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of Australia, with reference to practice in  
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Natacha Vsindilok  
University of Wollongong

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**A Comparison of the Case Flow Management  
and Case Tracking Systems of  
the Central Administrative Court of Thailand  
with those of the Federal Court of Australia,  
with Reference to Practice in the USA**

**Natacha Vsindilok, BA, MA**

**A thesis submitted in fulfilment of  
the requirements for the award of the degree  
Masters of Court Management**

**Faculty of Law  
University of Wollongong  
2004**

This thesis is dedicated to  
my father Jitti Vsindilok  
for inspiring me  
to continuously seek knowledge

## **Certification**

I, Natacha Vsindilok, declare that this thesis, submitted in fulfilment of the requirements for the award of Master of Court Management, in the Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Natacha Vsindilok

29 March 2005

## GLOSSARY

(Cth)	: Commonwealth Jurisdiction (Australia)
(Imp)	: British Imperial Parliament
AAT Act	: Administrative Appeals Tribunal Act 1975 (Cth)
AAT	: Administrative Appeals Tribunal
ACAS	: Administrative Case Administration System (the original case tracking system of Thailand)
ACP Act	: Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)
ACSP	: Administrative Case System Programme (the new case tracking system of Thailand) (Phase 1)
ACSSP	: Administrative Case Support System Programme (Phase 2)
ADJR Act	: Administrative Decision (Judicial Review) Act 1977 (Cth)
Administrative Court	: The Administrative Court of Thailand
ADR	: Alternative (or Assisted) Dispute Resolution
ART	: Administrative Review Tribunal
CAC	: The Central Administrative Court
Case judge	: A judge in charge of a case
Case judge's case official	: A case official assigned to assist a judge in charge of a case
CASETRACK	: New automated case tracking system of the Federal Court of Australia
CFM	: Case Flow Management

Chief Justice	: The Chief Justice of the Central Administrative Court of Thailand
Chief Justices	: The Chief Justices of the Central Administrative Court and the Regional Administrative Courts of Thailand
Conclusive judge	: A judge who makes a conclusion
Conclusive judge's case official:	A case official assigned to assist a judge who makes a conclusion
CTS	: Case Tracking System
DCM	: Differentiated Case Management
Directive on Performance and Assessment	Directive for the Performance and Assessment of Works of the Judges of the Courts of First Instance
Executive case official	: The Secretary General and the Deputy Secretary General
Executive judge	: The President of the Supreme Administrative Court, the Chief Justice and the Deputy Chief Justices of the Central Administrative Court
FEDCAMS	: Previous automated case tracking system of the Federal Court
Federal Court	: The Federal Court of Australia
High-ranking court official	: High level management staff and other specialists (e.g. IT and CTS)
IDS	: Individual Docket System
JCAJ	: Judicial Commission of Administrative Judges (Thailand)
NACM	: National Association for Court Management (USA)
Non-executive case official:	All case officials of various ranks who work for judges of the CAC
Non-executive judges	: All other judges including senior judges of a division



OAC	: The Office of the Administrative Court
Rule on Administrative Court Procedure	: Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E. 2543 (2000)
SAC	: The Supreme Administrative Court
The Constitution	: The Constitution of the Kingdom of Thailand B.E.2542 (1997)
The Court	: Referring to the overall structure of the Administrative Court as well as its processes and procedures
The Courts	: Referring to the Regional Court, Central Administrative Court and Supreme Administrative Court collectively

## ABSTRACT

Case flow management (CFM) is recognised as an essential component for the success of the overall management in contemporary courts. Case flow management programmes are adopted and implemented in many courts and tribunals across many nations to improve the courts' supervision of time and events from the beginning of cases to their finalisation. The case tracking system (CTS) is the most common tool in an automated case flow management system, providing crucial information to trace and track cases. The Administrative Court of Thailand and the Office of the Administrative Courts employ two such systems to promote overall court management. They are keen to improve and adjust the case tracking system, which is the main tool the Administrative Court's judges and executive judges employ in supervising case progress and enhancing the courts' overall capacity.

The central aim of this thesis is to make a contribution to the improvement of the case flow and case tracking systems of the Administrative Court. With this goal in sight, the thesis examines various aspects of the two systems in three stages. The first stage is the investigation of general principles, objectives and practices from United States of America perspective and a comparison of general principles, objectives and practices between those of the Federal Court of Australia (representing common law and adversarial systems) and the Thai Administrative Court (representing civil law and inquisitorial systems). The comparative study between the two courts includes the historical background of the establishment of these courts and their case flow management and case tracking systems.

The implementation of the case flow management and case tracking systems of the Administrative Court is analysed from the perspectives of three groups of users: judges, case officials and parties to cases. Interviews were conducted with selected judges and high-ranking court officials on various aspects of court policy and practice. Methodologically, I view the interviews as a primary source of data. The opinions of non-executive judges and case officials on various issues of the Court's case flow and case management systems were sought by questionnaire. The questionnaires were also distributed to parties who have experienced the Court's case management in order to gain the perspectives of an external group. Consequently, the actual implementation of the Court's policies in the two systems and the perceptions of the efficiency and achievements of such systems are explored in a practical way. A review of the literature

was conducted and interviews undertaken with selected experts in court and case management in the Federal Court. The aim of these theoretical and comparative stages was to provide a thorough understanding of the Administrative Court and its case flow management and case tracking systems.

Finally, the thesis attempts to identify the shortcomings of the case flow management and case tracking systems which emerge from the results of the two earlier stages of this study. Recommendations are then made to improve the functioning of the two systems in various areas. It is suggested that the effectiveness of the CFM can be developed in specific ways in the following areas: (i) timestandards for case flow management; (ii) timestandards for case finalisation; (iii) standards for monthly judicial output; (iv) investigation of the scope of the use of alternative dispute resolution (ADR) by judges and case officials and the establishment of a 'Settlement Division' for dealing with the suitable administrative cases; (v) adoption and adjustment of differentiated case management (DCM) techniques; and (vi) 'Administrative Case System Programme (ACSP) Improvement Plan'.

Suggested core measures to achieve the overall objectives of the implementation of the case flow management systems are to: (i) provide education to the public and encourage and increase parties' accountability, (ii) implement and enforce the suggested timestandards for case flow management and the suggested timestandards on case finalisation, (iii) enhance judicial knowledge by a 'peer group educating system', (iv) refine the case allocation system by employing an adjusted DCM technique and a nominating system, (v) standardise the judges' managerial role by enforcing suggested timestandards and by forming a research group to develop models for judge's writing styles for judgements, orders and statements, (vi) develop and execute a formal and practical plan for the improvement of the case tracking system (as suggested in the 'ACSP Improvement Plan' and other IT systems, (vii) revise and lay down the functioning of the 'Censor Division', (viii) enhance the knowledge of the Court's IT officers, and (ix) provide continuity and high standard for case officials' seminars and training programmes.

To assess improvement in the overall court performance and its case flow management, the proposals for an 'Administrative Court Performance Measurement Scheme' (developed from the Trial Court Performance Standard) and an 'Administrative Court Case Flow Management Improvement Project' are developed.

