

IT WOULD BE BENEFICIAL TO DEVELOPMENT OF CASE LAW AND JURISPRUDENCE: SUPREME COURT

Lawyers brush off concerns over foreign jurists on international commercial court

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SINGAPORE – Concerns that the presence of foreign jurists on the upcoming Singapore International Commercial Court (SICC) may undermine the standing of local judges and hamper the development of the legal system here — expressed in a Law Gazette commentary — have been dismissed by lawyers.

In his article, *The Singapore International Commercial Court: The Brave New World of International Commercial Litigation*, RTHLaw Taylor Wessing senior consultant Sim Yong Chan argued that having foreign judges on the bench might “stunt the growth of a confident judiciary”. His article was submitted to the Law Society magazine on Oct 13.

The setting up of the SICC was among several legislative changes approved by Parliament on Nov 4. The SICC, slated to open next year, will be established as a division of the High Court to hear international commercial disputes governed by Singapore and foreign laws. International judges can also be appointed to hear specific cases at the SICC or appeals on its judgments.

In his article, Mr Sim also said the presence of foreign judges could threaten the development of a home-grown legal system — something

towards which Singapore should be working, instead of, in the words of Judge of Appeal Andrew Phang, “voluntarily embrac(ing) the fetters of our colonial heritage”.

Mr Sim added: “For what good is it if we gain the whole world of international commercial litigation, but forfeit forever the possibility of an autochthonous legal system?”

He was also concerned that SICC cases might take up a large proportion of High Court judges’ time, leaving them with little time for local cases. This, he said, may deprive Singaporeans from judicial resources meant to serve the local public.

Lawyers and academics whom TODAY spoke to noted that the specialist court handles international commercial disputes that have little or no connection to Singapore. Hence, they added, any impact on local jurisprudence will be minimal.

In response to TODAY’s queries about the concerns raised by Mr Sim, the Law Ministry said that while the SICC needs international jurists who have the expertise to hear disputes governed by foreign laws, it does not compromise the development of a homegrown legal system.

“There is no reason to suppose that the development of an autochthonous legal system cannot occur alongside the existence of an international commercial court with international

judges. Singapore judges will also be appointed to hear SICC cases, whether governed by Singapore or foreign law,” said the ministry.

The Supreme Court told TODAY that the presence of international judges in a coram of local judges will promote “cross pollination” and is beneficial to the development of case law and jurisprudence.

Other lawyers and academics felt that given the international nature of the SICC’s cases, its judgments should not influence jurisprudence in local cases. “Even if they do, it is good for us to derive guidance from how other jurisdictions have dealt with similar matters,” said WongPartnership senior counsel Alvin Yeo, who is also

“The diversity of viewpoints could prove a catalyst for more innovative thinking ... Our own legal heritage reflects a mixture of different legal systems and laws (from) India, Australia and the United Kingdom. Over time, our judgments have continued to reflect a global outlook.

Rajah & Tann’s Paul Tan
ON HAVING FOREIGN JUDGES IN THE SICC

a Member of Parliament.

On concerns that High Court judges may end up having too much on their plate, Singapore Management University’s associate professor of law Goh Yihan said manpower issues could be addressed by tapping the pool of retired High Court judges or appointing new ones.

In any case, it will take some time for the SICC to see an increase in case load, as is the case for international arbitration here, said Mr Paul Wong of Rodyk & Davidson’s litigation and arbitration group.