

RECENT CHANGES TO THE SMALL CLAIMS PROCESS:

The Small Claims Tribunals (Jurisdiction) Order 1997¹
and
The Small Claims Tribunals (Amendment) Rules 1997²

Introduction

THE Small Claims Tribunal³ (“the Tribunal”) was established to deal with small claims with more informal procedures than the normal courts. It has been successful in dealing with small claims. Since its establishment, there have been requests for its jurisdiction to be enlarged.

The jurisdiction of the Tribunal is defined or limited by two main considerations: the monetary size of claims that it can deal with (money limitation) and the types of claims or disputes that it can hear (cause of action limitation).⁴ The Tribunal started with an initial jurisdiction to hear claims not exceeding \$2,000 in disputes arising from any contract for the sale of goods or the provision of services.⁵

From 15 August 1995, the jurisdiction was enlarged,⁶ with a new money limit of \$5,000,⁷ and the addition (to its cause of action jurisdiction) of tort claims in respect of damage to property (other than damage caused by an accident arising out of or in connection with the use of a motor vehicle).⁸

¹ S 321/97.

² S 320/97.

³ Established by the Small Claims Tribunals Act (Act 27 of 1984, now Cap 308, 1996 Rev Ed). All references to statutory provisions will be to this Act unless otherwise stated.

⁴ For a more detailed discussion of the jurisdiction of the Small Claims Tribunal, see Soh Kee Bun, “Small Claims Jurisdiction” [1996] SJLS 389.

⁵ S 5(1).

⁶ Small Claims Tribunals (Amendment) Act 1995 (Act 17/95, with commencement date set by S 333/95).

⁷ S 5(4), as amended by Act 17/95.

⁸ S 5(1) and s 5(2) as amended by Act 17/95.

When the jurisdiction of the Tribunal was enlarged in 1995, a new procedure was put in place to enable the Minister to change the money limit after consultation with the Chief Justice. This was done by defining the money limit as a “prescribed limit”,⁹ which was initially defined as \$5,000. This limit is the money limit for claims that the Tribunal can hear¹⁰ as well as the limit for any award of money that it can make.¹¹ The Ministerial power to increase the limit does not extend to the cause of action jurisdiction of the Tribunal. This is because the “prescribed limit” is a money limit.¹²

Provision was also made in 1995 to enable the Tribunal to hear claims of up to \$10,000 (within its cause of action jurisdiction) if the parties agree.¹³ This consent based limit of \$10,000 can also be increased by the Minister after consultation with the Chief Justice.

1997 Increase of Jurisdiction

At the opening of the 1997 legal year, it was announced that there had been a recommendation to double the “prescribed limit”. The Chief Justice, in his speech on 4 January 1997,¹⁴ said:

While we continue to hold down the level of legal costs in the civil courts, we will also expand the accessibility of the Small Claims Tribunals. Last year, the increase in their monetary jurisdiction from \$2,000 to \$5,000 led to a 12% increase in the number of claims lodged, from something like 28,000 in 1995 to 35,000 in 1996. So following a review of past year’s operations and case profile studies, a recommendation has been made to the Government to further increase their jurisdiction to \$10,000, and even to \$20,000 if the parties consent. After all, some 40% of the present writ actions are for claims of less than \$10,000. With an increase in jurisdiction, greater use can be made of the tribunals as a cheaper and more user-friendly alternative forum, for disputes whose size and nature often do not justify recourse to the civil courts. As in the civil courts, these claims will first be mediated by the Registrars or volunteer mediators.

⁹ S 2.

¹⁰ Under s 5.

¹¹ S 32(2).

¹² S 2 states that “prescribed limit” means \$5,000 or such other sum as the Minister may, after consultation with the Chief Justice, by order published in the Gazette, substitute therefore;”.

¹³ S 5(4).

¹⁴ Singapore Academy of Law Newsletter, February 1997, at 13.

The recommendation to increase the “prescribed limit” was accepted by the Minister for Law. From 15 July 1997, the “prescribed limit” was doubled to \$10,000. In addition, the consent based limit of \$10,000 was raised to \$20,000, with the result that the Tribunal can now deal with claims of up to \$20,000 with the consent of the parties.¹⁵ The current jurisdiction of the Tribunal is to hear and determine:¹⁶

- (1) claims in contract for the sale of goods or the provision of services; and
- (2) claims in tort for damage to property.

