

## Article

Helena Whalen-Bridge\*

# The Conceptualisation of Pro Bono in Singapore

**Abstract:** “Pro bono” is a familiar phrase in North American jurisdictions that generally refers to a lawyer’s provision of free legal services to indigent persons. The phrase “pro bono” has also come to imply a particular approach to a lawyer’s relationship to indigent persons, one that stresses the obligatory as opposed to the charitable nature of the services provided. To what extent has this phrase, and its conceptualisation of a lawyer’s role, been used in Asian jurisdictions? This article examines how one Asian jurisdiction, Singapore, conceptualises a lawyer’s relationship to indigent persons by examining newspaper usage of phrases describing legal services for indigent persons. The article argues that changes in usage over time, from free legal services and legal aid to inclusion of pro bono, coupled with increased discussions of access to justice, represent a shift to a more obligatory concept of indigent legal services. An obligatory conceptualisation potentially exerts greater pressure on lawyers to provide indigent legal services, but can also exert pressure to revise the historical lack of broad-based government funded criminal legal aid in Singapore.

**Keywords:** pro bono, Singapore, legal profession, access to justice

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## I. INTRODUCTION

“Pro bono” is commonly understood as the provision of free legal services by a lawyer to benefit persons of limited means.<sup>1</sup> There is considerable disagreement about definitional details, such as whether pro bono includes services to entities

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<sup>1</sup> See e.g. the discussion of American Bar Association Rule 6.1 in Deborah L. Rhode, *Pro Bono in Principle and in Practice* (Stanford, CA: Stanford University Press, 2005) at 15–18.

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\*Corresponding author: Helena Whalen-Bridge, Faculty of Law, National University of Singapore, Singapore, E-mail: lawhwb@nus.edu.sg

other than indigent individuals or services provided at a reduced fee, but no one questions the primacy of the term *pro bono*. In North American jurisdictions in particular, it signifies a lawyer's obligation to support access to law by donating legal services to persons who cannot afford a lawyer.<sup>2</sup>

In jurisdictions outside of North America, academic review of the connection between a lawyer's profession and obligations to access to justice is less developed. The growth of the legal profession in many countries has been explored,<sup>3</sup> and some comparative work has been done regarding *pro bono*.<sup>4</sup> However, in some Asian jurisdictions the term *pro bono* is unknown, and in others the historical development and current conceptions of lawyerly obligations to indigent persons remains relatively unexplored. The latter is the case even in Singapore, where recent developments such as the launching of the Pro Bono Services Office of the Law Society of Singapore in 2007,<sup>5</sup> the pending implementation of mandatory student *pro bono*,<sup>6</sup> and proposals for mandatory lawyer *pro bono*<sup>7</sup> have significantly raised the profile of *pro bono*. But how longstanding is the usage of this phrase in Singapore, and what does it mean in a jurisdiction outside of North America? This article examines the relationship between the legal professional role and indigent representation in the context of Singapore, a former British colony in Asia, by examining how newspaper discussion of legal aid and *pro bono* developed over time. It is not possible to draw a direct connection between newspaper coverage and popular understanding of a lawyer's role regarding indigent legal services, but patterns of terminology

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<sup>2</sup> Rhode, *ibid.* at 26–29.

<sup>3</sup> See Richard L. Abel & Philip S. C. Lewis, *Lawyers in Society: An Overview* (Berkeley, CA: University of California Press, 1995); Richard L. Abel & Philip S. C. Lewis, *Lawyers in Society, Volume 1: The Common Law World* (Berkeley, CA: University of California Press, 1988), Richard L. Abel & Philip S. C. Lewis, *Lawyers in Society, Volume 2: The Civil Law World* (Berkeley, CA: University of California Press, 1988), and Richard L. Abel & Philip S. C. Lewis, *Lawyers in Society, Volume 3: Comparative Theories* (Berkeley, CA: University of California Press, 1989).

<sup>4</sup> See Robert Granfield & Lynn Mather, eds., *Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession* (Oxford: Oxford University Press, 2009); Rhode (2005), *supra* note 1 at 3–5, 100–24; and Austin Sarat & Stuart Scheingold, *Cause Lawyering and the State in a Global Era* (Oxford: Oxford University Press, 2001).

<sup>5</sup> Law Society of Singapore, Pro Bono Services Office, About Us, online: <<http://probono.lawsociety.org.sg/About-Us/>> (last accessed 28 July 2014).

<sup>6</sup> “Pro-Bono Efforts to Get Boost as Part of New Legal Initiatives” *Channel NewsAsia* (6 January 2012), and at the National University of Singapore Faculty of Law, see *NUS Law Curriculum Review Discussion Paper, November 2012*, para. 42–44, online: <[http://law.nus.edu.sg/about\\_us/curriculum\\_review/CRC\\_Discussion\\_Paper\\_2012.pdf](http://law.nus.edu.sg/about_us/curriculum_review/CRC_Discussion_Paper_2012.pdf)> (last accessed 28 July 2014).

<sup>7</sup> “S’pore Academy of Law Seeking Feedback on Proposed Pro Bono Scheme” *Channel NewsAsia* (4 March 2013), online: <<http://news.xin.msn.com/en/singapore/spore-academy-of-law-seeking-feedback-on-proposed-pro-bono-scheme>>.

usage in media discussions should be one indicator of how indigent representation has been understood over the years.

## A. Methodology

This article explores how the concept of indigent representation, particularly the provision of free legal services by lawyers, developed over time in Singapore, by examining three aspects of the terminology used to discuss indigent representation in the news media: the actual phrases used to refer to indigent representation, the timing of the usage, and the subject matter context in which the usage occurred.

In the Singapore context, there have been insightful examinations of discourse<sup>8</sup> as well as a detailed exploration of the concept of “home”,<sup>9</sup> which use either primary or secondary legal sources as the focus of analysis. This article seeks a more widely accessible form of media in order to establish how a lawyer’s obligations to indigent clients might be understood in the broader community outside of legally trained persons. There has also been academic research on Singapore newspaper coverage; Chen’s 2013 article on the 2007 petition to repeal Singapore’s penal provision on homosexual sex sought to establish public opinion on the issue and investigated the relationship between the resulting legal position and the political majority.<sup>10</sup> The instant article attempts to establish a basic usage pattern in Singapore to consider how understandings of indigent representation may have changed over time, and therefore does not address the genesis of particular laws.

Examining newspaper coverage is a common methodology in socio-legal research and has focused on non-legal<sup>11</sup> as well as legal matters.<sup>12</sup> The focus of

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**8** Jothie Rajah, *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore* (Cambridge: Cambridge University Press, 2012) and Gary Chan, “The Right of Access to Justice: Judicial Discourse in Singapore and Malaysia” (2007) 2(1) *As. J.C.L.* Article 2.

**9** See Tang Hang Wu, “The Legal Representation of the Singaporean Home and the Influence of the Common Law” (2007) 37(1) *Hong Kong L.J.* 81.

**10** Jianlin Chen, “Singapore’s Culture War over Section 377A: Through the Lens of Public Choice and Multilingual Research” (2013) 38(1) *Law & Soc. Inquiry* 106.

**11** See T. A. Keenleyside, B. E. Burton, & W. C. Soderlund, “The Press and Foreign Policy: Canadian Newspaper Coverage of Relations with the United States, October-December 1982” (1986) 41 *Int’l J.* 189; Christopher L. Erickson & Daniel D. B. Mitchell, “Information on Strikes and Union Settlements: Patterns of Coverage in a ‘Newspaper of Record’” (1996) 49(3) *Industrial & Labor Relations Review* 395; Scott Chenault, “The New Ice Age? A Content Analysis of Methamphetamine” (2012) 12 *Journal of the Institute of Justice & International Studies* 15; and Karen Lowrie, Michael Greenberg & Lynn Waishwell, “Hazards, Risk and the Press: A Comparative Analysis of Newspaper Coverage of Nuclear and Chemical Weapons Sites” (2000) 11 *Risk: Health, Safety & Environment* 49.

**12** Sandra S. Evans & Richard J. Lundman, “Newspaper Coverage of Corporate Price Fixing” (1983) 21(4) *Criminol.* 529; Steven Garber & Anthony G. Bower, “Newspaper Coverage of

newspaper coverage research can be to establish determinants of coverage<sup>13</sup> or compare rates of coverage with rates of occurrence.<sup>14</sup> This article however focuses on patterns of usage over time, to see what terms have been used at various points to describe a lawyer's obligation to indigent persons, and what that terminology suggests regarding how the obligation is understood. The article therefore tracks variations in usage over time as opposed to correlations between usage and events.

Usage patterns can currently be found in different types of media in Singapore, including a variety of newspapers, newsletters, and online resources such as blogs. This article focuses on one newspaper, *The Straits Times*,<sup>15</sup> published in Singapore and Malaysia since the 1800s, because the paper's longevity offers a relatively stable source of data over a long period of time. *The Straits Times* has the longest history of continuous publication in Singapore.<sup>16</sup> For many years, it essentially held a monopoly on the news in English.<sup>17</sup> *The Straits Times* was launched on 15 July 1845,<sup>18</sup> when Singapore was still governed by the East India Company. As noted in C. M. Turnbull's history of *The Straits Times*, the paper was first published as a weekly, then a bi-weekly, and then from 1858 to 1866 as a daily. In 1866, its name changed to the *Singapore Daily Times* and the name *The Straits Times* was retained for the weekly edition.<sup>19</sup> The daily paper reverted to *The Straits Times* in January 1883 and the name has been retained to the present day. A *Sunday Times* edition joined the daily *The Straits Times* in December 1931. During the Japanese

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Automobile Product Liability Verdicts" (1999) 33(1) Law & Soc'y Rev. 93; and Lyn Hinds, "Three Strikes and You're Out in the West: A Study of Newspaper Coverage of Crime Control in Western Australia" (2000) 17(2) Current Issues in Criminal Justice 239.

**13** Erickson & Mitchell (1996), *supra* note 11; Garber & Bower, *ibid*; and Lowrie, Greenberg & Waishwell (2000), *supra* note 11.

**14** Chenault (2012), *supra* note 11; Keenleyside, Burton, & Soderlund (1986), *supra* note 11; Evans & Lundman (1983), *supra* note 12.

**15** Occasional exceptions to the research focus on *The Straits Times* are, for example, made for *The Singapore Free Press and Mercantile Advertiser*, because it contains relevant newspaper coverage in a time of relatively scant coverage, and for the *Singapore Monitor* (Faedah Ismail, "Society's Legal Aid Service Will Not Be Training Ground" *Singapore Monitor* (24 August 1984) at 4), because it appears to be one of the first discussions in the Singapore press regarding the Criminal Legal Aid Scheme, a subject of some prominence in *The Straits Times* coverage.

**16** Gerald Franics de Silva, *The Straits Times: 1945–1975* (B.A. Honors Thesis, Department of History, National University of Singapore, 1987/88) at ii.

**17** *Ibid.*

**18** C. M. Turnbull, *Dateline Singapore: 150 Years of the Straits Times* (Singapore: Singapore Press Holdings, 1995), "Bibliography" at 392.

**19** *Ibid.*

occupation of Singapore, publication was suspended from 16 February 1942 but resumed on 7 September 1945 and continues today. Printed in English, *The Straits Times* is currently published in Singapore by Singapore Press Holdings Ltd.<sup>20</sup>

*The Straits Times'* lengthy publication history is an advantage in tracking usage patterns over time, but using *The Straits Times* also limits the relevance of conclusions drawn from patterns of usage. The first limitation is language. In the years prior to Singapore independence in 1965, the majority of residents in Singapore did not speak English and could not read *The Straits Times*.<sup>21</sup> The newspaper was designed to be read primarily by Europeans, predominately expatriate British, and English-educated local domiciled populations.<sup>22</sup> The limited readership renders it impossible to state that the terminology was representative of Singapore as a whole before a majority of the population could read the paper. Potentially interesting questions regarding differing uptake rates of legal aid and pro bono services in different Singapore communities could be raised in a comparison of English, Malay and Indian language newspapers,<sup>23</sup> but these questions are beyond the scope of the current research. Other issues beyond the scope of the article are raised by the pre-independence bias in *The Straits Times* toward mercantile and British interests,<sup>24</sup> although editorial policy did not invariably favour those interests,<sup>25</sup> and the relationship between content and the ownership and control of *The Straits Times* over the years.<sup>26</sup> In view of these limitations, this article suggests that terminology in *The*

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**20** Singapore Press Holdings, Our Businesses, Newspapers, *The Straits Times/The Sunday Times*, online <<http://www.sph.com.sg/our-businesses/newspapers/the-straits-times-the-sunday-times/>>.

**21** de Silva (1987/88), *supra* note 16 at 14.

**22** Turnbull (1995), *supra* note 18 at 70, 81.

**23** See the documentation of differences in the opinions expressed in Malay and Chinese language newspapers in Chen (2013), *supra* note 10 at 118–20.

**24** de Silva (1987/88), *supra* note 16 at 2–4, 8–9, 16–20.

**25** See Turnbull (1995), *supra* note 18 at 71; de Silva (1987/88), *supra* note 16 at 14–15.

**26** De Silva notes that particularly after Singapore's exit from the Federation of Malayan, political leadership in Kuala Lumpur became concerned about the newspaper's management by European elites based in Singapore, resulting in an amendment of the *Corporations Act* which caused the newspaper to withdraw management shares (de Silva (1987/88), *supra* note 16 at 43–45). In the 1970s, Singapore enacted a series of laws "to ensure no foreign influence on the mass media," including provisions requiring that directors of newspapers be Singapore citizens and creating ordinary and management shares, with management shares to be held only by citizens or corporations approved of by the Minister (de Silva (1987/88), *supra* note 16 at 72, and 68–76; see the *Newspapers and Printing Presses Act*, 206 (Rev. Ed. Sing. 2002), s. 10, and see also *Broadcasting Act*, Cap. 28 (Rev. Ed. Sing. 2012), Part X).

*Straits Times* was generally representative of the readership's usage at the relevant time.

Another complication raised by research using *The Straits Times* is whether usage patterns represent the understanding of readers in Singapore or another political entity. This article focuses on conceptualisation of indigent representation in Singapore, but for much of Singapore's colonial history it was part of the Straits Settlements, a group of British territories located in Southeast Asia that included Penang and Malacca. After the signing of the Anglo-Dutch Treaty in 1824, Singapore and Malacca were transferred to the East India Company by the British Parliament.<sup>27</sup> In 1858, the East India Company was abolished and the Straits Settlements came under the new Indian government created by British Parliament, which meant that the Crown took over administrative responsibility for the Straits Settlements.<sup>28</sup> By Letters Patent, the Straits Settlement was granted a colonial *Constitution* in 1867.<sup>29</sup> After WWII, Singapore was briefly run by the British Military Authority,<sup>30</sup> and Britain determined that Singapore should be governed separately from Malaysia as it had different economic and social interests.<sup>31</sup> The Straits Settlements were disbanded by the *Straits Settlements Repeal Act 1946*, and Singapore became a separate Crown Colony.<sup>32</sup> Singapore progressed toward self-rule and on 1 August 1958, the British Parliament passed the *State of Singapore Act*, which converted the colony to a self-governing state.<sup>33</sup> In the elections of 1959, the People's Action Party won a majority of seats and Mr. Lee Kuan Yew became Singapore's first Prime Minister.<sup>34</sup> Singapore was a self-governing state, but the new party sought merger with the newly formed Federation of Malaya in order to guarantee political independence and ensure the economic survival of the small country.<sup>35</sup> Singapore joined the Federation in 1963; however, the merger did not last, and on 9 August 1965 Singapore was expelled and became independent.<sup>36</sup>

The sovereign states of Singapore and Malaysia therefore share a common history, and although this article focuses on the development of lawyer

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27 Kevin Tan Yew Lee, "A Short Legal and Constitutional History of Singapore", in Kevin Y. L. Tan, ed., *The Singapore Legal System* (Singapore: Singapore University Press, 1999) at 30.

