conley & William M. O'Barr, "Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives" (1985) 19:4 Law & Soc'y Rev 661 at 684-689; John M. Conley & William O'Barr, "Rules Versus Relationships in Small Claims Disputes" in Allen Grimshaw, ed, *Conflict Talk: Sociolinguistic Investigations of Arguments on Conversations* (Cambridge: Cambridge University Press, 1990), 178.

[91] Richard O. Lempert, "The Dynamics of Informal Procedure: The Case of a Public Housing Eviction Board" (1989) 23:3 Law & Soc'y Review 347 at 390-393 [Lempert, "The Dynamics of Informal Procedure"]; James Farmer, *Tribunals and Government* (London: Sweet & Maxwell, 1974) at 108-109.

[92] André Gallant, "The Tax Court's Informal Procedure and Self-Represented Litigants: Problems and Solutions" (2005) 53:2 Can Tax J 333 at 335.

[93] Hazel Genn, "Tribunals and Informal Justice" (1993) 56:3 Mod L Rev 393 at 403; Lempert, "The Dynamics of Informal Procedure", *supra* note 91.

enormous caseload and emphasis on efficiency, would benefit from litigants being more well-informed about its practice.

Hence, it may be apposite to remove section 12(4), replacing it with a provision stating that the tribunal must determine disputes according to law. Such a change would accurately reflect the tribunal's practice and ensure litigants are fully informed of its adjudicatory approach. Even if a provision similar to section 12(4) is deemed necessary to protect the tribunal's work, its drafting should be significantly revised, avoiding ambiguities. Presently, it is unclear what the "substantial merits and justice of the case"[94] refer to, as New Zealand's position that the phrase refers to the "equity and good conscience" jurisdiction[95] is clearly not followed in Singapore's small claims practice. Likewise, it is unclear what "strict legal forms or technicalities"[96] refer to, since form and technicality are value-laden descriptors, and what is a technicality to one person may be a legitimate substantive safeguard to another.[97] Ultimately, the tribunal's adjudicatory basis should be articulated clearly and with minimal oblique terminology.

IV. PROCEDURAL INFORMALITY AND THE JUDGE-LED APPROACH

Turning from the question of informality regarding the substantive aspects of disputed cases, this final Part evaluates informality in its procedural aspects. As a starting point, the general discourse on procedural informality largely centres on a three-way balancing act between procedural fairness, efficiency, and accessibility. Procedural formality is often considered a "prerequisite of justice" because procedural rules promote such *desiderata* as judicial neutrality and ordered presentation of relevant facts and issues.[98] However, excessive proceduralism leads to inefficiency and high costs. Efficiency thus becomes a countervailing goal because a delay in the administration of justice is a

[94] SCTA, *supra* note 5, s 12(4).

[95] Frame, "Fundamental Elements", *supra* note 53 at 78.

[96] SCTA, *supra* note 5, s 12(4).

[97] Leo Katz, "A Theory of Loopholes" (2010) 39:1 J Leg Stud 1.

[98] Whelan, "Small Claims Courts", *supra* note 39 at 230.

denial of justice.[99] Additionally, procedural complexity can make the legal process inscrutable to laypersons,[100] diminishing the accessibility and navigability of the civil justice system.

How does Singapore's small claims process appear to navigate these competing interests? By adopting a procedure predominantly reflective of adversarial proceedings, the observations in the SCTs prioritised judicial neutrality in adjudication over potential gains in accessibility that may arise from a more inquisitorial or investigative approach. Moreover, the interest in giving parties latitude to make their cases and freely adduce evidence is prioritised over keeping hearings short or document-light. Procedural fairness, therefore, is the primary consideration in adjudication; the goals of accessibility and efficiency are realised outside the adjudicatory setting, such as during the consultation stage or through legal aid offered elsewhere in the informal justice ecosystem.