## ACKNOWLEDGEMENTS

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# Chapter 1

## Introduction

### 1.1 Background

'Justice delayed is justice denied' is axiomatic in judicial administration. Undue delay increases the cost of litigation and decreases the merit of judgment. To avoid delay and cost, Case Flow Management (CFM) is recognised as an essential component of successful court management and has been implemented in many courts under various policies. Not surprisingly, courts and tribunals of a number of countries, including the Federal Court of Australia and the Administrative Court of Thailand, have adopted and developed their own CFM systems.

The benefit of CFM is comprehensively accepted as a court tool to supervise cases in terms of both time and events, from filing to disposition. The objectives in implementing CFM are chiefly to control costs and to ensure timely and expeditious resolution of cases whilst the quality and fairness of the process are maintained.<sup>1</sup> The case flow management systems that have been implemented help courts in managing their caseloads efficiently via the systematic management of documents, docketing and event processing, calendaring, the issuing of notices by the parties and/or the Court, statistical and managerial reporting and the enforcement of the settlement or court order.<sup>2</sup>

The most common measure of automated case flow management system is the Case Tracking System (CTS) which records four main types of data maintained in courts: person-related data (defendants, parties, attorneys); time-related data (court calendars

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<sup>1</sup> Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No. 89 (2000) [3.90].

<sup>2</sup>William E. Gladstone, *Case Management Systems: Executive Summary* (2003) < [http://www.ncsconline.org/WC/Events/KIS\\_CasSysExS.PDF](http://www.ncsconline.org/WC/Events/KIS_CasSysExS.PDF) > at 13 October 2003.

and reminders); case data (history and records); and financial data (fees and fines).<sup>3</sup> A good case tracking system is one that can meet the needs of the court's case flow management system. It should provide the information necessary to manage and track cases. It should be a user-friendly system not only for the judges and court staff, but also for parties participating in cases. For these reasons, the levels of sophistication of CTS are diverse in different courts and countries.

The development of more sophisticated case tracking systems is continuously required to meet the needs of courts' case flow management in gaining better information to maintain the quality of the court processes and to improve the methods of assessment of the courts' performance. The development of CTS systems has been influenced by innovation in IT systems, such as electronic filing and electronic data and document interchange.<sup>4</sup> Ultimately, the advantages of advanced CFM and CTS lie in promoting and ensuring equal protection and access, and in enhancing the quality of justice.

This research thesis analyses the importance of CFM implementation in courts, and examines how CTS matches CFM. It is worth noting that since 1997 the Federal Court of Australia has adopted and implemented a new listing and case management approach, the Individual Docket System (IDS), in its registries throughout Australia.<sup>5</sup> The case tracking system, FEDCAMS, was replaced by a new system (CASETRACK) operating from the beginning of 2004.<sup>6</sup> Concurrently, the Administrative Courts of Thailand formally implemented its new sophisticated case tracking system, Administrative Case System Programme (ACSP). It was launched in the middle of 2004.<sup>7</sup>

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<sup>3</sup>James E. McMillan, *Case Management System* (1995) <[http://www.ncsconline.org/WC/Publications/KIS\\_CassysCTB1995McMillanpub.pdf](http://www.ncsconline.org/WC/Publications/KIS_CassysCTB1995McMillanpub.pdf)> at 13 October 2003.

<sup>4</sup> Marco Fabri and Francesco Contini, *Justice and Technology in Europe: How ICT is Changing the Judicial Business* (2001) 9.

<sup>5</sup> Federal Court of Australia, *Practice and Procedure: Individual Docket System* (2003) <[www.fedcourt.gov.au/pracproc/aboutct\\_IDS.html](http://www.fedcourt.gov.au/pracproc/aboutct_IDS.html)> at 13 October 2003.

<sup>6</sup> Interview with John Mathieson, District Registrar, Federal Court (Face to face interview, 7 October 2003).

<sup>7</sup> Interview with Mr A, high-ranking court official: Bureau of Information Technology, Office of the Administrative Courts (Face to face interview, 20 February 2004).



## 1.2 Purpose of the Research Study

As a case official of the Thai Administrative Court the implementation of the policies on case flow management and the case tracking system is part of my responsibilities. Their efficient operation is a key factor in the successful implementation of the Court's case flow management and case tracking system and is the most important tool in the implementation of the case flow management technique.

The execution of policies encouraging the successful use of both the case flow management and the case tracking systems in the various courts that make up the Administrative Courts is somewhat different from court to court. However, due to my limited resources one court had to be chosen to study in depth. I chose the Central Administrative Court (CAC) because of the huge number and diversity of administrative cases filed and its broad jurisdiction in localities where a Regional Administrative Court has not yet been established; also because it handles cases filed outside the formal administrative system.<sup>8</sup> In other words, disputes arising in the jurisdiction of Regional Administrative Courts where they have not been established or are outside the jurisdiction of CAC may be brought before the CAC. The main purpose of this research study is to understand and improve the case flow management and case tracking systems of the Thai Administrative Court. To achieve this, I have examined the reviews of the Court's work: the case flow management and case tracking systems and the reviews of the implementation of those systems.

The study of the Thai Court's case flow management and case tracking systems can be compared with those in the Federal Court of Australia. Such a comparative study provides a clearer understanding of both the case management and the tracking systems of the Administrative Court. I chose the Federal Court of Australia to compare with the Thai Administrative Court over other courts or tribunals because they both have a broad jurisdiction and employ judicial review in all administrative disputes. The different perspectives deriving from the different characteristics of the Federal Court

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<sup>8</sup> *Act on Establishment of Administrative Court and Administrative Court Procedure B.E. 2542 (1999)* Chapter 1, s 8 (Office of the Administrative Courts trans, 2000) [trans of: พระราชบัญญัติจัดตั้งศาลปกครองและวิธีพิจารณาคดีปกครอง พ.ศ. ๒๕๔๒].

(representing common law and adversarial systems) and the Administrative Court (representing civil law and inquisitorial systems) make this comparative study more interesting. Nevertheless, for two reasons this is not a symmetric comparative study. Firstly, only some aspects of the Australian administrative law systems used in the Federal Court were studied for the purpose of comparison; a full study of the Federal Court was not carried out. Secondly, the extent to which I did study the Federal Court case flow management and case tracking systems was to develop a model and methodology for investigating the Thai Court's systems. In this sense, my research into the Federal Court from a pilot study to the investigation of the Thai Administrative Court case flow management and case tracking systems. (See the proposed guide for interview questions about CFM and CTS employed in the Federal Court in Appendix A and the details of the process of the pilot project on p. 10-11).

The methodology is applied to the study of the Administrative Court in three core issues: CFM, CTS and to the study of the relationship between case flow management and case tracking systems. The studies of the perceptions and expectations of the Federal Court's clients of the Court's CFM and CTS were out of interest.