28 *Ibid.* at 35.

29 *Ibid.*

30 *Ibid.* at 40.

31 *Ibid.* at 41.

32 *Ibid.*

33 *Ibid.* at 44–45.

34 *Ibid.* at 45.

35 *Ibid.*

36 *Ibid.* at 46.

obligations regarding indigent representation in Singapore, delving into the history of Singapore invokes the history of Malaysia. *The Straits Times* reflects this connection. For much of its history, *The Straits Times* was a pan-Malayan newspaper, not a Singapore paper.<sup>37</sup> In 1959, the newspaper moved its headquarters to Kuala Lumpur.<sup>38</sup> It is not until after independence in 1965, when both Singapore and Malaysia were suspicious of foreign influence over the newspaper, that control over the paper was segmented<sup>39</sup> and the papers could be said to contain a Singaporean or Malaysian sensibility on particular issues.

While publication in English and changing political boundaries limit the conclusions that can be drawn about Singapore from *The Straits Times*, there are precedents for one source newspaper coverage research. One newspaper source has been used in other socio-legal research because it was well suited to the research question and was easily accessible online,<sup>40</sup> and because it was the pre-eminent newspaper in the area.<sup>41</sup> In Singapore, *The Straits Times* is pre-eminent, is easily accessible online,<sup>42</sup> and has the added feature of having a lengthy record of publication. The length of time in particular is valuable to the research focus in that it helps establish the relative hold that certain phrases have had over the area of indigent legal services over time. The article therefore proceeds with the stated limitations in mind.

## B. Initial Findings and Phrases Searched

Initial research into the terminology used to refer to indigent representation in *The Straits Times* indicated that the term pro bono is of relatively recent vintage, and that a variety of terms have been used to refer to indigent representation. In order to track usage over time, the author searched issues of *The Straits Times* using the following terms: “legal aid”, “pro bono”, “free legal aid”, “free legal” with other words, “free counsel”, “volunteer”, and “voluntary lawyer”. Because

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37 Turnbull (1995), *supra* note 18 at 151; de Silva (1987/88), *supra* note 16 at 7, 26–27, 29.

38 de Silva (1987/88), *supra* note 16 at iv.

39 *Ibid.* at 61–76.

40 Chenault (2012), *supra* note 11 at 23.

41 Erickson & Mitchell (1996), *supra* note 11 at 400.

42 The primary database used to access *The Straits Times* was <<http://eresources.nlb.gov.sg/newspapers/>> (formerly <[newspapers.nl.sg](http://newspapers.nl.sg)>), a free full text online database. However, given limited coverage in more recent years, the usage patterns reported in this paper for the years 1990–2013 originate primarily from the Factiva database. Different databases do generate different usage figures. Also, Factiva references do not provide page numbers for articles, hence the lack of page numbers for articles retrieved this database.

the term “access to justice” also appeared with increased frequency in recent years, in connection with pro bono and on its own, it was also searched. The phrase “*in forma pauperis*”, understood as proceeding in court without paying court fees because of indigent status, also appears<sup>43</sup> but is greatly outnumbered over time by references to legal aid and ultimately pro bono. A fuller treatment of the history of indigent representation in Singapore would address *in forma pauperis* proceedings, but the constraints of the current article do not allow for more than a brief review.

To investigate usage patterns, the number of articles per year that contained these terms, as opposed to the number of times the phrase appeared per year, were tracked. A greater number of articles would indicate greater usage and interest in the subject matter better than multiple uses of the same term in one article, thus acting as a better indicator of the importance of the concept over time. The research results reflected in Tables 1–3, while not intended to be an exhaustive compilation, do suggest certain trends in usage patterns.

### C. Overview of Findings

Newspaper coverage in *The Straits Times* suggests that broadly speaking, the discussion of indigent representation developed in three stages in Singapore:

1. Prior to the passage of the *Legal Aid and Advice Ordinance*, when a charitable concept of indigent legal services prevailed;
2. Passage of the *Legal Aid and Advice Ordinance* and subsequent failure to implement broad-based criminal legal aid, when a charitable concept of lawyers providing indigent legal services remained despite increased need for voluntary criminal representation; and
3. The rise of pro bono and access to justice terminology and conceptualisation of a professional obligation.

Before exploring usage in *The Straits Times* in detail, the article offers a brief overview of pro bono as well as relevant regulatory histories of indigent representation. English regulation has been relevant in the Singapore context, so the article outlines the regulatory history of indigent representation of the U.K., followed by Singapore. The article then presents patterns of usage regarding

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<sup>43</sup> The <<http://eresources.nlb.gov.sg/newspapers/>> database indicates that the phrase “in forma pauperis” appears in 115 articles from 1907 (“Baron’s Vow of Poverty” *The Straits Times* (25 June 1907) at 7) to 1973 (“Family is refused leave to appeal to Privy Council” *The Straits Times* (20 February 1973) at 5).



indigent representation as they appear in *The Straits Times* from 1900s to 2010s, coupled with analysis of individual articles in the three stages. The article concludes by comparing the Singapore conceptualisation of pro bono with the U.S. and the U.K. and suggests how pro bono may function in Singapore compared to these other jurisdictions. The article argues that changes in usage over time, from free legal services and legal aid, to inclusion of pro bono coupled with increased discussions of access to justice, represent a shift to a more obligatory concept of indigent legal services. The article raises the question of whether conceptualising indigent representation as a obligation based on access to justice potentially conflicts with a state position that does not fund broad-based criminal legal aid, particularly where access to justice usage is associated with the court system.

## II. THE REGULATORY CONTEXT

### A. Overview of Indigent Representation and Pro Bono

Most contemporary authors would assert that the State has an obligation to fund legal assistance for indigent persons<sup>44</sup> and that lawyers should complement but not replace those legal services.<sup>45</sup> There are therefore two major actors in the history of pro bono, the State and lawyers. The relationship between these actors raises the questions of what obligation the State has to fund indigent representation, and whether lawyers providing representation are fulfilling a professional obligation or exercising a charitable preference.

The idea that indigent representation should be shared by the State as well as lawyers is a relatively recent development. Deborah Rhode states that by the mid-twentieth century, the inadequacies of systems of charitable assistance that had been in place for some time became apparent, and governments in Western

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<sup>44</sup> See Mauro Cappelletti, James Gordley & Earl Johnson, *Toward equal Justice: A Comparative Study of Legal Aid in Modern Societies* (Milano: A. Giuffrè; Dobbs Ferry, NY: Oceana, 1975).

<sup>45</sup> See e.g. the academic Richard L. Abel, "State, Market, Philanthropy, and Self-Help as Legal Services Delivery Mechanisms" in Robert Granfield & Lynn Mather, eds., *Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession* (Oxford: Oxford University Press, 2009) at 304; the organisational view of the International Bar Association's IBA pro bono declaration (16 October 2008) at para. G, online: <[http://www.ibanet.org/PPID/Constituent/ProBono\\_Accs\\_Justice/Default.aspx](http://www.ibanet.org/PPID/Constituent/ProBono_Accs_Justice/Default.aspx)>; and the newspaper article by Grania Langdon-Down, "Pro bono – Minding the Gap" *The Law Society Gazette* (25 October 2012), online: <<http://www.lawgazette.co.uk/67961.article>>.

Europe and former British Commonwealth nations developed schemes of government funded legal aid.<sup>46</sup>

The concept of pro bono developed as well. The understanding of pro bono shifted from a lawyer's charitable donation, an act that was laudable but not required, to a matter of professional responsibility, an obligation arising from the lawyer's professional status albeit one not normally mandated by regulation. Addressing the U.S. context, Deborah Rhode notes that although the U.S. legal profession has for most of its history resisted seeing pro bono service as a professional obligation,<sup>47</sup> most lawyers would today acknowledge some professional responsibility to provide pro bono service.<sup>48</sup>

Has Singapore participated in these wider developments, and to what extent has the Singapore context produced a different understanding of pro bono? The article reviews the regulatory context for legal aid in England and Singapore, as presented in academic writing, and then analyses how indigent representation has been represented in newspaper coverage in *The Straits Times*.

## B. Regulation of Indigent Representation in England and Wales

While broad-based legal aid developed in England only after WWII, there has been some form of indigent representation since the practice of law itself. Provisions in the year 813 forbid ecclesiastical lawyers from arguing secular pleas except for orphans and widows.<sup>49</sup> “[S]mall concessions” to the poor were made in legal procedure waiving security in exchange for a pledge to satisfy judgments in the reign of Henry I.<sup>50</sup> In 1495, the first English statute providing legal aid was passed, “An Act to Admit Such persons as Are Poor to Sue in Forma Pauperis.”<sup>51</sup> The Act was surprisingly robust, waiving fees for the issuance of writs, assigning clerks and counsel for the issuance of writs without reward, and assigning counsel to act for the litigant without reward.<sup>52</sup> The Act however did not define poor persons and did not remove the requirement to pay

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<sup>46</sup> Rhode (2005), *supra* note 1 at 101.

<sup>47</sup> *Ibid.* at 25.

<sup>48</sup> *Ibid.* at 37.

<sup>49</sup> E. J. T. Matthews & A. D. M. Oulton, *Legal Aid and Advice under the Legal Aid Acts 1949 to 1964* (London: Butterworths, 1971) at 9.

<sup>50</sup> Robert Egerton, *Legal Aid* (London: Kegan Paul, Trench Trubner & Co., 1945) at 6.

<sup>51</sup> 11 Henry VII c. 12.

<sup>52</sup> Matthews & Oulton (1971), *supra* note 49 at 10–11.

opposing counsel's costs if the suit did not succeed,<sup>53</sup> nor did it apply to defendants.<sup>54</sup> The spectre of frivolous claims raised by fee waivers existed then as it does today and was addressed by a 1531 enactment which waived opponent costs for an unsuccessful poor litigant but imposed "other punysshement as shall be thought reasonable," including whipping and pillory.<sup>55</sup>

Publicly funded legal aid for indictable criminal offenses began in 1903 under the *Poor Prisoners Defense Act*.<sup>56</sup> Prior to the Act, various practices existed. Poor defendants were assisted by family and friends, while others were funded by newspapers in return for a story.<sup>57</sup> The practice of a "dock brief" developed, where prisoners could ask to be defended by any counsel in the room if the prisoner could pay one guinea for the barrister and half a crown for the clerk.<sup>58</sup> The dock brief was understood to be a semi-charitable act by the lawyer, but only a minority of prisoners were able to raise what was then a large amount.<sup>59</sup> Prisoners were not properly advised and the results were lamentable because, as J. F. Stephen noted, persons accused of crimes were "poor, stupid and helpless."<sup>60</sup> Passage of the *Poor Prisoner's Defense Act* in 1903 however helped few defendants. In order to get legal assistance, a defendant had to disclose defences at the committal stage, and the most vulnerable or distraught were not able to communicate sufficiently. Defendants for the most part were not even told that there was a possibility of publicly paid legal aid because that might encourage a defendant to make a desperate plea at public expense. Judges continued to object to the Act, since the interests of defendants were safe in their hands.<sup>61</sup> The Act became an exceptional remedy in relatively rare cases, such as when the defendant disclosed an alibi at the committal stage.<sup>62</sup>

During the 1920s there was again pressure to improve criminal legal aid, at this point supported by successes in the women's movement.<sup>63</sup> Despite Home Office objections based on cost, the Committee investigating a new bill recommended

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53 *Ibid.* at 11.

54 Egerton (1945), *supra* note 50 at 7.

55 *Ibid.*

56 M. Harry Lease, Jr., "Legal Aid in England and Wales" (1988) 71(6) *Judicature* 345 at 345.

57 Tamara Goriely, "The Development of Criminal Legal Aid in England & Wales" in Richard Young & David Wall, eds., *Access to Criminal Justice* (Great Britain: Blackstone Press, 1996) at 30.

58 *Ibid.* at 31.

59 *Ibid.*

60 J. F. Stephen, *A History of the Criminal Law of England*, Volume 1 (London: Macmillan and Company, 1883) at 428, as cited by Goriely (1996), *supra* note 57 at 32.

61 Goriely (1996), *supra* note 57 at 36–37.

62 *Ibid.* at 37.

63 *Ibid.* at 37–38.

legal assistance for grave charges such as murder at the committal stage and the granting of legal aid by magistrates if necessary in the interests of justice and exceptional circumstances.<sup>64</sup> The *Poor Prisoner's Defense Act* of 1930 was passed, but with little publicity to call attention to its provisions.<sup>65</sup> This Act permitted courts to issue legal aid certificates authorising public funds for a poor defendant's lawyer, but only when the gravity of the charge or exceptional circumstances rendered a grant of aid desirable in the interests of justice.<sup>66</sup> Goriely notes that official attitudes toward legal aid after the 1930 Act were "at best grudging and sometimes overtly hostile," but that the principle of state payments had been accepted in the criminal sphere.<sup>67</sup> Where civil cases were concerned, a poor litigant depended on charity from a lawyer or philanthropic organisation.<sup>68</sup>

Conditions in England after WWII, and in particular the inability of the charitable system to deal with the increased number of divorces, radically changed the provision of indigent legal services.<sup>69</sup> As observed by the Rushcliffe Committee in 1945, many solicitors joined the armed forces in WWII or left their practices to undertake other work related to the war, so that out of 17,000 in practice prior to the war only 7,000 remained.<sup>70</sup> Practicing solicitors could not handle the volume of cases, let alone assist with gratuitous work, and another system was required to handle the matrimonial cases of persons serving in the armed forces.<sup>71</sup> In addition to persons needing legal assistance, ideas such as free education, as well as free medical and hospital care, were "exciting the public interest."<sup>72</sup> Consistent with the development of a welfare state, the landmark *Legal Aid and Advice Act* was passed in 1949.<sup>73</sup> The Act gave effect to Rushcliffe Committee recommendations, including granting legal aid in all criminal cases where it was desirable in the interests of justice, with doubts resolved in the defendant's favour; improving publicity; allocation of and payment for preparation time; remuneration by bills taxed by the clerk of the

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<sup>64</sup> *Ibid.* at 39.

<sup>65</sup> *Ibid.* at 39–40.

<sup>66</sup> Norman L. Stamps, "Legal Aid in England" (1952) 32 Oregon L. Rev. 10 at 11.

<sup>67</sup> Goriely (1996), *supra* note 57 at 41.

<sup>68</sup> Stamps (1952), *supra* note 66.

<sup>69</sup> Vicount Jowitt, "Legal Aid in England" (1949) XXIV New York University Law Quarterly Review 757 at 758–59.

<sup>70</sup> Report of the Committee on Legal Aid and Legal Advice in England and Wales (1945) Cmd. 6641, at 5 para. 23.

<sup>71</sup> *Ibid.* at 5 para. 24.

<sup>72</sup> Lord Parker of Waddington, "The Development of Legal Aid in England since 1949" (1962) 48 A.B.A. J. 1029 at 1029.