All claims are subject to a limitation period of one year¹⁷ and a money limit of \$10,000, which can be raised to \$20,000 if the parties agree. In addition, no claim can be made in respect of damage caused to any property by an accident arising out of or in connection with the use of a motor vehicle.¹⁸

Implications

Expansion of Role?

A money limitation of \$10,000, which is effectively increased to \$20,000 if the parties agree, confirms the view that the Tribunal is not just intended for the resolution of consumer contracts. This higher limit is a substantial sum for the general population, and while “small” is undoubtedly a relative term, some may not see the enlarged jurisdiction as being confined to “small claims”.

While claimants of smaller sums are certainly no worse off with the increased jurisdiction, it can be said that the increase in jurisdiction in 1997 has expanded the role of the Tribunal. It is now clearly intended to also act as a low cost informal forum for commercial parties who may otherwise even litigate in the Magistrate’s courts. This is indicated by the fact that 40% of present writ actions are for claims of less than \$10,000.¹⁹ This change

¹⁵ Small Claims Tribunals (Jurisdiction) Order 1997 (S321/97).

¹⁶ S 5(1).

¹⁷ S 5(3)(b).

¹⁸ S 5(2)(a). This bar can theoretically apply to a contract claim as well, but the situations where this might happen is very limited. The wording used (“in respect of damage caused to any property”) mirrors that used to define the tort jurisdiction of the Tribunal. In practice, this is a bar against tort claims arising from road accidents.

¹⁹ *Supra*, note 4.

will benefit many potential litigants in terms of access to a low cost and informal forum. Under the small claims system, a binding and enforceable resolution of a dispute can be obtained in a matter of weeks rather than months.²⁰

Although not all claims comprising this 40% will be claims within the cause of action jurisdiction of the Tribunal, there is no reason to doubt that most of these claims will be. This is because many claims will be based on contracts for the sale of goods or the provision of services. Many will simply be claims in debt that arise out of such contracts. While the enlarged jurisdiction will not mean a full 40% reduction in the workload of the Magistrate's Courts, a significant proportion of cases that are in fact litigated in the courts can now be alternatively resolved by the Small Claims Tribunals. Although the Tribunal has always resolved some claims that would have been brought before the Magistrate's court if there were no small claims procedure (*eg*, claims by statutory boards and town councils), the present figures show that a significant volume of such cases will now be brought before the Small Claims Tribunal instead.

With the new increased limits, the issues raised before the Tribunal may increase, even though the cause of action jurisdiction of the Tribunal remains unchanged. Arguments that are raised in contracts for the sale of goods which are limited in money value to \$5,000 are likely to be quite different from those arising from contracts for the sale of goods of up to \$10,000 (which can even be \$20,000 with consent). More complex issues and arguments can also arise with claims in tort for damage to property on the increased money limit.

Review of other aspects of the small claims process

A prescribed limit of \$10,000 (or \$20,000 with consent) raises the question of whether there should be a review of some aspects of the small claims process. The Tribunal was initially established for claims of up to \$2,000 only. The value of money has changed over the years, but it has not increased by five to ten times in the same period.

When small sums are involved, informal procedures are easy to justify. The Tribunal is not legally bound by the rules of evidence.²¹ It does not technically even have to decide the claim on the strict technicalities of the law, because it "shall determine the dispute according to the substantive

²⁰ In terms of procedure, the formal pleadings in litigation alone will take a few weeks to complete, after which a trial date will have to be set.

²¹ S 25.

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 forms or technicalities.”²² Generally, parties have to appear in person,²³ and lawyers are excluded, even if they are not paid. With up to \$20,000 in issue now, lawyers may well be consulted even if they cannot physically appear on behalf of the parties. The desire for representation may grow, especially by consumer parties who have better educated friends or relatives. With larger sums involved, consumer parties will be at an even greater potential disadvantage when presenting their case against a large corporation that could send an experienced and articulate representative after taking legal advice.

However, if the main characteristics of the small claims process were to be changed to take into account the larger stakes and greater complexity, there will be an impact on claims of smaller amounts as well, probably at the expense of the informal and low cost nature of the Tribunal.