A. The Legislative Basis for Procedural Informality

Section 22 of the SCTA provides that tribunal proceedings "are to be conducted in an informal manner", with the tribunal adopting a "judge-led approach".[101] This "judge-led approach" comprises two broad aims – firstly, the tribunal should "identify the relevant issues in the claim"; secondly, it should ensure that the "relevant evidence is adduced by the parties".[102] Section 22 is complemented by section 28, which provides that the tribunal is "not bound by the rules of evidence", but may "inform itself on any matter in such manner as it thinks fit".[103] However, both provisions are qualified by section 30, which provides that, in controlling its own procedure, the tribunal "must have regard to the principles of natural justice".[104] The SCTA contains more detailed subsections that specify certain wide-ranging powers that the tribunal enjoys. For instance, the tribunal may inquire into any matter it considers relevant, regardless of whether it is raised by

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[99] Jack Jacob, "Accelerating the Process of Law" in Jack Jacob, *The Reform of Civil Procedural Law and other Essays in Civil Procedure* (London: Sweet & Maxwell, 1982), 91 at 93.

[100] Subordinate Courts of Singapore, "Access to Quality Justice: Annual Report 2010" at 48, cited in Jaclyn L. Neo & Helena Whalen-Bridge, *Litigants in Person: Principles and Practice in Civil and Family Matters in Singapore* (Singapore: Academy Publishing, 2021) at 39-40.

[101] SCTA, *supra* note 5, ss 22(1) and (2).

[102] *Ibid*, s 22(2).

[103] *Ibid*, s 28(1).

[104] *Ibid*, s 30.

either party.[105] It may also seek evidence and make investigations on its own initiative,[106] and summon any person to give evidence or produce documents.[107]

B. Informal Proceedings, the Judge-Led Approach, and the Tribunal's Procedural Powers

Although sections 22 and 28 apply only to the hearing stage,[108] a large proportion of case management is conducted at the consultation stage. This section therefore analyses the procedural informality of the SCTs in both the hearing stage and the consultation stage based on the author's observations and pertinent case law on the judge-led approach. Although the relevant cases concern the Family Justice Rules 2014 ("FJR"), they can offer insights into the judge-led approach as it relates to the SCTs. The judge-led approach was first introduced through the 2014 Family Justice Reforms, before being adopted in the Employment Claims Tribunals and SCTs. Indeed, the wording of sections 22(1) and (2) of the SCTA is nearly identical to that of rules 22(1) and (2) of the FJR. Nevertheless, it is crucial to recognise that the SCTs enjoy more procedural flexibility than the Family Justice Courts, at least in theory. The SCTA explicitly mandates tribunals to conduct proceedings informally and does not bind them to evidential rules, a distinction not shared by the FJR.[109]

1. *The judge-led approach in tribunal hearings*

The judge-led approach is said to enable proceedings to be conducted in "a more inquisitorial fashion".[110] However, in the author's limited observations, the hearing remains predominantly adversarial in nature. Each party is responsible for presenting their case and providing evidence.

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[105] *Ibid*, s 22(5).

[106] *Ibid*, s 28(3).

[107] *Ibid*, s 22(4).

[108] Both provisions govern the procedure of a "tribunal". According to s 4(1) SCTA, a "tribunal" is presided over by a tribunal magistrate. A consultation, which is overseen by an assistant registrar, is therefore not a tribunal. Indeed, s 17 SCTA, which governs the Registrar's powers and the conduct of consultations, clearly distinguishes between a tribunal and the Registrar (and, by extension, an AR).

[109] See, for instance, r 22(3) FJR, where directions made under the judge-led approach are "subject to any written law relating to the admissibility of evidence" (r 22(3)(b) FJR) and "subject to any written law or rule of law restricting the disclosure, or relating to the confidentiality, of any document or information" (r 22(3)(k) FJR).

[110] *VBL v VBM* [2019] SGFC 112 at [84].

The observed TM conducted the hearings in the following manner, although not all TMs may adopt this approach:

a. The claimant is given 10-15 minutes to make oral arguments and refer the tribunal to relevant evidence.
b. The tribunal poses a series of questions to the claimant.
c. Steps (a) and (b) are repeated for the respondent.
d. Finally, the claimant is given a right of reply.