<sup>73</sup> Goriely (1996), *supra* note 57 at 43.

justices rather than fixed fees, which had slipped to levels so low that they were viewed as almost charitable; and funding by national taxpayers, which freed Magistrates to grant legal aid without accountability to local ratepayers.<sup>74</sup> Commentators at the time suggested that the British people had gone further than perhaps any other country toward making the ideal of equal justice under the law a reality,<sup>75</sup> or more modestly, that it was a valuable social service.<sup>76</sup>

### C. Regulation of Indigent Representation in Singapore

Prior to the introduction of a formal legal aid structure by the Legislative Assembly of Singapore via the *Legal Aid and Advice Ordinance 1956*,<sup>77</sup> there were some provisions in place to provide legal assistance in Singapore.<sup>78</sup> Court rules variously allowed poor litigants to waive court fees and in some instances have counsel appointed.<sup>79</sup> Yeo has noted that poor litigants should have had access to these devices pursuant to the English *in forma pauperis* Act of 1495, which presumably was received into Singapore law via the *Second Charter of Justice* in 1826.<sup>80</sup> In addition to *in forma pauperis* proceedings,<sup>81</sup> a “Poor Box Fund” dating to Victorian times and comprised of confiscated funds was used at the discretion of judges to meet the basic expenses of impoverished persons, such as a vagrant’s fare to return to his hometown of Penang.<sup>82</sup> The fund does not seem to have been used to pay legal counsel.

The main legislative vehicle for legal aid in Singapore was and continues to be the *Legal Aid and Advice Act*. Passed in 1956 as the *Legal Aid and Advice Ordinance* while Singapore was still a Crown Colony,<sup>83</sup> the Ordinance provided

<sup>74</sup> *Ibid.* at 42–43.

<sup>75</sup> Stamps (1952), *supra* note 66 at 23.

<sup>76</sup> Waddington (1962), *supra* note 72 at 1033.

<sup>77</sup> *Legal Aid and Advice Ordinance 1956*, No. 19 of 1956.

<sup>78</sup> Yeo Hwee Ying, “Provision of Legal Aid in Singapore” in Kevin Y. L. Tan, ed., *The Singapore Legal System*, 2nd ed. (Singapore: Singapore University Press, 1999) 446 at 448.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> References to parties proceeding *in forma pauperis* appear regularly in case reports of the time, from the 1889 Straits Law Journal (see *Sariah, Smail and Manood v. Jayah and Mymomah* [1889] SLJ 36 (Straits Settlement Court of Appeal)) to the 1998 Malaysian Law Journal (*Ghazali bin Mat Ghani v Public Prosecutor* [1998] 2 MLJ 675) (Court of Appeal Kuala Lumpur).

<sup>82</sup> See George Joseph, “Solved: Poor Box Fund mystery” *The Straits Times* (7 June 1976) at 7.

<sup>83</sup> H. Y. Yeo, “Assessing the State of Civil Legal Aid in Singapore” (1992) 41(4) I.C.L.Q. 875 at 876.

for legal aid in civil cases<sup>84</sup> and criminal cases,<sup>85</sup> as well as legal advice.<sup>86</sup> In typical fashion, the act allowed for implementation “on such date as the Governor may in the *Gazette* appoint, and the Governor may appoint different dates for different Parts or provisions of the Ordinance.”<sup>87</sup> Parts I, III, IV, and V were brought into effect between 1957 and 1958, but Part II on criminal legal aid was never implemented.<sup>88</sup> The non-implementation of comprehensive, state-funded criminal legal aid has been the subject of scholarly criticism over the years. Writers have questioned why civil legal aid was implemented and criminal legal aid was not.<sup>89</sup> In Singapore, the right to counsel is a constitutional right pursuant to Article 9(3), but it has been argued that the denial of state-funded criminal legal aid in all but capital cases weakens this constitutional right considerably.<sup>90</sup> H. Y. Yeo has noted that for a long time after independence in 1965, Singapore maintained that that the survival of the nation must take precedence over all other issues.<sup>91</sup> The lack of criminal legal aid implementation was addressed in 1983 by then Acting Minister for Social Affairs, Dr. Ahmad Mattar, who stated that “all available resources were needed to build the nation during the late 50s and 60s.”<sup>92</sup>

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**84** *Legal Aid and Advice Ordinance*, *supra* note 77, Part III.

**85** *Ibid.*, Part II.

**86** *Ibid.*, Part IV.

**87** *Ibid.*, s. 1.

**88** See Yeo (1999), *supra* note 78 at 449, n. 17, and Sylvia Lim & Ong Keng Sen, “A Time to Confront the Malaise: A Review of Post-Graduate Legal Training in Singapore” 6 *Sing. L. Rev.* 87 at 95, n. 23.

**89** See Stanley Yeo Meng Heong, “Unrepresented Defendants in the Subordinate Criminal Courts of Singapore” (1981) 23 *Malaya L. Rev.* 41 at 50–51; Stanley Yeo Meng Heong, “Re-Opening the Case for Criminal Legal Aid in Singapore” (November 1983) *The Malayan L. J.* cxxiv; Yeo (1992), *supra* note 83 at 877–78 and 890; Bhaskaran s/o Sivasamy, “The Criminal Appellate System in Singapore” (1995) 16 *Sing. L. Rev.* 319 at 336; K. S. Rajah, “The Hour of Criminal Legal Aid” (August 2008) *Singapore Law Gazette*, online: <<http://www.lawgazette.com.sg/2008-8/>> (last accessed 28 July 2014); “Pro Bono Feature: CLAS – Defending the Cause of the Less Fortunate” *Singapore Law Review Blog Archive* (1 April 2009), online: <<http://www.singaporelawreview.org/2009/04/pro-bono-feature-clas-defending-the-cause-of-the-less-fortunate/>> (last accessed 28 July 2014). See also the brief commentary on the right to counsel and criminal legal aid in Valentine Selvam Winslow, *Singapore Academy of Law Annual Review: Administrative & Constitutional Law* (2001) s. 1.19-1.20, and in Chin Tet Yung, “Remaking the Evidence Code: Search for Values” (2009) 21 *Singapore Academy of Law Journal* 52 at 65–68. Cf. Susheela Tiwary, *Legal Aid in Criminal Cases: A Case for Reform?* (1981) National University of Singapore Law Thesis (on file with author).

**90** See Chin (2009), *ibid.* at 66.

**91** Yeo (1992), *supra* note 83 at 875, n. 2.

**92** Remarks of then Acting Minister for Social Affairs, Dr. Ahmad Mattar, noted in Ivan Fernandez & Ng Weng Hoong, “Lawyers for the Needy...” *The Straits Times* (24 April 1983) at 1.

In 1995, the legislation underwent substantial revision.<sup>93</sup> Despite calls for implementation of criminal legal aid,<sup>94</sup> the provisions regarding criminal legal were deleted from the new act, effectively “abolishing any hopes of a state-run scheme” similar to that run for civil legal aid by the Legal Aid Bureau.<sup>95</sup> During the Second Reading of the Legal Aid and Advice Bill in 1995, then Minister for Law Professor S. Jayakumar stated that Part II of the existing Act was never brought into operation and was being deleted “because the policy of the Government is not to grant legal aid in criminal cases except for cases involving capital punishment.”<sup>96</sup> Speaking in support of the Bill, then Nominated Member of Parliament Associate Professor Walter Woon questioned the position on criminal legal aid. He stated in part:

In the old Legal Aid and Advice Act, Part II, as the Minister has said, was never brought into force. It is well and good to give legal aid to civil litigants. The danger, of course, of giving legal aid in civil litigation type situations is that sometimes one encourages frivolous litigation. And when we are talking about civil litigation, it is a question of money. But in the case of criminal prosecutions, very often, a poor person cannot afford a lawyer. Here, it is not just money at stake. The person could go to jail. In capital cases, we have assigned counsel. But in all other cases, the only legal aid that poor people can get for criminal cases is the Criminal Legal Aid Scheme run by the Law Society of Singapore. This is financed entirely, I think, out of the generosity of members of the legal profession. It seems paradoxical that in something like civil legal aid, the Government should provide funds. But in matters where a person could actually lose his livelihood, lose his freedom, there is no such provision of funds.

May I ask the Minister, who said that it is not the Government’s policy to provide criminal legal aid, to reconsider this, to at least look into the possibility of some sort of criminal legal aid for poor people. These are the people who need it most. Millionaires can buy legal advice by the ton, gold-plated. They can have a media circus, as we have seen in other countries. It is the poor who need criminal legal aid most of all. And I do not think in this kind of situation that leaving it to private enterprise is an entirely satisfactory matter.<sup>97</sup>

In response to questions about the Bill, Professor Jayakumar stated in part:

Assoc. Prof. Walter Woon’s point can be argued with some persuasion. But as I said, the Government’s policy is to provide legal aid to criminal cases only in capital offences...

To elaborate, the State spends a lot of resources in maintaining as best as possible a first-class, top-rate law enforcement machinery – the Police, the Central Narcotics Bureau, the Commercial Affairs Department and so on. It also invests heavily in an excellent legal service with very good legal officers handling prosecutions, who sieve and vet all the police

<sup>93</sup> *Legal Aid and Advice Act* (Cap. 160) Act 20 of 1995.

<sup>94</sup> See Bhaskaran s/o Sivasamy, *supra* note 89 at 336.

<sup>95</sup> Yeo (1999), *supra* note 78 at 463.

<sup>96</sup> Singapore Parliamentary Reports, 7 July 1995, Second Reading, Legal Aid and Advice Bill, column 1345.

<sup>97</sup> *Ibid.* at column 1346–1347.

investigation papers. Their job is to investigate offences when there is evidence to prosecute, when accused persons are brought to book, only after thorough and careful process.

Why are they prosecuted? They are prosecuted in the public interest and the State expends these monies in the public interest and in order to protect the law abiding majority... It is incongruous and inconsistent that public funds should be used to defend an accused person which the State has decided ought to be charged in court and use public funds at the same time to get him off. The exception is where life is involved and for capital cases, counsel is assigned.

I also agree that the legal profession itself has a role to play here. The legal profession has grown since the days the Legal Aid Act was enacted in the 1950s. It is larger today than what it was in the 1950s.

The Legal Profession Act states that one of the purposes of the Law Society is:

‘to make provision for or assist in the promotion of a scheme whereby impecunious persons on non-capital charges are represented by advocates.’

So Parliament’s intent is, to some extent, very clear that the legal profession must fulfil this social and public role through the Law Society.

I would like to take this opportunity really to commend the Law Society for running a very well established criminal legal aid system since 1985. I know many lawyers who give of their time voluntarily and I want to congratulate the Law Society on its programme which is in the right direction. I have told the President of the Law Society that I will do my best to give support to him and his council in their commendable efforts on the Criminal Legal Aid System, provided it does not involve State funds. I will discuss with the Attorney-General how best we can give such support.<sup>98</sup>

As noted by Professor Jayakumar, all criminal defendants in Singapore facing a capital offense are provided with legal representation by the government upon request, whether they are indigent or not, under the Legal Assistance Scheme for Capital Offences (“LASCO”).<sup>99</sup> Under the scheme, “anyone facing a capital charge is eligible to be assigned counsel by the state free of charge,” and no “means test or other eligibility criteria is imposed.”<sup>100</sup>

For non-capital crimes, defendants may approach the Law Society of Singapore’s Criminal Legal Aid Scheme (“CLAS”), a voluntary scheme set up in 1985 to provide legal assistance to the poor in Singapore in criminal cases.<sup>101</sup>

<sup>98</sup> *Ibid.* at column 1349–1350. For a discussion of similar orientations in the United States, see Lawrence C. Marshall, “Gideon’s Paradox” (2004) 73 *Fordham L. Rev.* 955 at 961.

<sup>99</sup> “Supreme Court: Information for Accused Persons”, online: <<http://app.supremecourt.gov.sg/default.aspx?pgID=84>> (last accessed 28 July 2014).

<sup>100</sup> *Ibid.*

<sup>101</sup> See Law Society of Singapore, Pro Bono Services Office, Criminal Legal Aid Scheme, online: <<http://probono.lawsociety.org.sg/Help-for-Public/personal-legal-issue/CriminalLegalAidScheme1/>> (last accessed 28 July 2014), and CLAS Pamphlet – English Version, online: <[http://probono.lawsociety.org.sg/Documents/Help%20public\\_hyperlinked%20files/CLAS\\_brochure\\_eng.pdf](http://probono.lawsociety.org.sg/Documents/Help%20public_hyperlinked%20files/CLAS_brochure_eng.pdf)> (last accessed 28 July 2014).



CLAS covers offences under 15 statutes where the accused person has not admitted the charge.<sup>102</sup> CLAS administers a means test comprising an income test and disposable assets test,<sup>103</sup> and CLAS is not able to grant legal aid to all unrepresented criminal defendants. In the period of 1 September 2012 to 31 July 2013, 1,304 applications for aid were received and aid was granted for 335 applicants.<sup>104</sup> In 2013, CLAS also began extending assistance to Community Court and Remand Clinic cases referred to CLAS by the Subordinate Courts; legal representation was given to 17 Community Court cases and legal advice rendered in 36 Remand Clinic cases in the period up to 31 July 2013.<sup>105</sup>

CLAS is funded by the Law Society of Singapore Pro Bono Services Office, of which key donors include the Ministry of Law, the Singapore Academy of Law and other sponsors; through member contributions, the Law Society remains the primary financial sponsor.<sup>106</sup> In addition to CLAS, the Association of Criminal Lawyers of Singapore (ACLS) and other groups also provide voluntary pro bono representation in criminal matters, and the activity is supported by the judicial system.<sup>107</sup>

The systems of pro bono criminal representation currently in place in Singapore do not cover all indigent defendants. In the Keynote Address for the Subordinate

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**102** CLAS Pamphlet, *ibid.*

**103** See CLAS Pamphlet, *ibid.* Applicants are queried about their income, savings, property and other assets. To pass the income test, single applicants must earn less than S\$1,300 net per month and married applicants must have a combined income of less than S\$1,700 net per month. Where the married applicant has dependants (excluding spouse), an allowance of S\$160 is added to the S\$1,700 net monthly ceiling.

**104** The Law Society of Singapore, Annual Report 2013, at 54, online: <<http://www.lawsociety.org.sg/Portals/0/AboutUs/AnnualReport/2013/The%20Law%20Society%20of%20Singapore%20Annual%20Report%202013.pdf>> (last accessed 28 July 2014).

**105** *Ibid.*

**106** *Ibid.* at 17, online: <<http://www.lawsociety.org.sg/Portals/0/AboutUs/AnnualReport/2013/The%20Law%20Society%20of%20Singapore%20Annual%20Report%202013.pdf>> (last accessed 28 July 2014).

**107** See Subordinate Courts Workplan 2010, 26 February 2010, “Access To Quality Justice For All”, online: <<http://app.subcourts.gov.sg/Data/Files/File/Workplans/Workplan2010/CJ's%20Keynote%20Address%20Feb%202010.pdf>> (last accessed 28 July 2014), Keynote Address By The Honourable Chief Justice Chan Sek Keong at para. 2, where the Chief Justice noted that in criminal matters, “the Subordinate Courts have instituted a centralised referral system to facilitate the referral by the Community Court of undefended cases involving young, mentally ill and intellectually challenged offenders for pro bono representation.” The system will refer remandees in the Community Court to the Law Society Pro Bono Office, which will decide whether to refer the cases to the Criminal Legal Aid Scheme (“CLAS”) or to the Association of Criminal Lawyers of Singapore (“ACLS”). The Chief Justice also noted the existence of a dock brief system for an indigent party *in forma pauperis*, which “has been put in place with ACLS to activate lawyers to act for unrepresented accused persons.”