The small claims process is suited for small claims, and is not an ideal process for other claims. When a claim is small, complexity is not a real issue in practical terms, and a just and equitable approach is quite acceptable, especially when actual litigation in a different forum is not likely. This position changes with an increase in the stakes involved. Although the current absolute limit of \$20,000 is not so high that the small claims process can be said to be generally unsuitable for claims of such order, it is probably close to the ideal limit.²⁴

Sums of \$10,000 to \$20,000 may not seem particularly “small” to lay people, but they are also not particularly “large” for formal litigation, especially considering the costs involved. In practice, Referees (who are qualified persons under meaning of the Legal Profession Act),²⁵ generally do apply the law. In fact, Referees are often also Magistrates. However, in the Small Claims Tribunal, the Referee has to decide without the benefit of professionally prepared and researched legal arguments. With the increased limits, there is a likelihood that the arguments may become more legalistic, which would not be the ideal approach considering the reasons for a special small claims procedure, and the absence of legal representation. Another possible development in respect of larger claims (especially of sums that are closer to \$20,000), may be that parties will try to raise technical

²² S 12(4).

²³ S 21, with limited exceptions for non-human entities, minors, non-residents and those who are unable to represent themselves by reason of old age, illiteracy or infirmity of body or mind. Lawyers are expressly barred by s 21(3).

²⁴ This statement is based on the current cost of living and average salaries.

²⁵ Cap 161. This is a requirement of s 4(2) of the Small Claims Tribunals Act.

legal arguments from their understanding of the law based on formal or informal advice from lawyers and knowledgeable friends. A Referee cannot reject or disallow such arguments as being irrelevant. When the sum involved is about \$20,000, a Referee may not be entirely comfortable in deciding the case simply on his personal sense of justice, or on his personal memory of the law.

A Tribunal can decline to determine a claim and transfer the claim to another court.²⁶ This is an answer to any concerns over the Tribunal dealing with claims that the small claims process is not suited for. However, the grounds for such an order are not expressly specified in the legislation. There is only a requirement for the subjective view of the Tribunal that the “claim ought to be dealt with by any other court”. It is unlikely that claims will be transferred only because the amount involved is relatively substantial. To do so would defeat the point of raising the prescribed limit to its current level.

No increase in cause of action jurisdiction

The changes do not affect or increase the cause of action jurisdiction of the Tribunal. It has been argued that the Tribunal should hear more types of claims, and that a higher money limit makes it more difficult to increase the cause of action jurisdiction of the Tribunal.²⁷

No Exclusive Jurisdiction

The Small Claims Tribunal does not have exclusive jurisdiction over claims within its jurisdiction. It is only when a claim has been lodged with the Tribunal that no other court can deal with a parallel claim.²⁸ If an action has been commenced elsewhere, then no claim can be lodged before the Tribunal.²⁹ Technically, claims of up to \$10,000 may still be made in the Magistrate’s Courts. However, a Magistrate who feels that the claim should have been made in the Small Claims Tribunal may award costs accordingly.

²⁶ S 7.

²⁷ *Supra*, note 4.

²⁸ S 6.

²⁹ S 6(2) states that “[n]o claim shall be brought before a tribunal if proceedings relating to that claim are pending in or have been heard and determined by any other court.”

Role of Lawyers

The legal profession stands to lose a significant amount of work with these changes. This will essentially affect the lower end of the litigation market. When the money limit was \$2,000, the impact on the profession was minimal. Most of the claims would not have been pursued in the courts for reasons of disproportionate cost. The 1997 increase in jurisdiction changes the position.

A professional issue that arises is whether lawyers should recommend that a claim be pursued before a Small Claims Tribunal when the dispute is one that is within its jurisdiction. The savings in fees, other costs and time are obvious advantages that should be highlighted. This may sometimes not be in the economic interests of the lawyer as the advice may effectively be equivalent to “you don’t need to retain a lawyer”.

Generally, the issue of using the Small Claims Tribunal should be seriously considered in cases involving sums of up to \$10,000. For sums above \$10,000, there should be a consideration of either persuading the other party to agree to use the Tribunal, or abandoning the difference and pursuing only \$10,000 before the Tribunal.

It is not possible to say what would always be the correct legal advice on the choice of forum. A lawyer who does not even raise the possibility of a small claim will probably not be acting professionally if the matter is within the jurisdiction of the Small Claims Tribunal. There should generally be a comparison of the advantages in risk, cost and time, over possible “disadvantages” in matters like a limited right of appeal, the absence of legal representation, and the mandate of the Tribunal to decide according to the justice of the case. Some of these “disadvantages” may, however, be seen as “advantages” by some. When sums that are well below \$10,000 are involved, it would be generally difficult to justify litigation in the Magistrate’s Courts. For larger sums closer to \$10,000 and above, stronger (but not necessarily strong) arguments can be made for not recommending the use of the Small Claims Tribunal. However, even when a claim is made before the Small Claims Tribunal, there is no reason why lawyers cannot advise on the arguments that the claimant can make before the Referee.