To make sense of this comparative study, it is essential to examine the theories behind employing CFM and CTS in courts. I look at the United States of America (USA) perspective, mainly derived from studies of American scholars because the USA was one of the very first countries to concern itself with court administration and management. Initially, the Federal Court adopted its techniques of case flow management from the American experience. The perspectives on both the case flow management and case tracking systems of the Administrative Court of Thailand and the Federal Court of Australia are elucidated in various aspects using these USA perspectives, including their historical development, principles and objectives and comparisons are made of the two systems. I compare and contrast the philosophy of the case flow management and case tracking systems in this USA context with local systems represented by the common law and adversarial concepts of the Federal Court and the civil law and inquisitorial concepts of the Administrative Court of Thailand. Additionally, the historical development of both courts is examined to understand the importance of an administrative appeal and procedural review system for the societies they serve.

The second study of the implementation of the Administrative Court's case flow management and case tracking systems was carried out in the Central Administrative Court using the perceptions and expectations of three groups of the systems' clients: the judges (both conclusive and case judges), case officials (who assist these judges), and the parties (plaintiffs, defendants and their representatives). The study aims to examine the achievement of the principles and objectives of both the case flow management and the case tracking systems and brings practical matters into focus from the theories expounded. Finally, practical recommendations for the improvement of both systems are made and the goals of this study are achieved.

### **1.3 Research Questions**

Two main areas of concern and eight research questions emerged during the preparation of this research paper. The first area of concern relates to the comparative study of the Federal Court of Australia and Thai Central Administrative Court and leads to six research questions:

- 1) How are the case flow management and case tracking systems essential to the management of courts?
- 2) What are the characteristics (history, definition, principles and objectives) of the case management and case tracking systems in the USA perspective?
- 3) What are the characteristics (history, definition, principles and objectives) of the case management and the case tracking systems in the inquisitorial perspective (represented by the Administrative Court of Thailand)?
- 4) What are the characteristics (history, definition, principles and objectives) of the case management and case tracking systems in the adversarial perspective (represented by the Federal Court of Australia)?

5) What are the relationships between the case flow management and case tracking systems in both the USA perspective and the two national perspectives?

6) How do the historical development and legislative background affect both the Federal and the Administrative courts?

The second area is particularly concerned with the implementation of the two systems in the Central Administrative Court and with the views of the Central Administrative Court's users: judges, case officials and parties. It raises the following two questions.

7) Are the principles and objectives of case flow management being achieved?

8) How can the case flow management and case tracking systems of the Administrative Court be improved?

## **1.4 Limitations**

### **1.4.1 Comparative Jurisdiction**

Only issues relating to the case flow management and case tracking systems, their relationship with each other, and each court's background in administrative laws and jurisdiction are examined in the comparative study between the Administrative Court and the Federal Court.

### **1.4.2 Time Limitations**

The Australian Administrative Appeals Tribunal (AAT) has powers to review decisions made by administrative agencies, that is, it deals with administrative cases.<sup>9</sup> The similarity between the jurisdiction of the Administrative Appeals Tribunal (AAT) and

the Administrative Court is obvious. However, the AAT employs administrative powers while the Administrative Court employs judicial powers. Although it may have been valuable to make a comparative study of the AAT and the Administrative Court, limits of time made it difficult to complete such an investigation. As a result, this research paper is limited to a comparative study of the Federal Court and the Administrative Court.

While I was analysing the data collected, the Administrative Court was in the process of introducing a new CTS, making it impossible for me to gather and assess data from the new Thai CTS, which was comparable with the data gathered from the Federal Court. Therefore, I used data gathered from interviews with court staff – judges and case officials – instead. Together these data allowed me to identify what was needed in the new CTS and whether in the opinion of the staff interviewed the new system would correct the problems emerging from the original system. Consequently, my research examines opinions of staff on the achievements of the original CTS. As the advanced programme needs a period of time in operation before any assessment of its efficiency can be made no assessment of its success was possible.

Because of these problems in using quantitative data gathered from the advanced programme, I assess the less objective opinion data, instead. People can have opinions about what their court will or can achieve but they can only prove their opinions to be right by demonstrating the performance of the court over time using outcome data such as measures of delays, hearing length and costs. These are the limitations of the opinion data based on a person's perception, rather than on hard fact. It must be accepted that such opinion evidence may not provide enough information to assess the case flow or case tracking systems of the Thai court. The fact that the opinions of some or all staff are good or accurate cannot be proven. The opinions of the Thai court staff might be more accurate than opinions of others, because they are close to the systems, working with them day-by-day and having a very good idea of their progress. They have no reason to misrepresent the performance of the court because it is in their interests to get the Court's performance right. In addition, there is no pressure on them to say it is better or worse than they think it is. Opinions can also be evaluated by reference to the seniority and reliability of the staff giving them. However, any opinion can be shown to be wrong in the future for reasons that were not known or understood at the time the

opinions were given – not because the people were lying or misrepresenting the situation. Asked again, with the additional information given by hindsight, quite properly the person giving the opinion may change their mind.

Another limitation is the limited variety amongst the groups of respondents interviewed. Opinions on the achievements of both systems are limited to three main users: judges (both case and conclusive), case officials (assisting either case or conclusive judges), and parties (plaintiffs and their authorised persons, and defendants and their authorised persons). The users of both systems (case flow management and case tracking) extend to others beyond the three main groups including court officers (such as the secretaries for each division and case officials working in other supporting units) and experts and witnesses. A complete study would include all those participating in the two systems, but because of limits of time in this research study, I chose to examine the views of only the three core user groups.

### 1.4.3 Geographic Limitations

Empirical research methodology is used to find out how related people (judges, case officials and parties) experience the existing case flow management system and the original case tracking system of the Administrative Court. A study of all seven Administrative Courts of First Instance throughout Thailand was impractical. The most relevant and significant court in terms of variety of case types and panels, caseload, size and numbers of judges and administrative staff was selected. The Central Administrative Court<sup>10</sup> is chosen as representative of the Administrative Courts of Thailand from the statistics: 8 case types, 17 panels, 77 (78%) judges, 357 (44%) court staff, and 8579 (71%) cases filed since March 2001.<sup>11</sup> The Supreme Administrative

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<sup>10</sup> The Central Administrative Court has a general jurisdiction because it was given jurisdiction over a province where a Regional Administrative Court has not been established. Disputes arising outside the jurisdiction of the Central Administrative Court may also be submitted to the Central Administrative Court. See *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999)*, s 8, paras 3, 4.

<sup>11</sup> These percentages are the Central Administrative Court's proportion of the totals for all the courts of First Instance. See Office of the Administrative Courts of Thailand, *Annual Report of the Administrative Court and the Office of the Administrative Courts of Thailand 2002 (2544)*, (updated until 24 October 2003), [trans from: รายงานประจำปีศาลปกครองและสำนักงานศาลปกครอง ๒๕๔๔ (ปรับปรุงแก้ไขถึงวันที่ ๒๔ ตุลาคม ๒๕๔๔)].

Court was not chosen for study because its jurisdiction raises too many issues that cannot be covered in one research thesis. Further study of that Court would be valuable.