Courts Workplan 2010, then Chief Justice Chan Sek Keong noted that in the Subordinate Courts accused persons represent themselves “in about one-third of criminal cases.”<sup>108</sup> The Singapore Community Court, established in 2006 with the goal of utilising a problem-solving approach to special categories of criminal cases involving young or mentally ill persons,<sup>109</sup> handled 1,971 cases in 2008, “of which about 63 percent were not represented.”<sup>110</sup> The lack of broad-based government funded criminal legal aid continues to cause concern and attract criticism.<sup>111</sup>

The regulatory context in Singapore is an experience which differs from other countries in several respects: (1) civil legal aid has been granted for some time and (2) criminal legal aid in capital cases has been granted for some time, without regard to the applicant’s income level, but (3) broad-based criminal legal aid for non-capital offenses has not been funded by the government. If the lack of broad-based criminal legal aid puts pressure on lawyers to make up the difference, then media discussions of indigent representation might note the lack of criminal legal aid and the organisation of voluntary organisations. The Singapore regulatory context does not necessarily suggest whether the lawyerly provision of indigent legal services would be voluntary or obligatory, although for much of *The Straits Times* coverage a voluntary conceptualisation prevailed. However, as the following discussion demonstrates, a more obligatory pro bono usage together with discussions of access to justice appeared in the 2000s and continues to the current day.

### III. INDIGENT REPRESENTATION USAGE PATTERNS

#### A. Quantitative Research

The terminology used in *The Straits Times* to refer to indigent representation shows a longstanding usage of the phrase “legal aid”, frequently associated with

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**108** *Ibid.* at para. 6, online: <<http://app.subcourts.gov.sg/Data/Files/File/Workplans/Workplan2010/CJ's%20Keynote%20Address%20Feb%202010.pdf>> (last accessed 28 July 2014). See also Kimberly Spykerman, “New initiatives at Subcourts” *The Straits Times* (26 February 2010), online: <<http://news.asiaone.com/News/AsiaOne+News/Singapore/Story/A1Story20100226-201117.html>> (last accessed 28 July 2014).

**109** State Courts Singapore, About Criminal Justice, Courts, Community Courts, online: <<http://app.subcourts.gov.sg/criminal/page.aspx?pageid=10819>> (last accessed 28 July 2014).

**110** K. C. Vijayan, “Ensuring Legal Aid Is Within Reach” *The Straits Times* (28 February 2009).

**111** See Christine Sim & Tan Zhi Feng, “The Paradox of Legal Aid in Singapore: Civil Legal Aid without Criminal Legal Aid” (2012) 30 *Sing. L. Rev.* 165, and Michael Hwang, President, The Law Society of Singapore, “A Conversation with the Chief Justice of Russia” (May 2010) *The Singapore Law Gazette* 6 at 6, online: <<http://www.lawgazette.com.sg/2010-05/>> (last accessed 28 July 2014).

“free” in the years following passage of government funded legal aid schemes in England and Singapore.

**Table 1:** Indigent representation usage grouped by decade

Years	“Legal Aid”	“Free Legal” (with another word)	“Free Legal Aid”	“Pro Bono”
1900–1909	1	6	0	0
1910–1919	3	19	0	0
1920–1929	4	9	0	0
1930–1939	17	22	8	0
1940–1949	12	11	1	0
1950–1959	125	67	56	0
1960–1969	187	30	17	0
1970–1979	540	52	18	1
1980–1989	334	93	21	0
1990–1999	290	76	6	2
2000–2009	250	89	15	86

On the other hand, as seen in the 2000s entries in Tables 1 and 2, the phrase “pro bono” is a more recent usage. First noted in July 1978,<sup>112</sup> pro bono did not come into regular yearly use until 2003 (Table 2). The phrase however quickly gained relevance. In 2008 “pro bono” referred to indigent representation as often as “legal aid”, and in the years 2012 and 2013 “pro bono” edged ahead of “legal aid” usage.

The other pattern suggested by terminology usage is the introduction of the phrase “access to justice.” Prior to 1962 there are no references, and the phrase appeared once in 1962.<sup>113</sup> There is one reference in 1988<sup>114</sup> and 1989,<sup>115</sup> and in 2000, “access to justice” was paired with “pro bono”, the same year that “pro bono” was first used to describe the Singapore context.<sup>116</sup> Like “pro bono”, “access to justice” usage increased over time, but “access to justice” appeared regularly throughout the 1990s while “pro bono” hardly appeared at all, rendering “access to justice” an established phrase before “pro bono” usage began to increase.

**112** Milton Chase, “Battle for Survival for Lawyers in United States” *The Straits Times* (17 July 1978) at 31.

**113** “‘Free Legal Aid for the Poor’ Call by Lawyer” *The Straits Times* (1 August 1962) at 7.

**114** Alan Hubbard, “Revolutionary Changes Mooted for British Courts” *The Straits Times* (9 June 1988) at 3.

**115** “UK Announces New Plans for Legal Shake-Up” *The Straits Times* (21 July 1989) at 11.

**116** “New Mentor Scheme Launched for Young Lawyers” *The Straits Times* (11 January 2000).

**Table 2:** Indigent representation usage grouped by year 2000–2012

Year	“Legal aid”	“Pro bono”
2000	28	1
2001	22	0
2002	32	0
2003	17	2
2004	17	1
2005	16	8
2006	32	19
2007	31	19
2008	21	21
2009	34	15
2010	15	20
2011	40	31
2012	53	54
2013	51	60

**Table 3:** Indigent representation and access to justice usage grouped by year from 1989

Year	“Legal aid”	“Pro bono”	“Access to justice” (all references)	“Access to justice” used with “legal aid”	“Access to justice” used with “pro bono”
1989	40	0	1	0	0
1990	19	1	2	0	0
1991	25	0	0	0	0
1992	22	0	1	0	0
1993	24	0	8	1	0
1994	63	0	4	3	0
1995	26	1	2	0	0
1996	33	0	3	0	0
1997	35	0	3	1	0
1998	23	0	5	0	0
1999	20	0	2	0	0
2000	28	1	6	2	1
2001	22	0	4	1	0
2002	32	0	0	0	0
2003	17	2	2	0	0
2004	17	1	1	0	0
2005	16	8	1	1	0
2006	32	19	5	0	0
2007	31	19	8	1	1
2008	21	21	6	1	5
2009	34	15	6	1	2
2010	15	20	3	0	1
2011	40	31	11	3	3
2012	53	54	11	4	10

The figures above indicate that usage of the phrase “pro bono” is a relatively recent phenomenon in Singapore, but one that now occupies a central position in how indigent representation is discussed.

## B. Qualitative Research: Content Analysis of Individual Articles

When the above figures are combined with a content analysis of articles, they suggest that broadly speaking, the discussion of indigent representation developed in three stages in Singapore:

1. Prior to the passage of the *Legal Aid and Advice Ordinance*, when a charitable concept of indigent legal services prevailed;
2. Passage of the *Legal Aid and Advice Ordinance* and subsequent failure to implement broad-based criminal legal aid, when a charitable concept of lawyers providing indigent legal services remained despite the increased need for voluntary criminal representation; and
3. The rise of access to justice and pro bono terminology and conceptualisation of a professional obligation.

The first stage, prior to the passage of the *Legal Aid and Advice Ordinance*, is characterised by introduction of the novel idea of government funded indigent representation, coupled with the charitable provision of legal services by lawyers.

The second stage is the passing of the *Legal Aid and Advice Ordinance* and the subsequent failure to implement broad-based criminal legal aid. This stage is characterised by discussions of the passage of the Ordinance, and in the period following passage, the existence of civil legal aid, the need for criminal legal aid, and the organisation by lawyers of voluntary criminal legal aid schemes. During this stage, non-state funded indigent representation continued to be discussed as if it were a voluntary, charitable act, and the concepts of access to justice and pro bono were not referred to.

The third and current stage, the rise of pro bono terminology and conceptualisation of a professional obligation, followed amendments to the *Legal Aid and Advice Act* which removed the possibility of criminal legal aid from the regulatory scheme. This stage is characterised by increasing discussions of first access to justice and then pro bono. To the extent that this usage occurs together, it suggests that non-state funded indigent representation is no longer a charitable act, but rather one that lawyers are obligated to perform by their professional role. The introduction of access to justice discussions in connection with the court system, prior to the regular application of access to justice to pro

bono by lawyers, also suggests application of access to justice to actors other than lawyers.

In the following sections, the article reviews the subject matter of particular newspaper reports using relevant terminology within the three different stages of indigent representation in Singapore.

## 1. Prior to the Passage of the Legal Aid and Advice Ordinance

The first stage of indigent representation, prior to the passage of the Singapore *Legal Aid and Advice Ordinance*, is characterised by introduction of the novel idea of government funded indigent representation, coupled with the charitable provision of legal services by lawyers.

The phrase “legal aid” appears in 1854 and in following years,<sup>117</sup> but this initial usage refers to legal advice and counsel, not free legal services to indigent persons. Although some early usage is ambiguous,<sup>118</sup> use of the phrase “legal aid” to mean legal advice generally has been excluded from Tables 1 to 3 to the extent possible as it does not refer to indigent legal services.

The first *The Straits Times* article to use the term legal aid in connection with indigent legal services addressed legal aid in England. The reference appeared in 1908, in an article discussing criminal defendants’ use of the statement “I have nothing to say. I reserve my defense.”<sup>119</sup> The article condensed the law for the lay reader, noting that the statement was misused in the case of a man “without means” because it deprived him of the benefit of the *Poor Prisoners Defence Act* of 1903, including legal aid, “or, in plain English, assign to him... counsel and solicitor at the public expense.”<sup>120</sup> The next reference to legal aid was published on 9 April 1910,<sup>121</sup> and it was literally a novelty. The headline was “Novel Suggestions Before the Commission”, with the by-line “Free Legal Advice,” and the reported legal aid was novel in three ways: the suggested donation of civil legal aid as opposed to criminal legal aid, the suggestion that government funds could be used to compensate lawyers for out of pocket

**117** See Untitled (“China”) *The Straits Times* (8 August 1854) at 5, “Pinang” *The Straits Times* (24 April 1855) at 5, “Princely Beggar Sent to Jail” *The Straits Times* (15 December 1904) at 6, and “Policies of Assurance” *The Straits Times* (16 September 1908) at 10.

**118** See “Amazing Story” *The Straits Times* (22 September 1905) at 12, and “Families of Seow and Teo appeal for aid” *The Straits Times* (4 June 1988) at 22.

**119** “Committed for Trial” *The Straits Times* (3 March 1908) at 10.

**120** *Ibid.*

**121** “Novel Suggestions Before the Commission: Free Legal Advice” *The Straits Times* (9 April 1910), at 10.

expenses to supplement their donated services, and the suggestion that divorce should be encouraged or supported in any way.<sup>122</sup> The article noted that when the Commission on Divorce held its ninth sitting, a representative of the Central Legal Aid Society, Mr. Fossett Lock, made a plea for facilities to give free legal advice to poor people seeking divorce. He suggested that courts be given the power to assign persons to represent poor persons and that young barristers and solicitors should be encouraged to “give free assistance to poor people.” Mr. Lock noted that while counsel and solicitors were willing to give their services, there were out of pocket expenses and witnesses had to travel from other parts of the country. He suggested that any unclaimed Chancery funds could be allocated by the Treasury, subject to recoupment of costs by the party.<sup>123</sup>

The use of the word “free” in the 1910 headline is noteworthy. As Table 1 demonstrates, current usage of the phrase “legal aid” is normally not accompanied by the word “free”. “Legal aid” is now implicitly understood as free, and no explicit use of the term “free” is necessary. Current usage of “legal aid” does not necessarily imply a clear source of funding from the government or a lawyer, but the phrase now most often functions on its own. When the term “legal aid” was coming into more regular use in Singapore in the 1950s, it was still necessary to state that the legal aid was free, hence the coupling of the terms and the eventual decrease of “free legal aid” in the 1990s and 2000s.

After 1910, the next reference to legal aid in *The Straits Times* occurred in 1913, in an article that distinguished a “so-called” legal aid society, whose sole purpose was the champertous aim to gain a portion of a party’s monetary award in court, from “the poor man’s lawyer’, who is employed by many philanthropic institutions with the sole object of seeing that justice is done to worthy claimants,” and who has no interest in the damages awarded.<sup>124</sup> Other articles underscored this distinction.<sup>125</sup> There were also sporadic reports of other legal aid funds available to limited groups of persons.<sup>126</sup>

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**122** In England, the 1857 *Matrimonial Causes Act* allowed ordinary people to divorce, and prior to that divorce was extremely difficult and expensive, requiring an Act of Parliament. Under the 1857 law, a woman seeking a divorce on the grounds of adultery still had to prove an additional fault such as rape or incest. See “A brief history of divorce” *The Guardian* (18 September 2009), online: <<http://www.theguardian.com/lifeandstyle/2009/sep/19/divorce-law-history>> (last accessed 28 July 2014).

**123** On legal aid for divorce, see also “The London Letter” *The Straits Times* (19 December 1929) at 6.

**124** “The Offence of Champerty” *The Straits Times* (11 February 1913) at 11.

**125** See “Touting Lawyers” *The Straits Times* (19 March 1934) at 13, “Work of a Legal Aid Society” *The Straits Times* (14 November 1932) at 5, and “Notes of the Day” *The Straits Times* (20 March 1934) at 10.

**126** See the reference to the Labourer’s Legal Aid Fund in “Notes of the Day” *The Straits Times* (8 June 1929) at 8.

On 4 June 1914, an article titled “Law for Nothing” reported on a new “Scheme to Give Legal Aid to Poor Persons”.<sup>127</sup> The article again discussed the situation in England. The scheme was a significant legislative development, because the new rules extended limited assistance to civil cases.<sup>128</sup> Before applicants were given assistance, they needed to satisfy the court or judge that they had reasonable grounds to contest the suit, and that they were worth less than £50.<sup>129</sup> A solicitor was required to do an initial report on the applicant’s means and the merits of the case, and this solicitor could not act as the appointed solicitor if the application was approved.<sup>130</sup> The article did not address the situation in Singapore. The new rules of the Supreme Court referred to the English Supreme Court,<sup>131</sup> and the report noted that “[l]ists of solicitors and counsel willing to be assigned to inquire into and report upon ‘poor persons’ applications, and of those willing to assist in the conduct of subsequent proceedings, will be kept by prescribed officers in London.”<sup>132</sup>

As indicated by the Rushcliffe Committee Report of 1945, the rules referenced in the 1914 article were the first regular scheme to address civil litigation.<sup>133</sup> At the time the scheme was passed however, no fund existed to pay acting lawyers. The rules provided that nothing precluded acting solicitors or counsel from receiving remuneration out of a fund which might be made available by the Treasury.<sup>134</sup> The Rushcliffe Committee noted that there was a hope that private donations perhaps together with public funds might be generated for this purpose, but that the beginning of WWI 1914–1918 “destroyed whatever chance there might have been.”<sup>135</sup> The early articles reviewed above suggest that the general understanding of the British community in Singapore at the time was that indigent representation was a charitable donation from a lawyer that did not involve government funding.

As noted above, there was a system of legal aid functioning in Singapore prior to the passage of the main legislation, the *Legal Aid and Advice*

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**127** “Law for Nothing: Scheme to Give Legal Aid to Poor Persons” *The Straits Times* (4 June 1914).

**128** The rules were enacted as Rules of the Supreme Court (Poor Persons) 1913 (Mathews & Oulton (1971), *supra* note 49 at 13, n.10).