The fact that costs other than disbursements are not allowed even to a successful party³⁰ should generally be pointed out.

³⁰ S 28. Only disbursements are allowed, which really mean the lodgment fees.

Appeals and Enforcement

With larger sums involved, the number of appeals may increase. This is an area where lawyers have a positive role. The formal enforcement of judgments may also become more common. Both these involve costs that are within the mainstream court system.³¹ Appeals are heard by the High Court, and the enforcement of an order made by a Tribunal is as if it were a judgment of a Magistrate's Court.³² It has been argued that a significant increase in appeals may decrease the usefulness of the Tribunal in dealing with small claims.³³ Larger commercial parties may raise legal arguments, especially on jurisdiction, as a procedural tactic to gain an advantage in negotiations. Many parties will not look forward to the prospect of being involved in High Court litigation.

Any limit to "prescribed limit"?

A potentially important issue is whether there is any limit to the Minister's discretion to raise the "prescribed limit". There is no express limit in section 2 of the Act. There is an indirect limit in section 5(2)(b), which states that the jurisdiction of the Tribunal shall not extend to a claim "which the subordinate courts have no jurisdiction to hear and determine". This means that the "prescribed limit" cannot be greater than the civil jurisdiction of the Subordinate Courts, which are currently much higher than that of the Small Claims Tribunal. The Subordinate Courts Act defines the money jurisdiction of the District and Magistrate's Courts on the basis of "District Court Limit" and "Magistrate's Court Limit". These were set at \$100,000 and \$30,000 respectively at the time of the increase of the prescribed limit.³⁴

From a practical point of view, it is very unlikely that the "prescribed limit" will be raised to a level that is even close to, let alone greater than, the Magistrate's Court Limit. The current \$10,000 limit is one third that of the Magistrate's Courts, and can rise to two thirds with consent.

³¹ S 33(6) states that no filing fee has to be paid by a person who seeks to enforce an order of a Referee. However, this exemption does not apply to other fees and costs.

³² S 33 and 34.

³³ *Supra*, note 4, at 399.

³⁴ Cap 121. Defined in s 2 therein. There are other limits, *eg*, in probate matters, which are not relevant to this discussion as the Small Claims Tribunal has much more limited cause of action jurisdiction. The District Court limit is now \$250,000 (S333/97, with effect from 1 August 1997).

Increase in Fees

The fees payable for lodging a claim were also revised, with the new fees taking effect on 15 July 1997. As before, there is a distinction between consumer and non-consumer claimants. The fees for claims of not more than \$5,000 remain at \$10 and \$50 for consumer and non-consumer claimants respectively. For claims of more than \$5,000 but not more than \$10,000 the new fees are \$20 and \$100 respectively. Most significantly, the fee for claims above \$10,000 are now based on a percentage of the actual claim, pegged at 1% for consumer claimants and 3% for non-consumer claimants.³⁵

The fees are payable by claimants on lodging a claim. The percentage fees are based on the "amount claimed". As such, they have no bearing on the actual amount (if any) subsequently awarded by the Tribunal. From a practical point of view, it is difficult to base fees on the amount actually recovered. If this were to be the case, not only will an estimated fee still have to be collected in advance, frivolous claims may also be encouraged.

Even though there are large percentage differences, the fee distinctions between consumer and non-consumer claimants are not significant in absolute money terms for any given claim. The \$50 filing fee paid by a non-consumer party may be five times the \$10 fee for consumer claimants, but it is still only \$50. However, there is a substantial difference for claimants with a large number of claims each month. These are parties who may reasonably be expected to contribute more to the cost of funding the work of the Small Claims Tribunals. Even at \$100 per claim, there cannot be any doubt that the administrative cost of dealing with the claim will be well in excess of the fee.

On the percentage basis, the maximum fees for a \$20,000 claim (which requires the consent of the parties) are \$200 and \$600 for consumer and non-consumer claimants respectively. Considering the benefits from using the Small Claims Tribunal (including the costs saved by not litigating in the Magistrate's Courts), the fees are reasonable, even if they may seem a huge increase from the original \$10 and \$50 fees. This is particularly so for claims of more than \$10,000 as the savings in costs over litigation in the Magistrate's courts make the 1% or 3% fee a substantial bargain.