#### **1.4.4 Translating Process**

I was aware of the risk that the process of translating the questionnaires from Thai to English could cause some errors. I designed the original questionnaires in Thai and then translated them into English. To ensure that the English version had the same precise meaning as in the Thai version, I had to edit the English version questionnaires many times. In addition, I developed many graphs to explain data collected from the questionnaires. This translation process resulted in some mistakes in the original edition of the thesis. The same questions I had asked judges and case officials in Thai were translated slightly differently in the English versions and some questions that appeared in the English questionnaires were slightly different in the graphs. For example, question 4.3 of the judge's questionnaire asked 'From your experience, there are some factors causing difficulties to comply with the timeframe' but the same question asked in the case official's questionnaire appeared as 'From your experience, there are some factors that make it impossible to comply with the time standard'. The error was perpetuated when the questions were transferred to the graphs. Question 4.3 of the judge's questionnaire was correctly copied to Graph 4.2, and Question 4.3 of the case official's questionnaire (the unedited version) was copied to the Graph 4.3. Although the presentations in Graph 4.2 and 4.3 were drawn from the same question, the differences may have caused confusion for reader who may have thought the graphs contained information from different questions.

The questionnaires appear in their original, uncorrected form in the appendix as it was thought too late to attempt to correct the wording of the questions after completion of the thesis. This explanation has been included to overcome any continuing doubt as to the validity of the questions asked in the questionnaires. Further explanation is provided below, at 1.5.3.

## 1.5 Methodology

The research methods used in this study combine qualitative and quantitative methods. This research paper was developed in three steps: first, theoretical material was taken from research into the literature on the USA perspective of CFM and CTS. Secondly, research was conducted into the national perspectives of CFM and CTS of the Federal Court and the Administrative Courts literature from the courts, questionnaires and interviews of their staff. Finally, the practical implementation of the case flow management and case tracking systems of the Federal Court and the Administrative Courts was studied from court documentation questionnaires and interviews.

The literature review undertaken in the first step is beneficial to identify the concepts, benefits and significant issues. In the second step, extensive reviews of published literature and internal court reports, memoranda, committee minutes, practice and procedure reports and other documents relating to the CFM and CTS in both the Federal Court and the Administrative Court were employed. The background of the work of both courts and their current policy directions provides useful insights into the context in which the two systems have developed. The specific perspectives in implementing the CFM and CTS of both courts are examined. There is a comparative study of the perspectives of both courts and between the courts as well as the theoretical framework.

Finally, the actual implementation of the CFM and CTS in the Central Administrative Court are elucidated. I found that the many published investigations and descriptions of the case flow management of the Federal Court were a very useful guide in approaching the study of the Thai Administrative Court, for which there is very little published material. Furthermore, during the periods studied, both the Federal Court and the Administrative Court replaced or adjusted their CTS to meet the needs of their users and to accommodate the needs of each. The pilot study includes a study of the reasons behind the decision to change the Federal Court's CTS and its review of its expectations in implementing the new CTS. Hence, the entire process of adopting, adapting, implementing and refining the new CTS is examined. A pilot study was necessary to ensure that: (i) the study of the Administrative Courts would be practicable and relevant; and (ii) there were no foreseeable adverse effects of the gathering of data.



The main research methods used in the pilot study are interviews with key people in relation to the case flow management and case tracking systems of the Federal Court and a comprehensive review of published literature and other internal documents relating to the development and use of the two systems in that court. After reviewing the literature I devised the questions on case flow management and the case tracking system for interviewing personnel currently practising in those areas. For case flow management I interviewed a Registrar of the Federal Court. For the case tracking system I interviewed a CASETRACK project team manager. Subsequently, I engaged in clarification and exchange of additional information with the interviewees. As a result, a number of problems were identified that could have interfered with the integrity of the overall research findings in the Thai court. Once these problems were overcome the findings could be studied comparatively between both systems in both jurisdictions. However the material from the Federal Court comprised information obtained from studies done by the Court, while the study of the Thai Court relied on opinions from interviews and data from questionnaires

### **1.5.1 Qualitative methods**

#### 1.5.1.1 Literature Reviews:

The Constitutions, laws and regulations, published literature, internal court reports, memoranda, committee minutes, practice and procedure reports, and other documents relating to the CFM and CTS of both the Federal Court and the Administrative Courts were examined.

#### 1.5.1.2 Interviews:

In this research study, interviews were conducted in both the Federal Court and the Administrative Court. In the Federal Court, interviews of selected key persons in the case flow management and the case tracking systems were conducted as a pilot project for the study of the Administrative Court. Face-to-face interviews were conducted based on the questions in a proposed guide interview. The interviewees were asked about the case flow management and case tracking systems of the Federal Court (see the proposed

guide interview questions in Appendix A). As a pilot project, the method of choosing interviewees focused on interviewing persons obviously with direct responsibilities in the systems of the Federal Court. Snowball Sampling was employed as a method to select samples for interview.<sup>12</sup> Note taking was used in recording the evidence and other information obtained from the interviewees. The correctness of the information was checked with the interviewees by reading over the notes taken at the end of each interview.

In the Administrative Court (represented by the Central Administrative Court), the people interviewed were more diverse. The interviews were undertaken in two stages. The first group of interviews were conducted with core people within the courts: executive judges and executive court officials. The second interviews were to be undertaken with selected senior judges of a division and selected case judges and conclusive judges. For the first group, expert sampling was done to elicit the views of experienced persons.<sup>13</sup> Quota sampling,<sup>14</sup> extreme and deviant case sampling,<sup>15</sup> and typical case sampling,<sup>16</sup> were used in selecting samples in the second group. This means that the perspectives of selected judges (from senior judges of a division, case and conclusive judges) were obtained (see details of samples and population in Appendix C).

To ensure consistency and to cover all relevant issues, standard interview schedules were developed during the pilot project in the Federal Court. A model interview schedule was adopted and adjusted for each group of interviewees: executive judges, executive officers, selected non-executive judges (see Appendix A). Mostly, the types of questions in the standard interview schedules for judges and high-ranking officials of the Office of the Administrative Courts (OAC) were similar. However, that question list

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<sup>12</sup> Snowball or chain sampling is one subcategory of purposive sampling which identifies someone who meets the criteria for inclusion in the study. That person is then asked to recommend others who also meet the criteria. This is a good way of interviewing in information-rich cases. See Michael Quinn Patton, *Qualitative Evaluation and Research Methods* (2002), 176.

<sup>13</sup> It is one of the subcategories of purposive sampling. It is also used to provide evidence for the validity of another sampling approach chosen in the study. William M. Trochim, *Non-probability Sampling* (2000) <<http://trochim.human.cornell.edu/kb/sampnon.htm>> at 27 October 2003.

<sup>14</sup> A purposive sampling which is selecting people non-randomly according to some fixed quota. See Ibid.

<sup>15</sup> It is one of the strategies serving a particular evaluation purpose, which focuses on cases that are rich in information because they are unusual or special in some way. See Patton, above n 12, 169.