**129** *Ibid.*

**130** *Supra* note 70 at 2.

**131** Seton Pollock, *Legal Aid – The First 25 Years* (London: Oyez Publishing, 1975) at 12.

**132** *Supra* note 127.

**133** *Supra* note 70 at 2.

**134** *Supra* note 70 at 2.

**135** *Ibid.*



*Ordinance*.<sup>136</sup> However, articles using the phrase “legal aid” in this period could well be referring to legal advice and not free legal representation from the government. For example, in 1934 the *Singapore Free Press and Mercantile Advertiser* reported that a revenue officer, Leong Cheong Goon, had been charged with receiving a bribe “of 40 cents from a Malay,” and that proceedings had to be postponed for a week in order to arrange legal aid.<sup>137</sup> In 1950, *The Straits Times* reported that after being served with notices to quit by the end of the following month, 2,500 squatters at Havelock Road, described as “hawkers and working people,” decided to seek legal aid to avoid eviction proceedings.<sup>138</sup> Neither article clearly refers to free legal services.

In 1936, *The Straits Times* also reported on a private scheme of legal representation available to members of the Automobile Association, referred to as a “free legal defense scheme,” which noted that woman needed legal assistance less frequently than men.<sup>139</sup>

The extent of representation for indigent parties was not the same in Singapore and England, as noted by *The Straits Times* article, “Crown Spends More on Legal Aid for Accused” in 1940.<sup>140</sup> The article noted that due to the abnormal increase in the number of murder cases and appeals to the Court of Criminal Appeal in Singapore, it had been necessary to provide an additional sum of \$4,200 for legal assistance in the Assize Court and the Court of Criminal Appeal, over and above the \$4,000 previously provided. The article noted that counsel appearing on behalf of persons charged with murder received \$100 a day for every day of trial, and in some instances a getting up fee, and that since convicted accused persons usually filed an appeal where counsel has to argue, “the Crown has to make two payments for legal assistance in the majority of murder cases.”<sup>141</sup> The article noted that according to the laws of the Colony, every person standing trial on a charge of murder is entitled to the assistance of a counsel in his defence, if he is unable to provide one for himself. However, in bolded, indented font, the article noted that “Colony laws, however, do not give him the right as well of choosing his counsel as is the practice in England.”<sup>142</sup> In regular font, the article stated that the system of obtaining counsel was to list the names of lawyers in Singapore and circulate the list with an inquiry as to

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**136** See *supra*, Section II(C).

**137** “Required Legal Aid: Revenue Officer Alleged to Have Taken Bribe” *The Singapore Free Press and Mercantile Advertiser* (27 October 1934) at 6.

**138** “Squatters to seek aid” *The Singapore Free Press* (14 August 1950) at 1.

**139** “New Flying Standard” *The Straits Times* (23 April 1936) at 18.

**140** “Crown Spends More on Legal Aid for Accused” *The Straits Times* (16 February 1940) at 14.

**141** *Ibid.*

**142** *Ibid.*

whether those mentioned on the list would be willing to take on a case should they be called upon. The article concluded by noting that lawyers “had the option to decline the offer.”<sup>143</sup> The Singapore procedure therefore placed lawyers in the position to choose or deny a particular client, although the systems were similar in that in serious criminal cases, the government paid for the counsel to represent the accused person.

In summary, *The Straits Times* coverage of indigent representation in the first stage was fairly sparse and in part addressed the relatively poor coverage compared to England. The phrase “legal aid” referred primarily to legal advice and counsel, not free legal services to indigent persons. Government funded legal services was a novel and limited idea and the provision of free legal services by lawyers was done on a charitable basis.

## 2. Passage of the Legal Aid and Advice Ordinance and Subsequent Failure to Implement Broad-Based Criminal Legal Aid

The second stage of indigent representation in Singapore comprises the passing of the *Legal Aid and Advice Ordinance* and the subsequent failure to implement broad-based criminal legal aid. In *The Straits Times*, this stage is characterised by discussions of the passing of the Ordinance, and in particular the Bar’s opposition to the measure as enacted. Post passage news coverage is characterised by discussions of civil legal coverage, queries about why criminal legal aid was not implemented, and the organisation by lawyers of voluntary legal aid schemes.

The *Legal Aid and Advice Ordinance*, Singapore’s version of England’s *Legal Aid and Advice Act*, is associated with David Marshall, Singapore’s first Chief Minister.<sup>144</sup> A plan for legal assistance was mentioned in *The Straits Times* on 14 November 1951, when Marshall suggested that a panel of lawyers could help the City’s poor by advising them on whether they have cause for legal action.<sup>145</sup> The article noted that one of the officers of the Citizen’s Advice Bureau was a lawyer, and that a citizen could ask for the lawyer’s assistance, but that there had been only one query for legal assistance in the past year. The plan did not at that point include public funding, and a follow-up article on 17 November 1951 stated that supporters of the plan “would invite public-spirited lawyers to go there and

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<sup>143</sup> *Ibid.*

<sup>144</sup> Kevin Y. L. Tan, *Marshall of Singapore: A Biography* (Singapore: ISEAS Publishing, 2008) at 358, 318–20.

<sup>145</sup> “Apathy Can Hold Back Legal Plan” *The Straits Times* (14 November 1951) at 4.

help the poor people in the ward who were seeking legal advice.”<sup>146</sup> The idea of government funding was addressed in *The Straits Times* on 6 January 1952, when a city police magistrate reported that he was in touch with poor man’s lawyer organisations in the UK which suggested that Singapore might adopt the model of Ceylon, where free legal aid was given by a big government department.<sup>147</sup> The discussion of government funding was also linked to a means test, and the city police magistrate noted that they could not “go about giving free assistance to people who turn up. Only certain people will be entitled to free legal aid.”<sup>148</sup> Ever the instigator, Marshall was heard from again on 25 January 1952, where he was reported as saying that a free legal aid system of pre-litigation advice could be started at once to help the poor. There were a number of lawyers and interpreters ready to help, but they were waiting for the Social Welfare Department to say the word.<sup>149</sup>

In 1955, *The Straits Times* reported that immediate arrangements were being made “for the introduction of a free legal aid service, including representation in courts both civil and criminal.”<sup>150</sup> This article began discussion of the *Legal Aid and Advice Ordinance* and similar to widespread social reforms that were taking place in England, the article also reported on plans for medical care and free primary education. In June 1956, an article entitled “Free Legal Aid” compared previous schemes and proposed coverage of the Bill, which had been passed very quickly in the Legislative Assembly and “was taken through all stages in less than an hour.”<sup>151</sup> The article noted that free legal aid had previously been available only in the High Court and in a limited number of cases, but that criminal aid would be made available for criminal cases in the Supreme Court and District Courts although not the magistrate’s courts. For criminal cases, assistance would be provided to all persons “without adequate means,” and the Minister for Labour and Welfare explained that it would not be desirable to have the rigid means test applicable in civil actions also applied to criminal actions, where a person’s liberty may be at stake.<sup>152</sup> For civil cases, applicants could not exceed \$500 capital and \$1,000 yearly income, although the Director of Legal Aid had discretion to exceed these limits up to \$3,500 in capital and \$3,000 yearly income and could ask the applicant for a contribution.

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146 “Legal Plan Welcomed” *The Straits Times* (17 November 1951) at 7.

147 “Free Legal Plan Will be a ‘tricky business’” *The Straits Times* (6 January 1952) at 9.

148 *Ibid.*

149 “Free Legal Aid Scheme ‘Could Start At Once’” *The Straits Times* (25 January 1952) at 10.

150 “Free Legal Help Is Being Worked on Now” *The Straits Times* (23 April 1955) at 8.

151 “Free Legal Aid” *The Straits Times* (12 June 1956) at 6.

152 *Ibid.*

In August 1956, an article reviewed the legal aid system in Britain, then five years old, and concluded that the system allowed justice to be done with costs that only occasionally resulted in anomalies.<sup>153</sup> Britain continued to be the point of comparison when the Singapore Bar Committee raised serious objection to the form of the scheme after the Act was passed. In an 8 August 1956 article entitled “Legal Aid Shock”, the Singapore Bar Committee was reported to call for a general meeting to ask its members to not cooperate with the government’s *Legal Aid and Advice Ordinance*.<sup>154</sup> The article noted that the Bar Committee objected to the lack of consultation with the Bar prior to passage and the rushed manner in which the bill was passed. The Bill had its first reading on 4 April 1956, and its second and third reading on 6 June 1956.<sup>155</sup> Tan notes that Marshall had long been concerned about the need to make legal remedies and services more available,<sup>156</sup> and it was reported that Marshall pushed through the Bill to get it passed and get credit prior to his resignation.<sup>157</sup> The Bar’s main objection was that the scheme envisioned a large government department, with legal advice and representation being administered by government employees, this “taking the place of the private practitioner,” which the Bar noted was “quite contrary to the principles of the British legal aid scheme.”<sup>158</sup> Then Singapore Chief Minister, Mr. Lim Yew Hock, replied that the Bar Committee’s desire for the same legal aid scheme as Britain, where lawyers were paid 85% of their taxed costs, was an expense that the Singapore government could not bear.<sup>159</sup> The Minister also noted that there would be no conflict of interest in civil cases where both parties needed legal aid, because if an applicant was granted legal aid, the Director of Legal Aid was prohibited from representing the opposing party and would assign a private solicitor from a panel compiled by the government. In criminal cases, an aided person would mean that both the prosecution and the defendant would be represented by state officers, but the Minister noted that those officers would be from “quite different departments.”<sup>160</sup>

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**153** “A Scheme That Is More Maligned Than Prodigal” *The Straits Times* (20 August 1956) at 6.

**154** “Legal Aid Shock: Lawyers Urged: Don’t Work This ‘Preposterous’ Bill” *The Straits Times* (8 August 1956) at 1.

**155** “Mr. Lim Explains to the Lawyers: ‘Legal Aid Needs Your Co-operation’” *The Straits Times* (10 August 1956) at 9.

**156** Tan (2008), *supra* note 142 at 318.

**157** “The Lawyers’ Boycott” *The Straits Times* (9 August 1956) at 6, and Tan (2008), *supra* note 142 at 319.

**158** *Supra* note 152.

**159** *Supra* note 153.

**160** *Ibid.*

The Bar Committee raised four separate points in their criticism of the Ordinance: (1) a poor person should have the same right as a rich person to have his legal affairs handled by a private lawyer of his own choice; (2) the legal aid scheme should be run primarily by the legal profession, with government supervision as necessary to ensure proper handling of public funds; (3) lawyers handling cases for aided persons should be entitled to fair and proper remuneration; and (4) the scheme should not operate unfairly against unaided persons, a reference to concerns about who would pay costs if a winning party prevailed against an aided person.<sup>161</sup> Then former Chief Minister David Marshall himself wrote an article published on 20 February 1957 that replied to a number of these points.<sup>162</sup> He stated that it was never the intention that legal aid should be run by the Singapore Bar as the cost would be “prohibitive.”<sup>163</sup> He noted that Singapore had sent a representative to study the legal aid system of New South Wales in Australia and that it was decided to adopt that system rather than the English system for which the Bar had been “clamouring.”<sup>164</sup> Marshall asserted that it was never intended that the Legal Aid Bill “should be a Lawyers’ Aid Bill.”<sup>165</sup>

Although it was reported on 24 August 1956 that Minister Lim and the Bar Committee had sorted things out,<sup>166</sup> it took some time before a final agreement on fees was reached.<sup>167</sup> On 23 March 1958, it was reported that legal aid lawyers’ fees had been settled and that an amended bill containing a new scale of fees would be tabled at the Legislative Assembly meeting on 9 April 1958, which when passed would be immediately effective.<sup>168</sup> The exact terms of the fees were not revealed but it was reported that lawyers would be paid according to a sliding scale in accordance with their experience. The article noted that the Government had appointed a Director of Legal Aid in May 1957 and set aside \$171,860 in funds for the Legal Aid Bureau.

Upon implementation of the scheme, it was reported that there was a “big rush” for free legal aid.<sup>169</sup> The Legal Aid Bureau stated that it had dealt with an average of 75 cases per day for the previous two weeks and that there were

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**161** “Free Legal Aid: Lim Sees Bar Committee Today” *The Straits Times* (23 August 1956) at 8.

**162** “Mr. Marshall and the Legal Aid Bill” *The Straits Times* (20 February 1957) at 8.

**163** *Ibid.*

**164** *Ibid.*

**165** *Ibid.*

**166** “Legal Aid: Lim and the Bar Sort Things Out” *The Straits Times* (24 August 1956) at 5.

**167** See e.g. “Fee Talks Delay Free Legal Aid” *The Straits Times* (4 July 1957) at 9, and “No Decision on Legal Aid” *The Singapore Free Press* (10 October 1957) at 2.

**168** “Settled at Last – Legal Aid Lawyers’ Fees” *The Straits Times* (23 March 1958) at 4.

**169** “Applicants Rush for Free Legal Aid” *The Straits Times* (20 July 1958) at 11.

indications that the numbers would increase. Two years after implementation, the Bureau said in its annual report that “a serious gap in our society is now recognised and bridged,” and that while previously the opportunity to secure legal expositions on one’s rights in the civil law was confined to those who could afford “the stiff fees normally charged by a lawyer,” happily “this is now a matter of the past.”<sup>170</sup> Subsequent articles advised on the coverage of legal aid, which assisted debtors in “the clutches of unscrupulous moneylenders”<sup>171</sup> and spouses requiring maintenance.<sup>172</sup>

The Legal Aid Bureau took only civil matters. After implementation of the Ordinance, the Bureau noted that it would only take civil cases at first, and not take on criminal cases until it had gained experience.<sup>173</sup> In September 1958, it was reported that the Bureau was still only dealing with civil cases and advice, and that the question of criminal legal aid would be considered later that year.<sup>174</sup>

Broad-based criminal legal aid was never implemented, although representation for capital crimes was available. The lack of a criminal legal aid programme was discussed in *The Straits Times*, as well as the voluntary measures lawyers created and participated in. In May 1970, *The Straits Times* reported criticism of the Singapore Legal Aid system by then Director of the Legal Aid Bureau, Mr. Lim Ewe Huat, then Vice Dean of the Law Faculty of the University of Singapore, Mr. S. Jayakumar, and Mr. K. E. Hilbourne, a local lawyer.<sup>175</sup> Mr. Hilbourne said that legal aid had been a failure because the scheme was “too restrictive” and did not “have adequate funds,” and Mr. Jayakumar said that to be “really effective, legal aid ought to be extended to criminal cases.”<sup>176</sup> Mr. Jayakumar also noted that problem would be less burdensome to the government with “meaningful co-operation” from the profession and law teachers.<sup>177</sup> The Director of the Legal Aid Bureau noted that the provisions in the *Legal Aid and Advice Act* for criminal legal aid had never been implemented, for two reasons: “financially, we are not able to do so and I do not think it would appear right for a Government department to defend criminals while another department – the Attorney General’s office is doing the

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170 “Legal Aid: ‘A Serious Gap Bridged’” *The Straits Times* (23 January 1961) at 5.

171 R. G. Pillai, “Now Free Legal Aid for Debtors: It’s an Offense to Collect Old Rates of Interest” *The Straits Times* (6 September 1959) at 11.

172 “Legal Aid Bureau at Your Service: Short of Divorce, You Can Sue Him for Non-Maintenance” *The Straits Times* (8 April 1969) at 12.

173 *Supra* note 167.

174 “15 Get Legal Aid from Government” *The Straits Times* (2 September 1958) at 9.