The parties retained control over their respective cases at all times. Indeed, the courts have warned that adjudicators should not use their judge-led powers to correct what is otherwise a procedurally or substantively erroneous case.[111] They may be more direct in highlighting their concerns, but they cannot craft or rectify a case for a party.[112] Moreover, although a substantial part of the hearing consists of the tribunal putting questions to the parties to test their respective cases, it is a stretch to say that this resembles a so-called "inquisitorial" process where the adjudicator plays an active role in the fact-gathering process by examining witnesses,[113] permitting or disregarding proof offers, and actively narrowing the dispute by concentrating on what they consider to be pertinent issues.[114]

In the author's observations, the tribunal's questions generally served one of the following purposes: (a) clarifying specific factual details raised in the parties' evidence; (b) inviting elaboration on how facts raised by a party support their argument; and (c) putting aspects of one party's case to the other party. The TM did not pre-emptively select issues to focus on, but allowed the parties to raise the points they considered relevant. When posing questions that were not merely factual clarifications, care was taken to base them on the party's own submissions or that of the counterparty, and to frame questions in an open-ended manner.

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[111] *Ibid.*

[112] *Ibid.*

[113] John Langbein, "The German Advantage in Civil Procedure" (1985) 52:4 U Chicago L Rev 823 at 828-829.

[114] Mary Ann Glendon, Paolo G. Carozza & Colin B. Picker, *Comparative Legal Traditions: Text, Materials, and Cases on Western Law*, 4th ed. (St. Paul: West Academic Publishing, 2014) at 235-236.

To illustrate, in Case T3, to prove that two related companies (Company A and Company B) were a singular entity, the claimant's representative relied on arguments that did not appear to be particularly compelling. The TM did not interrupt the claimant's representative, allowing them to make the arguments in full. The TM later engaged these arguments by asking the neutral and open-ended question, "Does this suggest that they are the same company?" The only instances where the TM segued into more pointed questioning were, firstly, when clarifying finer factual points of evidence, and, secondly, when points raised by a party generated implications for the arguments they were making. For instance, the claimant's representative noted that the registered entity to which goods were supplied was owned by Company A, to which the TM asked, "If [the registered entity] is registered in the name of [Company A], should [the contract] be in the name of [Company A]?"

It can thus be seen that the tribunal's questioning in this observation was not an extensive examination. The parties' prepared cases set the tenor of the hearing, and the tribunal asked questions mainly to clarify facts and arguments raised by the parties and to seek additional comments on points raised by either party. Hence, the TM in the observation arguably assumed a somewhat more passive role than the quintessential inquisitorial judge, who sets the tenor of the hearing by deciding what aspects of the dispute need to be proved and takes on a more investigative, rather than clarificatory, role in questioning.[115] The aforementioned analysis of the tribunal's interaction with the parties could be said to resemble the adversarial mould, where the adjudicator plays a chiefly "managerial" role and leaves the investigation of issues and the development of legal arguments to the parties.[116] However, a crucial element of the adversarial process is a party's right to probe the evidence.[117] Indeed, cross-examination has been called a "hallmark" of the adversarial process.[118] In this regard, in the three tribunal hearings observed by the author, witnesses were not called, and parties were not offered the chance to question each other. The only form of questioning present in the proceedings was that conducted by the TM. As

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[115] *Ibid.*

[116] Adrian Zuckerman, "Truth Finding and the Mirage of Inquisitorial Process" in Jordi Ferrer Beltrán & Carmen Vázquez Rojas, eds, *Evidential Legal Reasoning: Crossing Civil Law and Common Law Traditions* (Cambridge: Cambridge University Press, 2020), 71 at 74.

[117] *Ibid.*

[118] Phoebe Bowen, Terese Henning & David Plater, "Balancing Fairness to Victims, Society and Defendants in the Cross-Examination of Vulnerable Witnesses: An Impossible Triangulation?" (2014) 37 MULR 539 at 540.

discussed in the preceding paragraphs, this was largely clarificatory, rather than inquisitorial, in nature.

Finally, despite the tribunal's extensive powers to seek evidence, conduct investigations, and compel testimony on its own initiative, these powers may not always be exercised, and no instance of their use was observed during the author's observations. Indeed, the tribunal officials interviewed noted that they were slow to request the parties to submit additional evidence, typically using these powers only when a crucial piece of evidence that is obviously essential to the case, e.g., the contract forming the basis of a contractual dispute, was somehow not adduced. The tribunal's procedural powers are generally not employed to seek evidence that merely supplement a party's case. This further supports the conclusion that the tribunal plays a limited role in investigation or fact-gathering, with the production of evidence falling almost entirely to the parties themselves.