<sup>16</sup> This technique provides a normal distribution of characteristics from which to identify average examples. See Ibid. 178.

is different from the non-executive judges' interview schedules. While the executive judges and court officials were asked policy and in-depth sets of questions, the non-executive judges (senior judges of a division, case judges and conclusive judges) were questioned about their practical implementation, perspectives and expectations.

Face-to-face interviews were conducted normally in the Central Administrative Court and the Office of the Administrative Court, meaning the interviews were conducted in the interviewees' own work environments. As in the Federal Court, note taking and checking by reading the notes back were used to check the accuracy of information gathered during the interviews.

### **1.5.2 Quantitative Method: Questionnaires**

Interviews of executive judges, high-ranking court officials and selected non-executive judges were used to collect data. However, questionnaires were principally employed for the other interviews: non-executive judges, case officials and parties. Three sets of questionnaires were used; each designed for the different groups of respondents (see Appendix B). While the majority of questions in the questionnaires were close-ended questions, there are some open-ended questions available to allow respondents to raise matters of particular concern.

The types of questions asked of the first two groups, non-executive judges and court staff, are similar. The core questions can be grouped as: some personal details, work role/relation, the CFM and CTS issues, the general practices of the CFM and CTS, the expectations and obstacles in using the CFM and CTS, and other issues of interest: timeframes, case allocation etc. (see questionnaires in Appendix B). Nevertheless, the methods of sampling used differed between the interviews and questionnaires. While each Central Administrative Court judge and the court officials who work for these judges were counted as a sample in the study, stratified random sampling<sup>17</sup> was employed to choose the samples of two types of parties, the plaintiffs and their

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<sup>17</sup> Stratified random sampling (proportional or quota random sampling) divides the population into groups and takes a sample from strata. See Australian Bureau of Statistic, Education Resources, *Statistics – A Power Edge: Sampling Methods – Random Sampling* (2003) <[www.abs.gov.au/sampling](http://www.abs.gov.au/sampling)> at 27 October 2003.

representatives and the defendants and their representatives. The sampling size was set in consultation with the statistical consulting service of the University of Wollongong. Simple random sampling in each type was done using a research randomizer.<sup>18</sup> The questionnaires were mailed to proportionate samples of both groups, randomised from the case number file listed in the case tracking system of the Central Administrative Court. The main questions in the questionnaire were about the respondents' perspectives and expectations of aspects of the Administrative Courts (see Appendix B).

### 1.5.3 Limitations of Methodology

As in all research, there are limitations with the methodology employed in this project. Following are some comments on those limitations, particularly those appearing in the non-executive judge's and non-executive case official's questionnaires. Several possible problems have been identified in these questionnaires, including the following:

- possible ambiguity in some of the questions asked;
- issues arising from translation of the questions between the Thai and English languages;
- apparent inconsistency between answers expected to some questions and the ways in which responses were obtained;
- possible conflict between comments made by the judges and case officials; and
- questions about the appropriateness of seeking comment on professional court relationships from groups outside the profession.

Firstly, it is accepted that some of the questions asked in the questionnaires could be read in such a way as perhaps to confuse the people interviewed. In fact no such confusion occurred. The researcher conducted all the interviews personally and can report that none of the judges asked questions to indicate they were confused. Any flaws identified in the questionnaire in fact caused no problem.

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<sup>18</sup> A Research Randomizer is a free service offered to students and researchers interested in conducting random assignment and random sampling. See Geoffrey C. Urbaniak and Scott Plous, *Research Randomizer* (2003) <[www.randomizer.org/form.htm](http://www.randomizer.org/form.htm)> at 27 October 2003.

Secondly, the wording of some of the questions in the questionnaires suggests that there may have been problems with the translation necessary from Thai to English. In fact the flaws in translation detected did not affect the administration of the questionnaire, because it was done in Thai. Any confusion lies in the translation into English from Thai, something that did not affect the conduct of the interviews, but which could mislead the reader in English. For example, Question 2.4 'In your opinion, what are important to promote the achievement of the CFM' would be translated better as 'Which of the following is important for CFM to achieve its aims?' without altering the meaning of the question as administered in Thai.

Thirdly, while inconsistency was possible in the way the statements in the questionnaires were worded, particularly in some of those with sub-questions, in fact no problems arose because the statements were not treated by the respondents as inconsistent. In other words, there is no possible inconsistency when the questions are asked in the Thai language. The questions were designed deliberately, as a double check system, to require the respondents to find different ways to express the same ideas. The result of the research proved the methodology successful as no one gave inconsistent answers.

Fourthly, the questionnaires provided for two types of answering methods: one, permitting a choice between only two possible alternative and the other permitting a choice between several answers. This could have led to misunderstanding of the way the answers were to be selected. As the sole interviewer, I was aware of this as a possible problem and took care to ensure that respondents understood the choices they had available to them in each question. In fact none of the respondents answered the questions in such a way as to indicate they had any confusion about the process.

Fifthly, it might have appeared that some of the questions asked of the judges and case officials could have resulted in conflicting results. In fact, no such problems occurred. The potential problem is illustrated by the following example. Question 3.1 of the judge's questionnaire asked 'You are independent in managing your own cases' while Question 3.1 of the case official's questionnaire asked 'A judge manages and controls case by him/herself'. Because of the differences in the questions asked, the answers to

these two questions might appear to be irreconcilable. The questions were designed to detect whether the judges and case officials think differently about the same issue, whether judges manage and control their cases themselves. The aim was to discover the opinions of both groups on this issue. The outcome of the study was to show that the two groups think in the same way. The judges think they are independent in managing their own cases and the case officials agree that judges manage and control their own cases. Such answers from both groups indicate that the Administrative Court maintains judicial independence as a real principle.

Finally in the section on court relations in both the judge's and the case official's questionnaires, each participant was asked to comment on the relationships amongst their own group. The members of the two groups were not asked for their views on relationships in the other group. This form of questioning was chosen deliberately because it was not thought appropriate for the different professional groups to comment on the relationships between other professional groups in the court. Also it was thought that members of the same group should understand their relationships better than others outside their professional group.

## **1.6 Research Outline**

### **Chapter 1: Introduction**

This chapter provides general information about the research. It consists of six core sections: background, purpose of this research study, research questions, limitations, methodology and research outline.

### **Chapter 2: Case Flow Management**

This chapter considers relevant aspects of case flow management from the USA, Australian and Thai perspectives. The main issues raised are the history, definition, principles, and objectives of case flow management and the relationship between case flow management and the case tracking system. The chapter consists of four core sections: the USA perspective, the Thai inquisitorial perspective, the Australian

adversarial perspective and the discussion of issues specific to the concerns of the interviewees. The principles and the objectives of the Federal Court are also elucidated in this chapter; the principles and the objectives of the Administrative Court are examined in other chapters.

### Chapter 3: Comparative Study: Federal Court and Administrative Court

This comparative chapter provides comment on characteristics relevant to both the Australian Federal and the Thai Administrative Courts, particularly those relating to administrative matters. The importance of the administrative appeal and procedural review systems in the two countries, which are different in the legal systems, is also investigated. This chapter consists of three main sections: the importance of the Administrative Court, the importance of the Federal Court, and relevant comparative issues. Various critical issues are considered: the historical development of the two courts, constitutional and legislative background, jurisdiction and structure.