175 Tan Kin Mee, “‘Improve the Legal Aid System’ Call” *The Straits Times* (14 May 1970) at 5.

176 *Ibid.*

177 *Ibid.*

prosecuting.”<sup>178</sup> Additional criticism came a few days later in an article entitled “Extending Legal Aid in S’pore.”<sup>179</sup> The article noted that failure to exercise the provisions of the *Legal Aid and Advice Act* in criminal cases had been attributed to a “dire” lack of funds and some had argued that it would not be right for a government body to defend while another prosecutes, but the article stated that the fundamental characteristic of the Singapore judiciary is its guarantee that the innocent get every facility to prove their status and there is nothing “unto-ward about the two sides – whether government or not – sorting the evidence to keep that guarantee.”<sup>180</sup> Cooperation from the profession and law teachers was again suggested. In 1974, the Acting Director of the Legal Aid Bureau, K. S. Rajah, highlighted the need for lawyers to support legal aid. He stated that lawyers acting for the Bureau had to deal with lawyers in the profession, and that lawyers sat on the Legal Aid Board which grants legal aid. He also noted that like many developing countries, the government had taken much of the initiative for legal aid rather than the organised bar, and that “[q]uite clearly a legal aid scheme which will be available to all those who need it and one where counsel can appear for all applicants before all tribunals will require the participation of the Bar.”<sup>181</sup>

In 1976, a letter from “Citizen” addressed the funding of civil as opposed to criminal legal aid. The writer noted that the provisions on criminal legal aid had been part of Singapore’s law since legal aid was passed and that it was “high time that these provisions be invoked as we have more and more criminal cases, affecting people in the less fortunate groups.”<sup>182</sup> In response to the Citizen’s letter, Acting Director of Legal Aid Mr. K.S. Rajah submitted a reply, which was further discussed by another Citizen letter. The Citizen’s second letter noted that regarding criminal legal aid, the Government’s view was that where there is a reasonable doubt as to the guilt of the accused, the charge should be withdrawn, but the Citizen asserted that the question of “reasonable doubt” is one for a criminal court of law to decide.<sup>183</sup> The Citizen again raised the matter of why civil legal aid was implemented and not criminal legal aid, “when there are provisions for it since at least easily more than 10 years ago?”<sup>184</sup> A few days later another writer submitted a letter to *The Straits Times*, noting that he was “just as

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**178** *Ibid.*

**179** “Extending Legal Aid in S’pore” *The Straits Times* (17 May 1970) at 10.

**180** *Ibid.*

**181** “Legal Aid Bureau Needs Backing Lawyers” *The Straits Times* (4 July 1974) at 6.

**182** “Expanded Legal Aid Will Benefit Public” *The Straits Times* (5 April 1976) at 12.

**183** “Criminal Cases and Legal Aid” *The Straits Times* (20 April 1976) at 10.

**184** *Ibid.*

puzzled as Citizen” why the Legal Aid Bureau shuns criminal cases, and asking whether people who erred by the commission of crimes “require assistance just as much as people who are faced with problems of a civil nature?”<sup>185</sup>

In the early 1970s, a number of articles noted discussions of student and university involvement with legal aid.<sup>186</sup> In the 1970s and 1980s, *The Straits Times* also reported on a number of free or voluntary schemes that sprang up to fill the need for legal aid, including a Muslim legal aid clinic,<sup>187</sup> two legal aid clinics run by a temple,<sup>188</sup> and organisation of defense counsel for soldiers facing court-martial.<sup>189</sup> The Bar noted via the Law Society that it would be “extremely difficult, if not impossible” to execute a free legal aid scheme for members of the Singapore Armed Forces.<sup>190</sup> An article also addressed the availability of free psychiatric help through a Law Society Scheme.<sup>191</sup> In 1978, former Chief Minister David Marshall suggested that a free legal clinic should be set up in every community centre in Singapore, with the Law Society organising, supervising and financing the project.<sup>192</sup> Marshall repeated the theme that laws should be equally available to the poor as well as the rich, but shifting the discussion away from charity and toward a professional obligation, he stated that such a programme “is not charity; this is but part of our responsibility to our community which has conferred special privileges on us.”<sup>193</sup>

In the early 1980s, some articles addressed the study done by the National University of Singapore law lecturer Stanley Yeo,<sup>194</sup> which found that

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**185** “Criminals’ Should Also Get Legal help from the Bureau” *The Straits Times* (23 April 1976) at 16.

**186** “Extending Legal Aid in S’pore”, *supra* note 177, “Top Legal Brains Due for Law Meet” *The Straits Times* (15 April 1971) at 9, “Students on the Go” *The Straits Times* (6 May 1971) at 12, “Legal Aid Clinics Plan Gets Support at Law Seminar” *The Straits Times* (8 July 1971) at 4, “Legal Aid Clinic ‘Stepping Stone’ to Private Practice” *The Straits Times* (10 July 1971) at 20, “Student Participation in Legal Aid” *The Straits Times* (29 July 1971) at 12, and “New Visiting Law Prof” *The Straits Times* (20 January 1972) at 15.

**187** “Muslim Legal Aid Clinic to Be Set Up” *The Straits Times* (3 June 1976) at 11.

**188** “Temple to Open Its Second Free Legal Clinic” *The Straits Times* (30 April 1989) at 20.

**189** “Legal Aid Offer to Troops: ‘Yes, If It’s Free’” *The Straits Times* (14 June 1977) at 13, and “Free Legal Advice” *The Straits Times* (14 June 1977) at 14.

**190** “Society: Hard to Give Free Legal Aid to Soldiers” *The Straits Times* (13 July 1977) at 9.

**191** Elena Chong, “Needy Accused Can Get Free Psychiatric Help” *The Straits Times* (30 April 1989) at 20.

**192** “‘Start Free Legal Aid Clinics in C-Centres’ Call to Law Society” *The Straits Times* (3 September 1978) at 8.

**193** *Ibid.*

**194** See Ng Weng Hoong, “Case for Legal Aid for All Accused of Crimes” *The Straits Times* (11 December 1982) at 7, “The Case of the Represented versus the Unrepresented” *The Straits Times* (12 January 1983) at 18, Fernandez & Ng, *supra* note 92, and “Helping Those in Need to Get Free Legal Help” *The Straits Times* (8 January 1984) at 15.



unrepresented defendants had a far greater likelihood of being convicted and receiving heavier sentences than those who had lawyers to speak for them.<sup>195</sup> These *The Straits Times* articles appeared shortly before the launching of the Criminal Legal Aid Scheme.

In March 1984, another article reviewed the voluntary schemes available, but noted that there is a limit to what voluntary lawyers can do.<sup>196</sup> The law lecturer Stanley Yeo, who attracted attention with his earlier study on unrepresented criminal defendants, was quoted as saying that the schemes were “laudable and praise-worthy, as they reflect the concern of the practitioners who can spare the time to help these poor people,” but they were only advisory in nature and did not offer continued representation. Also, the voluntary schemes handled a very limited number of criminal cases and were “grossly inadequate in meeting the need for criminal legal aid.”<sup>197</sup> The article noted that the Ministry of Social Affairs was looking into ways to introduce a legal advice and representation scheme for defendants charged with criminal defences, and the Law Society was also examining ways of getting its lawyers to volunteer their services.<sup>198</sup>

The Law Society efforts eventually resulted in the Criminal Legal Aid Scheme, a voluntary service provided by lawyers that continues to be a primary source of non-capital criminal representation or indigent persons in Singapore.<sup>199</sup> An early report of this pilot project appears in the *Singapore Monitor*, which in 1984 noted the start of the project and included comments of then Law Society President Harry Elias, who said that he hoped the scheme would eventually become part of an official legal aid service involving relevant authorities.<sup>200</sup> In July 1985, *The Straits Times* reviewed the available government funded and voluntary schemes for indigent persons and noted that there had been no service providing free representation for persons accused of crimes

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**195** See Yeo (1981), *supra* note 89; Yeo (1983), *supra* note 89.

**196** “Legal Aid for the Needy” *The Straits Times* (14 March 1984) at 1.

**197** *Ibid.*

**198** See also K. C. Vijayan, “More to Qualify for Legal Aid” *The Straits Times* (15 July 2005) (Professor Yeo’s study “led to the start of the Criminal Legal Aid Scheme in 1985, which a group from the Law Society and Professor Yeo helped put in place”).

**199** See Sim & Tan (2012), *supra* note 111 at 166, and Cheah Wui Ling, who includes CLAS as well as the Association for Criminal Lawyers of Singapore (ACLS), in “Developing a People-Centered Justice in Singapore: In Support of Pro Bono and Innocence Work” (2013) 80 U. Cin. L. Rev. 1429 at 1430.

**200** Faezah Ismail, “Society’s Legal Aid Service Will Not Be Training Ground” *Singapore Monitor* (24 August 1984) at 4; the *Singapore Monitor* is cited here as it appears to be one of the first references in the Singapore press regarding the Criminal Legal Aid Scheme; see also “Law Society Should Not Drag Its Feet on Legal Aid Plan” *Singapore Monitor* (12 December 1983) at 17.

other than capital offenses.<sup>201</sup> The article stated that this “one big gap will soon be plugged” by the Law Society’s Criminal Legal Aid Scheme, and “73 lawyers have put up their names for this altruistic purpose.”<sup>202</sup> The article stated that “it is the few who bring honour to the many.”<sup>203</sup> The pilot scheme was launched on 2 September 1985 and only covered defendants who wished to claim trial.<sup>204</sup>

The Criminal Legal Aid Scheme was characterised as a “landmark in Singapore’s legal history”.<sup>205</sup> The Scheme was initially limited to theft charges, but it was expanded to cover housebreaking and robbery charges since they related to theft.<sup>206</sup> In April 1986, the scheme was expanded to all offenses under the Penal Code except capital offenses.<sup>207</sup> Two years after the post-pilot scheme was launched, newspaper coverage reported on the progress and expanded coverage of the Criminal Legal Aid Scheme.<sup>208</sup> In 1988, a headline stated “Legal aid scheme for criminal cases a success.”<sup>209</sup> Mr. Harry Elias stated that one in three cases handled under the scheme were withdrawn from prosecution and that many people had plead guilty “because it is convenient or because they are confused.”<sup>210</sup>

### 3. The Rise of Pro Bono and Access to Justice Terminology and Conceptualisation of a Professional Obligation

After formation of the Criminal Legal Aid Scheme, legal aid continued to be a main topic of discussion, but dramatically increased usage of the phrases “access to justice” and “pro bono” suggest that a third and current stage of usage developed in discussions of indigent representation, that of the rise of pro bono terminology and conceptualisation of a professional obligation. This stage is characterised by increased discussions of the terms “access to justice” and “pro bono”, and the combination of these phrases suggests that non-state funded indigent representation is no longer conceptualised as a charitable act, but one that lawyers are obligated to perform by their professional role.

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**201** “Plugging the Legal Gap” *The Straits Times* (8 July 1985) at 12.

**202** *Ibid.*

**203** *Ibid.*

**204** “Free Legal Aid for the Needy” *The Straits Times* (2 September 1986) at 1.

**205** “Legal Aid Pilot Scheme Starts Tomorrow” *The Straits Times* (1 September 1985) at 20.

**206** “Legal Aid Now for Robbery Cases, Too” *The Straits Times* (24 October 1985) at 14.

**207** “Free Legal Aid for the Needy”, *supra* note 202.

**208** *Ibid.*

**209** “Legal Aid Scheme for Criminal Cases a Success” *The Straits Times* (4 August 1988) at 16.

**210** *Ibid.*

However, as explored below, the phrase “access to justice” appeared before “pro bono” and is first associated with Singapore courts. Access to justice was used regularly throughout the 1990s, during which time the phrase “pro bono” hardly appeared at all. “Access to justice” was therefore an established phrase at the point when “pro bono” usage began to increase in the 2000s.

Starting in the 1840s and continuing until the 1980s, there were regular references to “pro bono publico”<sup>211</sup> and “pro bono,”<sup>212</sup> but not in connection with indigent legal services. “Pro bono” is the short form of “pro bono publico,” the Latin phrase for in the public good. The long version of this phrase was used in letters to *The Straits Times* editor addressing issues of general public interest, characterised as matters “pro bono publico”<sup>213</sup> or “pro bono public.”<sup>214</sup> This type of letter was also submitted by authors identified as “Pro Bono Publico”<sup>215</sup> and numerous variations which suggest more vested interests, such as “Pro Bono Malayo,”<sup>216</sup> “Pro Bono Singapura,”<sup>217</sup> “Pro Bono English,”<sup>218</sup> “Pro Bono Medals,”<sup>219</sup> and “Pro Bono Suus.”<sup>220</sup> Some of these letters touched upon legal matters, such as a 1979 letter from “Pro Bono Publico” that requested a definition of “solicitor and client costs” and “party and party costs,”<sup>221</sup> but as a group these letters do not suggest a connection with indigent legal services. In July 1989, *The Straits Times* required that letters be published with the author’s name,<sup>222</sup> and in the 1990s the longstanding *pro bono publico* usage reoccurred

**211** “The First Reference Appears to Be ‘Untitled’” *The Straits Times* (4 April 1849) at 3, a letter to the editor regarding dusty roads from “A CLOUD”.

**212** See e.g. “Retrenchment” *The Straits Times* (10 June 1922) at 8 and “Rare Clean-Up” *The Straits Times* (13 July 1965) at 10.

**213** See “Price of Firewood” *The Straits Times* (23 July 1926) at 10.

**214** “Jellyfish Say O.K.” *The Straits Times* (7 November 1949) at 4.

**215** See “Merchants Should Be Consulted” *The Straits Times* (19 November 1936) at 13, “Pawnshop Rates” *The Straits Times* (12 March 1949) at 9, “Noises” *The Straits Times* (6 September 1940) at 8, “Why Blame the Govt.?” *The Straits Times* (17 May 1957) at 8, “Time for a New Bridge” *The Straits Times* (12 March 1966) at 11, “A Capital Sight, That Weekend Mess in the Gardens” *The Straits Times* (12 March 1966) at 11, “Untitled” *The Straits Times* (21 June 1974) at 14, and “Give Us the Numbers” *The Straits Times* (1 March 1984) at 17.

**216** See “British Malaya” *The Straits Times* (29 July 1924) at 10.

**217** See “Training at The Kandang Kerbau Hospital” *The Straits Times* (29 April 1957) at 6.

**218** “This Word Is Misused” *The Straits Times* (3 August 1957) at 12.

**219** “Medals” *The Straits Times* (3 July 1937) at 12.

**220** See “Motor Lights” *The Straits Times* (28 August 1923) at 10.

**221** “Clarification Plea” *The Straits Times* (16 February 1979) at 17; see also “Untitled” *The Straits Times* (19 June 1976) at 19 (cancelled appearance date for subpoenaed witness).