2. *Case management at the consultation stage*

At the consultation stage, the AR seemingly plays a significant role in case management because almost all the necessary evidence and written submissions are submitted at this stage. Like the TM, they appear to play a relatively limited role in evidence production. However, from the author's observations, the AR's role becomes slightly more significant than the TM when guiding parties in framing the issues. In the observed consultation sessions, this took the form of the AR providing neutral observations on the parties' cases, leveraging their position as an official in the small claims process who is not determining the merits of the dispute.[119]

The observations suggest that, like the TM, the AR does not typically request parties to submit specific pieces of evidence. They only do so when the parties have yet to adduce fundamentally important and obvious documents. However, it was noted in interviews with the author that if one party requests documents from the other, the AR may assist in putting across such requests by paraphrasing requests more clearly or facilitating discussions about the feasibility of disclosure. Conversely, the AR also does not appear to prohibit the parties from submitting evidence and

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[119] Although the AR may render a default judgment in favour of either party if their counterparty does not appear at the consultation (ss 17(5) and (6) SCTA), they do not examine the merits of the case in doing so. Where the claimant is absent, the AR may dismiss the claim outright; where the respondent is absent, they must be "satisfied that the claimant is entitled" to the order (s 17(6) STCA), but only on a *prima facie* basis.

documents, even if a sizeable amount of evidence is submitted. Indeed, the AR has no real power to prevent parties from submitting evidence the same way that a TM does by virtue of section 22. The author observed cases in which a party submitted hundreds of pages of documents, all of which were read and considered by the TM before the hearing. When interviewed, the TM noted that it was "neither frequent nor rare" for parties to submit an excessive amount of evidence. Parties may do so for different reasons: to err on the side of caution, inundate their counterparty with documents, or obscure inconvenient facts. Regardless of their motives, the TM noted that the SCTs cannot preclude parties from submitting whatever they wished.

In the observed proceedings, the AR played a slightly more active role in guiding the parties to frame the relevant issues. However, the AR maintained a neutral posture and chose their words carefully to avoid imposing on the parties. The observed AR's positive guidance primarily took the form of objective observations. For instance, in Case C2, the AR told the claimant that, based on the agreement, it appeared that they were not a party to the contract and thus may not be entitled to their desired recourse. The AR qualified this observation by saying that they were "not commenting on the merits of the case" and were "raising this point … because [it] may come up with the tribunal". They then proceeded to schedule the claim for hearing. Crucially, the AR made this observation only after the respondent had argued that the claimant was not a party to the contract. Through this observation, the AR guided the parties by drawing their attention to a relevant contested issue. However, the AR's comments were deliberately phrased as tentative observations made without the benefit of a full factual examination. Additionally, they avoided the appearance of siding with either party by framing their comments as predictions of what a tribunal may focus on.

Apart from making observations, the AR also helped focus the issues while facilitating settlement negotiations. From what the author observed, this facilitation involved helping parties focus on matters at the heart of the dispute by paraphrasing a party's remarks and asking probing questions to ascertain the true source of their grievances. This approach serves a dual-purpose. By having a clearer idea of the matters at the heart of the dispute, parties can more productively discuss feasible solutions or compromises; simultaneously, they can also better understand the relevant legal issues and can better prepare for and substantiate their respective cases.

C. Evaluation of the Tribunal's Practice

Suggestions that the judge-led approach might resemble a "constructive and problem-solving model of adjudication" that "represent[s] a departure from the traditional role of the judge as an umpire"[120] did not appear to hold true for the SCT proceedings observed by the author. The TM did not use their wide-ranging procedural powers to make inquiries or seek evidence on their own initiative. From what the author observed, they weighed the evidence and arguments of the parties without acting as an investigator or substantive guide. Instead of charting a middle course of "active" or "enabling" adjudication between the supposed extremes of adversarial and inquisitorial procedure,[121] the observed procedure seemed more akin to the adversarial mould. Indeed, the tribunal officials interviewed did not consider the tribunal's procedure to be substantially different from the procedure of the civil courts.