### Chapter 4: Principles of the Case Flow Management of the Administrative Court

This chapter elucidates the principles of the CFM of the Administrative Court. It begins with a study of the principles of the Administrative Court's administration established by the Constitution, 1997 and the *Act on Establishment of Administrative Courts and Administrative Court Procedure, 1999 (ACP Act)*. The principles of case flow management of the Court derived from such laws and the Court's policies are also explored. Principles of case flow management derived from the USA, Federal Court and Administrative Court perspectives are compared and contrasted. Then, the practical implementation of the principles of the Court's CFM are analysed from the perspectives of judges, case officials and parties. The findings and a summary of comments are set out at the end of this chapter. Therefore, this chapter is organized in six core sections: principles of judicial administration of the Administrative Court, principles of the Court's CFM ascertained from the Constitution and the *ACP Act*, principles of the Court's CFM established in practical measures or court policies, comparison of the principles, the practical implementation of the principles of the Court's CFM, and the findings and summary of comments.

## Chapter 5: Objectives of the Case Flow Management of the Administrative Court

This chapter elucidates the objectives of the CFM of the Thai Administrative Court. Study of the values of the Court is the first step in finding out the CFM's objectives. From there, the data from interviews with the executive judges and high-ranking court officials are examined and matched to the court's values. General objectives of the CFM are analysed and then the more practical objectives of the CFM are investigated through the perceptions of judges and case officials. Findings about the objectives are made and compared to the objectives of the Federal Court of Australia and the USA perspectives. Then, the achievement of the general and particular objectives of the Court's CFM are examined. For the purposes of this study, only the objectives that were not being achieved in the views of judges, case officials and parties are comprehensively examined in order to find out the causes of such failures and identify suggestions for improvement. Some of the objectives not discussed were considered either achievable (thus not warranting discussion here) or unimportant by the judges and their case officials who participated in this research project. Then, the objectives of the Administrative Court's case tracking system are identified from the literature reviews and the views of the judges and case officials about its practical operation. The implementation and the achievement of each objective are evaluated, as well as the overall achievement. Finally, the findings of the project and summary of comments of the CTS from judges' and case officials' perspectives are reported.

## Chapter 6: Conclusions and Recommendation

This chapter summarises all the key findings and raises some particularly relevant issues deriving from this research project. It also contains conclusions and recommendations emerging from these issues. The outline of this chapter is summary of findings, issues arising and conclusions and recommendations.



## Chapter 2

### Case Flow Management

Case Flow Management (CFM) introduced a new paradigm for a court's role in controlling and monitoring the progress of cases. The philosophy of CFM has gradually shifted the progress of litigation from a situation where cases belong to the lawyers, and where the court has no business intervening, to a situation where 'cases belong to the litigants, and the court has an obligation to the litigants to provide a dispute-resolution process that minimized the possibility of delay.'<sup>1</sup> With CFM, courts should now actively manage the progress of cases.

The development of case flow management arose from the concern of judges, court managers and lawyers about delays. However, the importance of CFM is not just that it is a way to reduce delays or backlogs, it is a hub of court management as well.<sup>2</sup> Therefore, even though a particular court may not have a delay problem, it is important to implement an effective case flow management system: it is a means to achieving success in the business of a court and a key aspect to success in the management of a case.

The quality of justice is enhanced when a court supervises a case's progress from its initiation, sets events and deadlines throughout the case life, and provides reliable trial dates. Effective CFM ensures that all litigants receive procedural due process and equal protection. To promote the efficiency of case flow management, automated case information systems have been introduced. Case tracking systems, as the central information system, are implemented to monitor and enhance court case flow management.

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<sup>1</sup> Maureen M. Solomon, 'Fundamental Issues in Caseflow Management' in Stephen W. Hays and Cole Blease Graham, Jr. (eds), *Handbook of Court Administration and Management* (1993) 372-373.

<sup>2</sup> David C. Steelman, John A. Goerdts and James E. McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (2004), xi.

This chapter aims to grasp the CFM systems of the Administrative Court of Thailand and the Federal Court of Australia, in terms of how they work and how the case tracking technique of each court supports the operation of their case flow management. In order to fully understand both systems I will elucidate the USA perspective, the Thai inquisitorial perspective, and the Australian adversarial perspective, respectively.

## **2.1 Origins of Case Flow Management in the USA**

The examination of the USA experience of CFM will reveal the importance of the adoption of CFM to a court. The origins of the development of case flow management are to be found in the United States and Canada. In particular, the American experience is a central part of its development, and its experience has been pervasively adopted in Australian court reforms. An outline of American courts' case flow management is beneficial to understanding the Australian courts' case flow management and its development in the Thai court.

### **2.1.1 History**

In the United States, the increase of concern with delays and backlogs in courts was first discussed at the American Bar Association and at National Court Management Seminars in the 1960s.<sup>3</sup> In the 1970s American courts first enunciated the principles of case flow management as 'a set of actions that a court takes to monitor and control the progress of cases, from initiation through trial or other initial disposition to the completion of all post-disposition court work, to make sure that justice is done promptly.'<sup>4</sup> One of the American scholars in the 1970s, Maureen Solomon, commented in *Case flow management in the Trial Court* that different case assignment systems—individual, master and hybrid calendars—were not the most beneficial approach to tackle delay in courts. She proposed that it was more useful to promote judicial commitment in order to control and manage case progress, using a court manager to administer timeframes and other operational

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<sup>3</sup> Solomon, above n 1, 372.

<sup>4</sup> Steelman, above n 2, xi.

standards adopted in the courts.<sup>5</sup> Solomon's ideas corresponded with Carl Baar's ideas about the development of CFM. He mentioned in his work that there are three stages in developing case flow management: non-management, calendar management and case flow management; and the third stage is the new model requiring judicial leadership and judicial commitment to supervise and control the entire process of the case.

#### Stage one: non-management model

This model has been justified on the basis that lawyers should control the flow and timing of cases in court while judges carry out no caseload management. It can be implied that this is a model of a passive role for judges in managing their cases, and is the narrowest role for judges in managerial terms. This first model is difficult to manage in the contemporary situation because if judges completely abdicate any role in managing the flow of cases, the result is an increase in delays.

#### Stage two: calendar management model

Judges in the second stage are concerned that adjournment, settlements and other events influence and can have an impact on the whole schedule of cases causing judges to employ overbooking. In this model case management is shared between judges and lawyers. It can be said that in this model, courts exercise active control in the period from certificate of readiness to trial. An adjournment will not be given automatically when the parties consent, but only when entirely necessary. However, because overbooking can create the necessity for adjournments by providing a number of cases that were not able to be reached, the willingness of lawyers to ask for adjournment is expected. Under this condition, a practicable calendar cannot be shaped and the strict adjournment policy is undermined by unexpected trial dates.

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<sup>5</sup> Maureen M. Solomon, *Caseflow Management in the Trial Court* (1973), 29-30.