**222** See “Untitled” *The Straits Times* (7 July 1989) at 2, “Untitled” *The Straits Times* (11 July 1989) at 28, and “Should real names be used?” *The Straits Times* (11 July 1989) at 3.

only occasionally.<sup>223</sup> Currently, connections between legal services for indigent persons and the longer phrase “*pro bono publico*” are limited as well.<sup>224</sup>

“Pro bono” has been used to indicate the provision of free services of a non-legal sort, but the first *The Straits Times* article to use the phrase “pro bono” in connection with indigent legal services appears have been in 1978.<sup>225</sup> The content of the article suggests the degree to which the phrase was imported, as the article did not report on activity in Singapore, but rather the state of legal practice in the U.S. The article noted that the legal profession there had been “taking it on the chin” because of criticism of lawyerly greed and erosion of protective regulation such as advertising bans. The article also reported on a Washington Post survey of large law firms indicating that they did less “pro bono” cases than in the 1960s and 1970s. After 1978, “pro bono” was not used again in connection with lawyers until 1990, and again it described activities in the U.S. – but this time pro bono was getting closer to home. The article noted that a Singapore lawyer practising in the United States had won an award for work with the underprivileged in the state of North Carolina.<sup>226</sup> The lawyer, Madam Maureen Chee Man Lin, credited her “soft heart” to her father, a doctor who used to treat poor people for free. Referring to the basis for pro bono, she stated that “lawyers should first serve justice and not think of the fees.”<sup>227</sup> In 1995, *The Straits Times* reported comments made by then Deputy Prime Minister Datuk Seri Anwar Ibrahim to the ASEAN Law Association General Assembly at their meeting in Kuala Lumpur, where he noted that lawyers should do more pro bono work and make legal services more accessible to less affluent persons.<sup>228</sup> Pro bono did not appear again in *The Straits Times* until 2000, where it was used by then newly elected Law Society President Mr. R. Palakrishnan. Speaking at the Opening of the Legal Year, Mr. Palakrishnan highlighted recent developments, including a new scheme in the Law Society to connect younger lawyers with more experienced lawyers, a panel of mediators and arbitrators to complement the services offered by the Singapore International Arbitration Centre and

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**223** See Cheong Suk-Wai, “‘Creative Cynics’ Take Up Gauntlet” *The Straits Times* (13 October 2000) (“The inaugural Pro Bono Campaign Of The Year Award will recognise the ad that aims to build a better world”), and “Recreation Galore” *The Straits Times* (24 October 2004) at 26.

**224** See Jeremy Lim, “About Pro Bono” *The Straits Times* (10 June 2012) and Editorial, “Time for More to Do Pro Bono Work” (18 December 2012).

**225** Chase (1978), *supra* note 112.

**226** “Singaporean Lawyer Wins US Award for Helping Underprivileged” *The Straits Times* (13 August 1990).

**227** *Ibid.*

**228** “Judges and Lawyers Must Be Above Suspicion: Anwar” *The Straits Times* (8 December 1995) at 38.

Singapore Mediation Centre, and expansion of the Criminal Legal Aid Scheme.<sup>229</sup> He stated that the legal profession had been “unique” in its willingness to engage in pro bono work for the less privileged, and they “shall continue to do so in our mission to ensure the access to justice is not denied to the poor.” As noted earlier, the first time pro bono was applied to the Singapore context, the phrase appears together with “access to justice”.

The next article to address pro bono was published in July 2003 and addressed a Senior Counsel’s representation of a former nominated Member of Parliament in order to assist him to appeal a bankruptcy judgment.<sup>230</sup> The lawyer, Mr. Jimmy Yim, viewed the move as a good public cause, stating that the client “is one of the icons of the industry, a public figure who had done so much but has now fallen on hard times.”<sup>231</sup> Starting in 2003, the phrase “pro bono” was referred to on a yearly basis, in ever increasing numbers.<sup>232</sup>

The other pattern of usage regarding indigent representation in this third stage is increased reference to the phrase “access to justice,” in connection with the court system and with lawyers. After 1990, “access to justice” is discussed almost every year, with increasing use in the early 2010s.<sup>233</sup> The discussion of access to justice regarding lawyers initially addresses the fact that many Singaporeans cannot afford legal fees, and ultimately connects a lawyer’s duty to access to justice with the free provision of indigent legal services, or pro bono.

The phrase access to justice appears to have been raised for first time in *The Straits Times* in 1962. In “‘Free Legal Aid for the Poor’ Call by Lawyer,” *The Straits Times* reported on the lack of free legal aid in the Federation of Malaya compared to Singapore, and lawyer Mr. K. L. Devaser said that “[r]eady access to justice for a poor man will enable him to realise the blessing of liberty and will make him desist from a life of fraud and dishonesty.”<sup>234</sup> The second and third references, in 1988<sup>235</sup> and 1989,<sup>236</sup> in a manner similar to the first pro bono usage, referred to a foreign legal system, noting civil justice reforms in the UK. In the 1989 article “UK announces new plans for legal shake-up,” *The Straits Times* reported that the British government had announced proposals to overhaul the legal profession in order to further the administration of justice,

**229** “New Mentor Scheme Launched for Young Lawyers” *The Straits Times* (11 January 2000).

**230** Kelvin Wong, “Lawyer Fights for Ex-NMP – for Free” *The Straits Times* (30 July 2003).

**231** *Ibid.*

**232** See Table 2.

**233** See Table 3.

**234** “‘Free Legal Aid for the Poor’ Call by Lawyer” *The Straits Times* (1 August 1962) at 7.

**235** Alan Hubbard, “Revolutionary Changes Mooted for British Courts” *The Straits Times* (9 June 1988) at 3.

**236** “UK Announces New Plans for Legal Shake-Up” *The Straits Times* (21 July 1989).

increase access to justice, and extend rights of audience before the court to a larger group of lawyers.<sup>237</sup> The specific proposals included doing away with the traditional distinction between barristers and solicitors, thereby allowing solicitors to present cases in court, and allowing a limited contingency fee, which would enable persons without means to engage a lawyer and only pay the lawyer if they were successful. In this article, lawyers were at the centre of access to justice discussion, but the focus was on how to make their fees more affordable, not whether they should volunteer legal services. A number of articles made the connection between access to justice and lawyer fees,<sup>238</sup> but at this point free legal services were still primarily understood as legal aid.<sup>239</sup> The first discernible connection between access to justice and the provision of free legal services by lawyers was made in 1994, notably in the context of indigent criminal defendants. The phrase “pro bono” was still years away, and although the discussion was primarily focused on whether scaled fees for conveyancing matters should be retained, the author, then Law Society President Mr. Peter Cuthbert Low, noted that in criminal matters, fees are negotiated between the lawyer and client. Persons who could not afford a lawyer would be denied access to justice, and that is why “volunteer lawyers” undertake the defence of impecunious persons accused of non-capital charges “at no cost.”<sup>240</sup> Toward the end of the 1990s, the connection between lawyers and access to justice began to increase, with one article noting a Law Society Law Awareness Exhibition, an activity characterised as within the “mission” of the Law Society

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**237** *Ibid.*

**238** See “CJ: Quality Work Is Road to Success” *The Straits Times* (15 March 1990) (quality of legal service is the basis of rule of law and access to justice, but there is a danger of moving away from professionalism and placing profit before service); Mathew Pereira, “Hearing Fees Will Not Restrict Access to Justice, Say CJ” *The Straits Times* (16 May 1993) (access to justice is already restricted because of high lawyer fees); Richard Goh Soo Hock (Forum Letter), “Cap Legal Fees to Make Justice Accessible to All” *The Straits Times* (23 November 1993); Tin Keng Seng (Forum Letter), “Capping Legal Fees Won’t Put Justice within Reach of Most” *The Straits Times* (26 November 1993); Frances Gibb, “No-Win, No-Fee Scheme for British Lawyers Facing Hurdles” (19 March 1994) (reviewing the progress of ongoing reform of lawyer fees in Britain); Brendan Pereira, “Rising Cost of Justice” (27 November 1994) *The Straits Times* (lawyer costs rising but some working Singaporeans cannot afford a lawyer, leaving them with little access to justice); “Blue-Print for the 21st Century” (5 April 1998) (while “reviewing the Subordinate Courts’ annual workplan, then Chief Justice Yong Pung How noted the expense of litigation itself can often be a real bar to access to justice”).

**239** See Brendan Pereira, *ibid.* (“although there is free legal help, few would pass the means test at the Legal Aid Bureau, which gives help in civil cases”).

**240** Peter Cuthbert Low (Forum Letter), “Conveyancing fees are reasonable” *The Straits Times* (13 August 1994).

to provide access to justice.<sup>241</sup> This article noted the presence of “free legal advice” from “volunteer lawyers,” but did not link the free advice to access to justice. In 1998, Andrew Phang, then Associate Professor in Law at the National University of Singapore, authored an article regarding professional legal ethics, where he noted that per the recently enacted Legal Profession (Professional Conduct) Rules, lawyers had a duty to facilitate access to justice by the public.<sup>242</sup> A lawyer’s duty to act in his client’s best interest, uphold the rule of law, and ensure access to justice was also noted in 1999 by then President of the Law Society of Singapore, George Lim.<sup>243</sup> As noted above, an express link between access to justice and pro bono work for the less privileged was made in 2000 by then President of the Law Society of Singapore R. Palakrishnan at the Opening of the Legal Year 2000.<sup>244</sup>

The newspaper coverage reviewed above suggests that the current conception of pro bono legal services is obligatory, based on a lawyer’s duty to support access to justice. However, as noted in Table 3, access to justice usage precedes pro bono usage, and a contextual analysis demonstrates that in the 1990s it was associated with the court system in Singapore. In fact, the first mention of access to justice in the Singapore context used the phrase in the context of the court system, not lawyers. In 1990, *The Straits Times* reported on the Opening of the Legal Year, during which then Chief Justice Wee Chong Jin stated that the judiciary and the legal profession would have to adapt to an increasingly hi-tech and modern Singapore in the 1990s.<sup>245</sup> Chief Justice Wee noted that ways of ensuring that the public gets a just and efficient court system, easy access to justice, and good and affordable legal services, would have to be devised. Subsequently, a number of reports addressed a proposed hike in the hearing fee for each court day beyond the first day of hearing, intended to help ensure that court hearings did not take undue lengths of time. The hike was framed in terms of access to justice for all court users, as the additional cost would assist to keep all hearings at a reasonable length and free up earlier court dates for all matters.<sup>246</sup> Objections to the hike were also based on access to justice, because additional costs would deter the poor

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**241** Tan Ooi Boon, “Law Still Grey Area for Many People” *The Straits Times* (13 July 1998).

**242** Andrew Phang, “Your ‘Legal Friend’ May Be His Worst Enemy” *The Straits Times* (29 November 1998).

**243** George Lim, “Letter – Lawyers Are Keeping Pace with Change” *The Straits Times* (19 May 1999).

**244** “New Mentor Scheme Launched for Young Lawyers” *The Straits Times* (11 January 2000).

**245** “Adapt to Meet Needs of High-Tech Singapore: CJ” *The Straits Times* (7 January 1990).

**246** See “In the Service of Justice and the Taxpayer” *The Straits Times* (17 January 1993) (excerpts of then Chief Justice Yong Pung How’s speech at the opening of the legal year); Mathew Pereira, “Hearing Fees Will Not Restrict Access to Justice, say CJ” *The Straits Times* (16 May 1993); and “When, Why and How” *The Straits Times* (19 June 1993).

from seeking their day in court.<sup>247</sup> Access to justice was raised in a number of other articles connected to the court system. These articles reported that Singapore courts had been highly rated in the world in the administration of justice,<sup>248</sup> outlined the courts' missions and values,<sup>249</sup> identified the role of IT<sup>250</sup> and mediation in access to justice,<sup>251</sup> and addressed whether appeal limits adversely affected access to justice.<sup>252</sup>

From 2000 to 2009, access to justice continued to be discussed in connection with court systems<sup>253</sup> and governments,<sup>254</sup> with one article noting that access to

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**247** See Warren Fernandez, "Should Hearing Fees Be Imposed?" *The Straits Times* (19 June 1993) (debate between Mr. Peter Low, then President of the Law Society, and lawyer Shrinivasa Rai); and Brendan Pereira, "A Friend of the Underdog" *The Straits Times* (23 January 1994) (interview with Mr. Peter Cuthbert Low, then President of the Law Society).

**248** "Singapore's Legal System Rated Best in the World" *The Straits Times* (26 September 1993) (World Competitiveness Report 1993); see also Brendan Pereira, "Justice System Here Top in Asia, 9th in World" *The Straits Times* (19 September 1995) (World Competitiveness Report 1995); Brendan Pereira, "Singapore's Justice System Ranked 4th in the World" *The Straits Times* (4 June 1996) (World Competitiveness Yearbook 1996); Tan Ooi Boon, "S'pore Justice System Ranked Too Low, Says Don" *The Straits Times* (26 September 1996).

**249** Brendan Pereira, "CJ – Courts Must Be Accessible to All" *The Straits Times* (26 February 1995) (access to courts should be for all litigants, not only those who have legal representation); Lim Li Hsien, "Sub-Courts Aim to Reach World Class in 21st Century" *The Straits Times* (2 March 1997).

**250** Tan Ooi Boon, "IT Can Make Courts More Consumer-Friendly – CJ" *The Straits Times* (25 September 1996).

**251** Lim Li Hsien, "A Centre to Talk It out – Instead of Fighting" *The Straits Times* (17 August 1997).

**252** "Has the Price of Justice Gone Up? – MPs Concerned Over New Appeal Limits" *The Straits Times* (27 November 1998); Yap Kim Sang, "Letter – The Right to Appeal Is Sacred" *The Straits Times* (4 December 1998), and Tan Ooi Boon & Lim Seng Jin, "Opening of Legal Year – Appeal Limit Not Meant to Deny Access to Justice, Says CJ" *The Straits Times* (10 January 1999).

**253** "CJ – Sub Courts' Progress Good" *The Straits Times* (11 January 2000); Karen Wong, "Soon – 'Virtual' Resolution of E-commerce Disputes" *The Straits Times* (30 April 2000); "Read about Cases in Family Court" *The Straits Times* (30 September 2000); Tan Ooi Boon, "No Slowing Down the Courts – CJ" *The Straits Times* (8 October 2001); "Aim for All to Have Access to Justice – CJ" *The Straits Times* (18 May 2003); "Manila Rolling Out Mobile Courts to Speed Up Cases" *The Straits Times* (1 July 2004); Selina Lum, "CJ Yong Overhauled Justice System" *The Straits Times* (1 April 2006); "Listening to the People" *The Straits Times* (19 May 2006) (excerpt from then Chief Justice Chan Sek Keong's address to judicial officers); Li Xueying, "Rule of Law Key to S'pore Stability, Growth: MM Lee" *The Straits Times* (15 October 2007); "Why Singapore Is What It Is" *The Straits Times* (15 October 2007); Chong Chee Kin & V. C. Vijayan, "Quality of Justice, Not Rankings, Matters: CJ" *The Straits Times* (5 April 2008); K. C. Vijayan, "No Single Model for Legal System: CJ" *The Straits Times* (21 January 2009).

**254** Reme Ahmad, "At 50, Racial Lines Showing" *The Straits Times* (16 December 2006); K. C. Vijayan, "A-G Acts to End Man's Repeated Appeals" *The Straits Times* (17 November 2007); Kor Kian Beng, "Asean Rights Body Will Foster Justice: Prof" *The Straits Times* (12 June 2008); Chong & Vijayan, *ibid.*



justice did not necessarily mean only access to the courts.<sup>255</sup> In the 2000s, a while after the connection between access to justice and the courts was established, the connection between a lawyer's duty to ensure access to justice<sup>256</sup> and affordable fees<sup>257</sup> and free<sup>258</sup> or pro bono<sup>259</sup> legal services began to increase.