With this approach, the tension between maintaining judicial neutrality and providing assistance to lay-litigants is resolved decisively in favour of the former. This is wholly appropriate because impartiality, as a cornerstone of natural justice, is an essential requirement of adjudication;[122] jeopardising it would threaten the legitimacy of the system and lower public confidence in the tribunal's ability to fairly determine disputes.[123] The ideal of judicial neutrality should not be easily traded off for other interests less fundamental to the hearing itself, especially if these interests may be met in pre- or extra-adjudicatory settings. The observed TM's restrictive lines of questioning and limited use of quasi-inquisitorial procedural powers uphold judicial neutrality because they afford the TM a degree of relative passivity, which "enhances [their] ability to be and to seem impartial".[124] In contrast, a decision-maker that actively inquires into unraised issues or who seeks out evidence not adduced by a party can easily appear to be building one party's case for it, at the other party's expense.[125] Indeed, institutional commentaries on the FJR have warned that the

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[120] Kevin Ng & Yarni Loi, "Family Justice Courts – Innovations, Initiatives and Programmes: An Evolution over Time" (2018) 30 Sing Ac LJ 617 at 641-642.

[121] Robert Thomas, "From 'Adversarial v Inquisitorial' to 'Active, Enabling, and Investigative': Developments in UK Administrative Tribunals" in Laverne Jacobs & Sasha Bagley, eds, *The Nature of Inquisitorial Processes in Administrative Regimes: Global Perspectives* (Surrey, UK: Ashgate Publishing, 2013), 51.

[122] *Metropolitan Properties Co (FGC) Ltd v Lannon* [1969] 1 QB 577.

[123] Paul Weiler, "Two Models of Judicial Decision-Making" (1967) 46:3 Can Bar Rev 406 at 413.

[124] *Ibid.*

[125] Adams, "The Small Claims Court and the Adversary Process", *supra* note 19 at 597-598; J Maxwell Atkinson, "Displaying Neutrality: Formal Aspects of Informal Court Proceedings" in Paul Drew, John

judge-led approach and "inquisitorial" procedural powers may lead to "undue judicial intervention" or create the perception that the decision-maker has "descended into the arena".[126] By retaining a largely adversarial procedure, the tribunal avoids these pitfalls and maintains its neutrality, both actual and perceived.

While the absence of cross-examination in the observed tribunal hearings deviates from a purely adversarial mould, this procedural feature arguably promotes efficiency and maintains decorum and focus during the hearing. As discussed above, lay-litigants may bring into the proceedings grievances that are irrelevant to the legal dispute at hand. This appears to be more common in tenancy disputes, which, according to the AR interviewed, are the most common type of case that reaches the hearing stage. The observed proceedings suggest that inviting parties to question each other could result in unnecessary confrontations over matters that do not affect the legal merits of the claim, prolonging the hearing and obfuscating the key issues. It could also make lapses in decorum more common and heighten the tension between parties. Conversely, when each party presents their case and the TM asks detailed questions to each side in turn, the parties would be better able to focus on pertinent issues, disputed facts, and documentary evidence. With this added clarity, the parties would be better placed to challenge the evidence and arguments of the other side than they would through unstructured and unguided cross-examination.

Despite all of the foregoing analysis, the trade-off between judicial neutrality and rendering substantive assistance does not leave lay-litigants helpless in navigating the proceedings. Firstly, discussions at the consultation stage allow parties to identify the factual and legal bases of the dispute and thus frame the issues and prepare their cases accordingly. The AR's observations contribute to this end by drawing the parties' attention to areas of dispute that emerge from their discussion and providing an honest assessment of how the facts and evidence lie. Secondly, the TM consciously frames questions simply, without invoking dense legal jargon. They do not expect parties to explain their positions using accurate legal terminology, but remain ready to look behind what is argued to discern the legal principles at play, asking questions to clarify the thrust of the

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Heritage, eds, *Talk at Work: Interaction in Institutional Settings* (Cambridge: Cambridge University Press, 1993), 199 at 210.