### Stage three: case flow management model

The last stage is described as the control of flow and timing of cases under judicial leadership in consultation with lawyers. The characteristics of this stage can be described as: (a) monitoring of case flow begins as soon as a case is initiated—that is, courts' responsibility for cases is not from the certificate of readiness stage but from the initial stage as a single process; (b) cooperation among judges, lawyers and administrative officers is requisite—that is, reliable information must be developed and shared to enhance the predictability of the process of scheduling to the mutual benefit of both the court and its clients; and (c) judicial leadership—used to promote co-ordination and to share information—is essential in the flow of cases. In addition, the case flow management policies must be developed in consultation with lawyers and court officials.<sup>6</sup>

In the 1980s, case flow management programmes were implemented throughout the US, highlighting early court control and active court management. In 1990, the Commission on Trial Court Performance Standards listed five standards to measure effectiveness of courts in five areas (see details in Table 2.2). Reduction of delays was a theme throughout those standards. The National Association for Court Management (NACM) has also recognised case flow management as one of the 10 core competencies for court managers.

In America, the reduction of delays has been one of the key focuses of twentieth-century court reform efforts. Thus, case flow management is not a new approach in court management in the United State or in other countries such Canada<sup>7</sup> and Australia.<sup>8</sup> Not only are these common law countries employing CFM, civil law countries are also experimenting with it. For instance Latin American countries have begun to discover a

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<sup>6</sup> See Carl Baar, *Caseflow Management Policy Options for Victorian Courts* (1988) 3-11.

<sup>7</sup> Carl Baar, 'Court Delay as Social Science Evidence: The Supreme Court of Canada and 'Trial within a Reasonable Time' (1997) 19 (2) *Justice System Journal* 123.

<sup>8</sup> Ronald Sackville, 'Case Management: A Consideration of the Australian Experience' (Working Group on Courts Commission, Conference on Case Management, Dublin: Government of Ireland, 1997), 165.

proper case flow approach to their cases.<sup>9</sup> In Egypt, where the legal system is based on both Islamic law and civil law (particularly the French codes), the Ministry of Justice supervising civil and commercial case flow management selected some courts in the first instance to implement a new system.<sup>10</sup> In Thailand, too, the Administrative Court invented an approach to case flow management which suited an inquisitorial administrative procedure. Case flow management has come to be seen as the core factor in the success of overall court management, employed not only as a way to eliminate undue delay but also as a means to achieve successful general court management.

### 2.1.2 Definition

'Case Flow Management' (CFM) is now broadly employed as the most important part of court management.<sup>11</sup> Its denotation is comprehensively accepted as the supervised process of time and events in order to move cases from filing to disposition, regardless of the type of disposition.<sup>12</sup> This definition covers four areas of operation: (a) court setting and monitoring of events and deadlines; (b) court supervision of all cases filed; (c) court scheduling appropriate to events in each case, monitoring compliance with deadlines and providing credible trial and hearing dates; and (d) the court assuring timely preparation of a case for disposition, not only for trial (disposition includes by trial, arbitration, abandonment, a guilty plea, dismissal, etc).<sup>13</sup>

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<sup>9</sup> Carlos Gregorio, 'Case Management and Reform in the Administration of Justice in Latin America'; William Davis, 'Strategies to Reduce Trial Court Delay' (Discussion papers prepared for Judicial Reform Roundtable II, 1996).

<sup>10</sup> Hiram E. Chodosh et al., 'Egyptian Civil Justice Process Modernization: A Functional and Systemic Approach' (1996) 17 *E Law- Michigan Journal of International Law* [865] <<http://www.lexisnexis.com.au>> at 15 May 2003. See also David C. Steelman and Jeffry Arnold, 'Experimental Civil Caseflow Management Improvement Plan for North Cairo and Ismailia Pilot Courts' (Paper presented to the First Assistant to the Minister of Justice, Arab Republic of Egypt, 16 September 1998).

<sup>11</sup> Court management is related to many areas such as personnel management, financial management, records management, and facilities management.

<sup>12</sup> Maureen M. Solomon and Douglas K. Somerlot, *Caseflow Management in the Trial Court: Now and for the Future* (1987) 3-4; Maureen M. Solomon, *Caseflow Management in Australian Courts: Report of Proceedings of Workshops and Seminars* (1988) 23.

<sup>13</sup> Solomon (1993), above n 1, 371-372.

### 2.1.3 Principles

The principles of case flow management are examined through a review of expert literature available. The general and fundamental elements of the CFM are revealed.

#### 2.1.3.1 General Principles

Following Solomon, there are six general principles of case flow management.<sup>14</sup>

##### 1. Judicial Leadership and Commitment

The judges of the court must be responsible for case flow management; that is, each judge has to be the key person to control all cases in his/her responsibility from filing to disposition. Active management by the judges (judicial leadership) is essential in order to coordinate all the activities of a large number of people such as lawyers, parties and support staff. Besides this, the co-operation of both the chief judge and the court administrator is required to initiate the case flow management programme.

##### 2. Court Consultation

While the judges play the most important role in case flow management, consultation and good relationships with all justice agencies are necessary. Court consultation is an effective procedure to reduce delays, which is an essential objective of CFM. An institution or committee composed of key participants such as judges, court staff, the legal profession and major court users should be set up. Consultation helps create order, predictability and precise time management of cases.

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<sup>14</sup> Solomon (1987), above n 12, 7-31; Mark Herron, 'Civil Justice Report and Baar Report' cited in Solomon and Somerlot (1988), above n 12, 6-22.

### 3. Court Supervision of Case Progress

Judges have to manage cases actively from the time of filing and provide appropriate disposition plans for all cases. Judges should set strict timeframes, while at the same time providing sufficient time to encourage due attention to a case. Supervision of case progress helps judges identify the simple cases from the complex early on and thus guide their progress to an appropriate disposition.

### 4. Standards and Goals

After consultation with all participants, particularly with the lawyer in the case, the limitation of time in each step of the litigation is designated. In other words, judges not only establish overall timeframes, they also monitor the progress of cases. Some protraction of a case may be acceptable but the explicit management goal of timeframes is to ensure credibility for all scheduled events, any flexibility conceded in particular cases must have an effect on all the other cases in the list.

### 5. Monitoring and Information System

The system to monitor performance from commencement to disposition is crucial to effective CFM. Such a system can provide information on individual case progress to facilitate court management, but its more important function is as a managerial tool to monitor the pace of litigation. It functions as a calibrator to the established standards and goals, predictability and timeliness.

### 6. Scheduling for Trial Date Credibility

To achieve effective case flow management, scheduling of deadlines and trial dates is vital. There is no doubt that delays produce injustice; hence, credible scheduling is required to ensure a just outcome. Furthermore, short schedules should be implemented because they encourage practitioners to focus on a particular case. Timely scheduling in

the listing system is also crucial to ensure that events occur at a specific time, thus avoiding schedule conflicts.

## 7. Restrictive Adjournment Policy

To a certain degree, a restrictive adjournment policy should be applied to enhance the efficiency of case flow management. Judges should limit the adjournment of scheduled trials to encourage timely practitioner preparation.