Prior to discussions of access to justice in *The Straits Times*, the reason supplied for why indigent representation should be provided was most often discussed by using the terms "rich" and "poor."<sup>260</sup> This usage began to change in the 1990s, and by the 2000s the connection between a lawyer's obligation to ensure access to justice and the provision of pro bono services was established. The change in the reason for indigent representation, from charity to professional obligation, is a significant development. If the difficulty posed by indigent representation is understood as the difference between being rich or poor, then providing legal services is consistent with a charitable act. It is not necessarily anyone's fault that one person is rich or poor, although it is laudable if a person who is better off assists a person who is poor. The rise in "pro bono" usage alone does not mean that the conceptualisation of indigent legal services shifted from a charitable to a professional obligation, but the rise in access to justice usage in connection with lawyers suggests an obligatory understanding. Access to justice is most often described as a duty or mission, not as a choice or option.

While access to justice discourse in connection with Singapore courts has been analysed elsewhere,<sup>261</sup> association of access to justice with indigent persons, as a matter of concern for both the state system of courts and lawyers, raises a potentially problematic usage in a system that does not provide broad-based criminal legal aid. If indigent representation is conceptualised as an obligation based on access to justice, that raises the question of whether state

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**255** Tan Ooi Boon, "Senior British Judge Praises Singapore Courts" *The Straits Times* (1 May 2000).

**256** Sue-Ann Chia, "Raising the Bar" *The Straits Times* (27 October 2006).

**257** "Dare to Win, Not Darwin" *The Straits Times* (17 August 2000).

**258** Susan Long, "A 'Fool' Who Lights Up Lives" *The Straits Times* (12 October 2001); K. C. Vijayan, "More to Qualify for Legal Aid" *The Straits Times* (15 July 2005).

**259** Tan Dawn Wei, "Want Free Legal Advice? Get in Line" *The Straits Times* (9 September 2007); Chong Chee Kin, "Stats Show Courts Not Getting Soft on Crime" *The Straits Times* (6 January 2008); Radha Basu, "Clients Throng Law Society's Free Clinic" *The Straits Times* (9 February 2008); Chong & Vijayan (2008), *supra* note 251; Lydia Lim, "Legal Fraternity Lauds Jaya's Stewardship" *The Straits Times* (13 May 2008); Kimberly Spykerman, "Handle Cases for Free? Why Not Give Cash?" *The Straits Times* (22 October 2008); "Don't Condemn Majority of Small Law Firms Which Do Good Work" *The Straits Times* (15 February 2009); Wong Kim Hoh, "Legal Eagle to the Rescue" *The Straits Times* (7 April 2009).

**260** See discussion in Section III(B)(1) and (2) above.

**261** Chan (2007), *supra* note 8.

actors other than lawyers and courts have a similar obligation. The newspaper coverage reviewed in this article does not answer this question, and so in order to understand how legal aid and pro bono function in Singapore, it may be helpful to take a wider view and compare the balance of legal aid and pro bono in Singapore with that of other jurisdictions.

#### 4. Obligatory Indigent Legal Services from Lawyers and State Actors

The precise history of how pro bono developed in different countries is no doubt a complex matter, but the broad manner in which legal aid and pro bono interact can be outlined. As in Singapore, pro bono in the U.S. was historically characterised as a charitable act.<sup>262</sup> According to Rhode, during the mid-twentieth century the American bar sought to encourage greater pro bono participation, in part to avoid a loosening of practice restrictions to address unmet legal needs, and because government funding of civil legal aid appeared to present government control akin to socialised medicine.<sup>263</sup> By the mid-1960s, awareness of poverty in American culture generally prompted additional support for government funded legal aid as well as pro bono.<sup>264</sup> Able states that the “most stunning” contemporary development in the delivery of legal services has been the rise of pro bono services.<sup>265</sup> However, in the U.S., pro bono primarily means civil legal aid.<sup>266</sup> As noted in the most recent American Bar Association report on lawyer pro bono, lawyers reported providing 85% of pro bono services in civil matters such as family, contract, estate planning, non-profit, real estate, consumer, etc., and 15% of their services in criminal matters.<sup>267</sup> This state of affairs appears to be brought about primarily by developments in U.S. law requiring that criminal defendants be given state funded legal representation if they

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<sup>262</sup> Abel (2009), *supra* note 45 at 295–96; Rhode (2005), *supra* note 1 at 25.

<sup>263</sup> Rhode (2005), *ibid.* at 13.

<sup>264</sup> *Ibid.*

<sup>265</sup> Abel (2009), *supra* note 45 at 296, where Abel also notes that there are differences between the U.S. and England, Canada, Australia, and civil law countries on this point.

<sup>266</sup> See Scott L. Cummings & Rebecca L. Sandefur, “Beyond the Numbers: What We Know – and Should Know – About American Pro Bono” (2013) 7 Harv. L. & Pol’y Rev. 83 at 83 (“Over the past decade, a growing body of research has focused on the significant role that pro bono service has come to play in the overall provision of civil legal aid and public interest law in the United States”).

<sup>267</sup> American Bar Association Standing Committee on the Pro Bono Work of America’s Lawyers, *Supporting Justice III: A Report on the Pro Bono Work of America’s Lawyers* (2013) at 10, online: <[http://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_Supporting\\_Justice\\_III\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf)> (last accessed 28 July 2014).

cannot afford it. As noted by Granfield and Mather, indigent defendants did not always have the right to legal representation in U.S., but changes in state and local practices, evolving ideas of justice, and successive constitutional litigation lead to U.S. Supreme Court decisions that guaranteed legal representation<sup>268</sup> for felonies<sup>269</sup> and misdemeanours with potential incarceration.<sup>270</sup> There is sharp disagreement about the degree to which the criminal representation provided by the government actually provides access to justice,<sup>271</sup> but the fact remains that the constitutional guarantees require the government to fund criminal legal aid but not civil legal aid.<sup>272</sup> After the rise in government funding of civil legal aid in the 1960s and 1970s, federal funding for legal services decreased sharply in the 1980s, beginning with President Reagan.<sup>273</sup> It was these sharp cutbacks in civil legal aid that brought about the recent growth in private practice pro bono<sup>274</sup> and the incorporation of a professional obligation into the ABA Model Code.<sup>275</sup>

Because Singapore has not funded broad-based criminal legal aid, comparisons to the U.S. often emphasize the difference in legal aid regimes between the two jurisdictions, but in terms of the dynamic between government funding and pro bono, they arguably function in a similar fashion. While government funding of criminal legal aid in the U.S. has led to the current predominance of civil pro bono, the emphasis on civil legal aid in Singapore has arguably assisted in the development of criminal pro bono. There are no Singapore statistics comparable to available U.S. statistics on the types of pro bono performed by lawyers,<sup>276</sup>

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**268** Robert Granfield & Lynn Mather, “Pro Bono, the Public Good, and the Legal Profession: An Introduction,” in Robert Granfield & Lynn Mather, eds., *supra* note 4 at 9.

**269** *Gideon v. Wainwright* (1963) 372 U.S. 335.

**270** *Argersinger v. Hamlin* (1972) 407 U.S. 25.

**271** Deborah L. Rhode, *Access to Justice* (Oxford: Oxford University Press, 2004).

**272** For a brief comparison of U.S. and U.K. legal aid on this point, see Lease (1988), *supra* note 56 at 346.

**273** Steven A. Boutcher, “The Institutionalization of Pro Bono in Large Law Firms: Trends and Variations Across the AmLaw 200”, in Robert Granfield & Lynn Mather, eds., *supra* note 4 at 138.

**274** Granfield & Mather, *supra* note 266 at 8, citing Scott Cummings, “The Politics of Pro Bono” (2004) 52 U.C.L.A. L. Rev. 1.

**275** American Bar Association, Modes Rules of Professional Conduct, Rule 6.1, Voluntary Pro Bono Publico Service, online: at <[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_6\\_1\\_voluntary\\_pro\\_bono\\_publico\\_service.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service.html)> (last accessed 28 July 2014).

**276** For statistics on the pro bono hours provided by Singapore lawyers, see Law Society of Singapore, Annual Report 2013, Annual Non-Mandatory Pro Bono Hour Survey of Practising Lawyers” at 42, online: <<http://www.lawsociety.org.sg/Portals/0/AboutUs/AnnualReport/2013/The%20Law%20Society%20of%20Singapore%20Annual%20Report%202013.pdf>> (last accessed 28 July 2014).

but it can be noted that one of the main matters addressed in the newspaper coverage of indigent representation was the failure to implement criminal legal aid and the subsequent creation, by lawyers, of the Criminal Legal Aid Scheme.<sup>277</sup> The U.S. shifted from a charitable to a professional conception of pro bono primarily in the context of civil legal services, while in the Singapore context, conceptualising indigent legal services as a professional obligation occurred in the relative lack of broad-based criminal legal aid. In both countries, conceptualisation of pro bono as a professional obligation supports the government approach to legal aid by addressing the gap created by priorities in government funding.

Comparisons with the U.K. provide further assistance. The context for pro bono in the U.K. appears considerably different than the U.S. and Singapore, despite the fact that Singapore and England started their legal aid regimes with relatively similar regulatory structures. Prior to enactment of broad-based legal aid in England and Wales, there were voluntary associations providing free legal services and qualified acknowledgement of obligations from the profession.<sup>278</sup> Following WWII, the structuring of the British welfare state and the enactment of criminal and civil legal aid allowed ordinary people access to lawyers on terms previously enjoyed only by the wealthy.<sup>279</sup> Introduction of legal aid however brought about a decline in voluntary services and the profession's sense of responsibility, and conferred an aura of public service on legal aid work that did not rely on pro bono sensibilities.<sup>280</sup> Legal aid did not cover matters resolved via tribunal, but lawyers were used by institutional respondents, which led to the growth of Citizens' Advice Bureaux and Law Centres and the delivery of pro bono services in that area.<sup>281</sup> Private lawyer participation in these activities though was small. As Boon puts it, the tradition of pro bono is not strong in England,<sup>282</sup> in part because it did not have to be. The legal aid scheme

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**277** See *supra* Section III(B)(2).

**278** Andrew Boon & Avis Whyte, "'Charity and Beating Begin at Home': The Aetiology of the New Culture of Pro Bono" (1999) 2(2) *Legal Ethics* 169 at 175, n. 41, citing T. Goriely, "Law for the Poor: The Relationship between Advice Agencies and Solicitors in the Development of Poverty Law" (1996) 3 *Int'l J. of the Legal Profession* 215.

**279** Andrew Boon, "Cause Lawyers in a Cold Climate", in Austin Sarat & Stuart Scheingold, *Cause Lawyering and the State in a Global Era* (Oxford: Oxford University Press, 2001) at 147, citing Richard Moorhead, "Legal Aid in the Eye of a Storm: Rationing, Contracting, and a New Institutionalism" (1998) 25 *J. L. & Soc'y* 365.

**280** Boon & Whyte (1999), *supra* note 276 at 175.

**281** Boon (2001), *supra* note 277 at 147–48.

**282** *Ibid.* at 168.

ultimately came under political and fiscal attack,<sup>283</sup> and by the 1990s the climate had changed.<sup>284</sup> The new culture of pro bono in England involves a number of struggles<sup>285</sup> but arose in response to cuts in publicly funded legal aid, increased government emphasis on volunteer activity, and the influence of London-based U.S. law firms.<sup>286</sup> Recent newspaper reports discussing cutbacks in legal aid have focused attention on pro bono and the role of lawyers in the provision of access to justice.<sup>287</sup>

Using a wide angle comparative perspective suggests a relationship between legal aid and pro bono: the gaps in legal services brought about in part by the amount and type of government funded legal aid creates pressure on lawyers to provide pro bono legal services in response to the perceived need. This hypothesis lacks data in the Singapore context because statistics on the type of pro bono services provided by lawyers is not available, but conceptualising the U.S and Singapore as polar opposites in the field of legal aid masks a similarity. The type of government funded legal aid is clearly different in these jurisdictions; the U.S. more fully funds criminal legal aid and provides less for civil legal aid, while Singapore more fully funds civil legal aid.<sup>288</sup> The function of pro bono in these systems though appears to work in a similar fashion in that it addresses the gap opened by government funded legal aid priorities. There is also evidence in all three of these jurisdictions that pro bono has shifted from a charitable conception to a professional obligation. In these countries, conceptualising pro bono as a professional obligation supports the government orientation toward legal aid because it puts pressure on lawyers to provide pro bono services for those matters not met by legal aid.

The newspaper coverage on access to justice reviewed in this article, however, suggests that these jurisdictions do differ in an important respect. In the Singapore context, the rise of access to justice usage creates a potentially problematic dynamic. If indigent representation is understood as a charitable choice, then lawyers have the option of providing the charity or not, as do other

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**283** *Ibid.* at 157–58.

**284** *Ibid.* at 174.

**285** Boon & Whyte (1999), *supra* note 276 at 170.

**286** Rhode (2005), *supra* note 1 at 104, n. 29, citing Boon & Whyte (1999), *supra* note 276.

**287** See e.g. Jon Robins, “Pro Bono: Do We Need to Rethink the Formula Post Legal Aid?” *The Guardian* (6 November 2012), online: at <<http://www.theguardian.com/law/2012/nov/06/pro-bono-post-legal-aid>> (last accessed 28 July 2014), and Alex Aldridge, “Legal Aid Cuts Will Put Pressure on Students to Do More Pro Bono Work” *The Guardian* (31 March 2011), online: at <<http://www.theguardian.com/law/2011/mar/31/legal-aid-cuts-students-pro-bono>> (last accessed 28 July 2014).

**288** Cheah (2013), *supra* note 197.

actors in the field of indigent representation. If, on the other hand, indigent representation is required because of the need to provide access to justice, that conceptualisation supports a professional obligation for lawyers, but it may also apply to state actors. Access to justice is associated in newspaper coverage with lawyers as well as court systems, and the question is whether the concept applies to government funding of criminal legal aid.

## IV. CONCLUSION

This article's review of usage patterns regarding indigent representation in Singapore, particularly the more recent connection between indigent representation and access to justice, suggests that the idea of a lawyer's role in indigent representation shifted over time from a charitable donation to a professional obligation. Conceptualising a lawyer's role as obligatory is consistent with a system of legal aid that does not fully fund either civil or criminal legal aid, because it helps to fill the gap created by particular legal aid priorities. However, access to justice usage in Singapore also applies to the court system, and conceptualising access to justice as an obligation raises the question of whether the other major actor in indigent representation, the state, also has an obligation to provide indigent representation. Conceptualising indigent representation as an obligation, for lawyers and other actors, ultimately suggests a balance between legal aid and pro bono in which all parties share a burden.<sup>289</sup>

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**289** After this article was written but prior to publication, it was reported that in “a significant departure from its long-held stance towards legal aid for those accused of non-capital crimes”, the Singapore Government would provide direct legal assistance and support to defendants in criminal cases (Amir Hussain & Amanda Lee, “Govt Will Provide Direct Legal Aid to Defendants In Criminal Cases” *Today* (7 December 2013), online: <<http://www.todayonline.com/singapore/govt-will-provide-direct-legal-aid-defendants-criminal-cases?singlepage=true>> (last accessed 28 July 2014); see also S. Ramesh, “Govt to Enhance Criminal Legal Aid Scheme” *Channel News Asia* (6 December 2013), online: <<http://www.channelnewsasia.com/news/singapore/shanmugam-announces-new/912780.html>> (last accessed 28 July 2014), and Thian Yee Sze, Director-General, Ministry of Law, “The Four Principles that Anchor Singapore’s Criminal Justice System” *Law Gazette* (February 2014), online: <<http://www.lawgazette.com.sg/2014-02/964.htm>> (last accessed 28 July 2014) (from 2014, “the Government will enhance the funding to the Law Society for the operation of its pro bono criminal legal aid efforts”).

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