These fees are essentially all that most parties to a small claim stand to lose if they are not successful before the Tribunal. This is because the Tribunal cannot award costs other than disbursements.³⁶ The new fees cannot

³⁵ Rule 9, Small Claims Tribunals Rules (R1) as amended by the Small Claims Tribunals (Amendment) Rules 1997 (S 320/97).

³⁶ S 28.

be described as changing the low-cost nature of the Tribunal as they have to be seen relative to the sums involved. The new fees are better seen as being based on the philosophy of making those with larger claims (who usually would have greater means) bear a higher proportion of the operating costs of the Tribunals, and to discourage frivolous claims.

Electronic Filing of Claims

In line with developments in the court system, the rules now provide for the electronic lodgment of claims in two forms.

Facsimile Transmission

The first method is through a facsimile machine.³⁷ Rule 11G states that the Registrar may permit any person or class of persons to lodge claims by facsimile transmission. Under this scheme, there is no formal lodgment until the Registrar has verified compliance with the rules. Lodgment fees are payable within 7 days, failing which the claim is deemed to be withdrawn.³⁸ The provision is not so widely drafted as to allow any party to use a fax machine to lodge a claim; as the right is confined to those who are authorised by the Registrar. However, the Registrar could effectively make it as broad by simply authorising the public to do so.

Electronic Means

The second involves advance approval, with password enabled access to a computer system to file the claims.³⁹ This requires the use of suitable computer, software and communications equipment, together with identification and authentication codes. It is expected that this method is intended for frequent and large scale users of the Tribunals, like town councils and statutory boards, as well as utilities providers like Singapore Telecom and Singapore Power. Significant savings in time and costs can be expected from this new method of filing claims for those authorised to use the system. Given the nature of small claims, it is unlikely that law firms would be involved in such arrangements.

³⁷ Part IIIB, Small Claims Tribunals Rules (R 1) as amended by S 320/97.

³⁸ Rule 11L(2).

³⁹ Rule 11B states that the "Registrar may, subject to such conditions as he may impose, permit any person or class of persons to lodge a claim by electronic means in accordance with" Part IIIA.

Final Observations

As a matter of policy, litigation should not be encouraged. But there is much to be said for providing a low cost and informal forum for those with genuine claims. The 1997 expansion of the jurisdiction of the Small Claims Tribunal is to be welcomed for bringing a cheaper dispute resolution process to more parties. In theory, a widely available low risk procedure carries an unintended and unavoidable risk of encouraging litigation. There is no evidence that this has occurred in Singapore. However, since a claim before the Tribunal is indeed relatively risk free, care should be taken to ensure that unmeritorious claims are not made, and that those which are lodged should be identified and dealt with accordingly. This is especially important when the jurisdiction of the Tribunal is being expanded.

The higher fees for larger claims act as a useful factor in discouraging weak claims. However, there is no special procedure for the striking out of patently bad claims, as provided for in the Rules of Court 1996,⁴⁰ which does not apply to small claims. It is not suggested that there should be such a procedure as it may be inappropriate for a small claims process. The task of identifying such claims lies with the mediator (during the consultation process under section 17), and the Referee thereafter. This may seem to be an awkward task for an officer whose main task is to bring the parties to a settlement,⁴¹ rather than to judge the merits of the case. As a matter of practice, however, it is unlikely that mediators and Referees would not consider the strength of the claim in their primary role as mediators.

The potential problems highlighted here are not necessary consequences of a relatively high prescribed money limit for small claims. It is, however, beneficial to consider the potential problems that may arise, so that they may be appreciated and dealt with if necessary.

Finally, the present \$10,000 prescribed limit brings attention to the relatively narrow cause of action jurisdiction of the Tribunal. There are other contracts that could be brought within the jurisdiction of the Tribunal. Motor accidents claims (that are now expressly excluded) should be re-considered. There is of course also the issue of claims based on the law of Restitution,⁴² which are not expressly within the jurisdiction of the

⁴⁰ Order 18 Rule 19 (S 71/96)

⁴¹ S 12.

⁴² This has been considered elsewhere, and the arguments will not be repeated here. See *supra*, note 4.

Tribunal.

While a higher prescribed limit may present problems that do not surface with a lower prescribed limit, it cannot be denied that there are crucial advantages in making the small claims process available to more parties. It is hoped that even more parties can have access to the Tribunal through a broader cause of action jurisdiction. Such parties would include those with disputes that would probably not be litigated in a Magistrate's Court.

SOH KEE BUN*

* LLB (NUS); BCL (Oxon); Advocate and Solicitor (Singapore); Senior Lecturer, Faculty of Law, National University of Singapore.