[126] Sundaresh Menon, "The Future of Family Justice: International and Multi-Disciplinary Pathways" (Opening Address delivered at the International Family Law Conference, Singapore, 29 September 2016), *Law Gazette*, online: <https://v1.lawgazette.com.sg/2016-11/1701.htm> at [22]; Family Justice Courts, "Case Management Handbook for Divorce Matters" *Singapore Courts* (June 2020) online: <https://www.judiciary.gov.sg/docs/default-source/family-docs/handbook_divorce.pdf> at [2.9].

parties' submissions and test their positions. Parties are therefore not necessarily disadvantaged for not knowing the law because the tribunal is used to rendering legal decisions based on arguments and points expressed in lay terms. Thirdly, free legal advice is available to litigants-in-person at the Community Justice Centre,[127] an independent charity housed in the State Courts itself; substantive assistance is thus available in avenues independent of the tribunal but still forming part of the broader ecosystem.[128] Hence, there does appear to be sufficient assistance provided to lay-litigants to ensure the tribunal's procedure is accessible, although such assistance lies squarely outside the tribunal's outward-facing adjudicatory role.

Finally, the observed proceedings suggest that the interest of an expeditious conclusion of proceedings is given little weight at the hearing stage. Instead, as discussed in Part II, the interest of efficiency appears to be mostly achieved outside the adjudicatory function, through the facilitation of settlements. Parties in the observations were free to file as much documentary evidence as they wished, and the TM apprised themself of all submitted documents. Hearings are not rushed through on an assembly-line basis. It was noted in the interviews that a full day is blocked-out for each hearing by default, and this may be extended if necessary. Under this paradigm, the interest of securing a fair outcome and giving parties their day in court far outweighs any interest in keeping proceedings short and document-light. The sentiment that "petty justice [is given] for petty claims",[129] a common perception of small claims processes elsewhere,[130] is kept at bay by giving parties every opportunity to make their case and bring whatever material they consider relevant before the tribunal. While this makes proceedings more time and resource intensive, it burnishes the tribunal's standing as an institution that dispenses quality justice rather than an approximation of it, giving parties confidence in the tribunal's efficacy.

V. CONCLUSION

Although the present study provides some insight into the SCTs' practice, the small sample size of observations should be borne in mind as an inherent limitation. With only eleven observed proceedings involving two tribunal officials, this paper's findings do not capture the full spectrum of variations in adjudicatory practices and interactions in the small claims process. Furthermore,

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[127] "Community Justice Centre", online: <https://cjc.org.sg>.

[128] However, the Community Justice Centre's assistance is available only to individuals, not entities.

[129] Adams, "The Small Claims Court and the Adversary Process", *supra* note 19 at 608.

[130] Baldwin, *Small Claims in the County Courts in England and Wales*, *supra* note 68 at 101.

the observed tribunal hearings lack variability in the type of claim and nature of parties, as all three observed tribunal hearings involved disputes over contracts for goods/services that involved entities as claimant and respondent. Future research with larger and more diverse samples will enhance the robustness and validity of this study's findings.

The foregoing analysis does however suggest that, unlike many other jurisdictions, the approach to informal justice in the SCTs does not entail extensive modifications to adjudicatory frameworks and processes. The SCTs' adjudicatory practice does not deviate substantially from ordinary civil processes, as the tribunal strictly applies the law in determining disputes and adopts a mostly adversarial procedure, making limited use of its wide-ranging, quasi-inquisitorial procedural powers. Rather, key interests at the heart of informal justice, such as efficiency, increased accessibility of civil justice, and pragmatic, interest-based dispute resolution, are mainly served outside adjudicatory proceedings, in the consultation sessions, through settlement facilitation and case management. This distinction between the SCTs' facilitative and adjudicatory roles ensures that, in adjudicating disputes, principled decision-making, judicial neutrality, and procedural fairness are not compromised by countervailing, albeit important, interests. This approach enhances the predictability and certainty of outcomes, improving litigant satisfaction and preserving the tribunal's prestige as a dispenser of quality justice. The SCTs' practice thus strikes an appropriate balance between meeting the demands of natural justice as an adjudicatory body and promoting access to justice as a speedy and inexpensive avenue for practical dispute resolution.