### 2.1.3.2 Fundamental Elements

These common principles coincide with the fundamental elements of successful court case flow management programmes applied in the USA. Research on the pace of criminal and civil cases in American trial court jurisdictions, demonstrates that there is no one specific technique used to avoid delays. Successful courts have employed various methods. However, there are four basic features of effective court case flow management that can be found to achieve the goals of preventing and reducing delays. These are: (1) Judicial Leadership; (2) Timeframes; (3) Early Court Intervention and Continuous Court Control of Case Progress; and (4) Credible Trial Dates. Apart from these key features, the other common elements which assist in improving case flow management are: (1) Good Foundation for Case Flow Management in the Court; (2) Active Management; and (3) Proven Methods and Techniques.

#### *Key Features*

Four key features of successful case flow management programme are more prominent than others.

### 1. Judicial Leadership

Assessment of courts in the US has demonstrates that effective leadership is one of the elements critical to the adoption of a case flow management programme and overall court



management. The leader plays an important role in encouraging other participants in the programme by:

- i) expressing the benefits of changing to a new system
- ii) illustrating the benefits of the change to the people involved
- iii) insisting on commitment to operating the proposed programme, providing information on its progress and rewarding those who cooperate
- iv) creating harmony among key court members<sup>15</sup>

However, an interesting aspect of the relationship between the judge and the court administrator in this process is the improvement in administration derived from the teamwork between them that delivers expeditious, timely results.<sup>16</sup>

## 2. Timeframes

This is a measure to evaluate timely justice. Many key court organisations in the USA such as the American Bar Association, the Conference of Chief Justices and the Conference of State Court Administrators agree and encourage the implementation of these standards for speedy case flow management.<sup>17</sup>

The experience of American courts in successfully implementing a CFM programme is that time expectations reflect the achievement of goals in each stage of case processing. This guideline should be based on a standard speed in most cases of a certain type and reflect public expectation of what is regarded as reasonable time 'by setting goals that are feasible and reasonable, the court will have announced the policy that the procedural needs of the case and time used to exercise those procedural rights must be proportionate. Moreover, these standards permit the court to measure the extent to

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<sup>15</sup> David C. Steelman, *Improving Caseflow Management: A Brief Guide* (Draft, 2004) 8-9.

<sup>16</sup> Barry Mahoney, et al., *Planning and Conducting a Workshop on Reducing Delay in Felony Cases* (1991), 8-2 to 8-4.

<sup>17</sup> Steelman, above n 15, 9-12.

which the court docket is in a condition of delay and backlog.'<sup>18</sup> Two standards are commonly set, on overall timeframe and standards for intermediate events:

a) Overall timeframe

It is important to frame on overall timeframe for case flow management. This regulates the time in which general cases are to be finalised and dictates the percentage of cases that should be disposed of within a certain period of time. Common standards for the overall timeframes in the United State can be seen in Table 2.1 below.

Table 2.1: American Bar Association Timeframes<sup>19</sup>

b) Timeframes for intermediate case events

This is a timeframe for progress in each main type of case and its key intermediate stages, from initiation to finalisation, as well as for all post-disposition court work. This timeframe is to ensure that the overall timeframe can be reached.

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<sup>18</sup>American Bar Association, *Standards Relating to Trial Courts* (1992), [2.51] <<http://www.judiciary.state.nj.us/strategic/subapp2.htm>> at 8 March 2005.

<sup>19</sup> Steelman, above n 15, 11.

### 3. Early Court Intervention and Continuous Court Control of Case Progress

This element requires the court to be responsible for case movement from the time of initiation to ensure that the case is protected from undue delay. National research in the USA demonstrates that early court intervention is connected to faster civil case disposition.<sup>20</sup> Early court intervention includes tasks such as collecting all case information from filing, scheduling hearing and conference dates and issuing orders to settle cases without trial. The objective of this measure is to resolve the case as early as reasonably possible and to reduce the cost of litigation to both the court and the party. Continuous court control of case progress means the control of each step and the triggering of the next step. The control of case progress might extend beyond the case disposition to the processes post-judgment.

### 4. Credible Trial Dates

It is necessary for courts to set the first trial date and make it practical. All events should then occur according to an expected schedule. Trials that are commenced on the first date scheduled require all participants to prepare for trial and to decide whether a case will be resolved by trial or non-trial means. Credible trial dates promote earlier finalisation of cases with pleas or negotiated settlements. Four measures are required to ensure firm trial dates:

(a) maximising dispositions before setting specific trial dates

(b) realistic calendar setting levels

(c) continuance policy

(d) backup judge capacity—‘the availability of one or more judges to help colleagues facing unanticipated calendar problems.’<sup>21</sup>

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<sup>20</sup> John Goerdts, Chris Lomvardias, and Geoff Gallas, *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (1991) 55, cited in Steelman, above n 2, 3.

<sup>21</sup> Steelman, above n 15, 14.

### *Other Essential Elements*

The three other common elements that set up and maintain a steady effort in case management are: a good foundation for case flow management in the court; active management; and proven methods and techniques.<sup>22</sup>

#### 1. Good Foundation for Case Flow Management in the Court

In addition to judicial leadership a good foundation for case flow management in the court requires (a) judicial commitment to well-timed and cost-efficient justice; (b) judicial communication; and (c) the promotion of a learning environment.

##### a) Judicial commitment to well-timed and cost-efficient justice

Involvement and commitment are very important to the effectiveness of a case flow management programme. The most important involvement is from the judge; however, court staff commitment and support from members of other justice agencies outside the court are also important to the success of the programme.

##### b) Judicial communication

Good court communication is crucial to an enhanced case flow management programme. Communication amongst judges, communication between judges and court staff, judicial consultation with lawyers, and other major representatives of any court participants are all essential to the success or improvement of CFM. Good communication depends upon support from all related groups to ensure the success of the proposed system.

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<sup>22</sup> Ibid. 16-27.

### c) Promotion of a learning environment

Judicial education is a basis for maintaining the success of a case flow management improvement programme. Training for others, such as court staff, lawyers and other court participants is also important to promote better commitment to the success of the programme.

## 2. Active Management

An active effort to manage cases is related not only to the adoption of timeframes (one of the core features of a successful case flow management programme) but also to other case flow management goals and policies. In addition, monitoring performance by employing information systems and enforcing judicial accountability to ensure that public expectations are met are required to improve the case flow management programme.<sup>23</sup>

### a) Establishing other case flow management goals and policies

The adoption of other case flow management goals, apart from the timeframe goal, also assists the success of a programme. These policies relate directly to CFM and concern the size of a court's pending inventory and its continuance policy. Apart from this, the effects of court policies on accessibility to justice and maintaining equality, fairness and integrity are essential. These other goals include:

#### (i) backlog reduction and size of pending list

Goals should be set and clarified to reduce the pending list size and age of cases and to maintain an inventory of the level of compliance with that timeframes. Backlog is 'a case that has been pending longer than the time that the court has adopted as its

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<sup>23</sup> Steelman, above n 2, 79-85.

standard.<sup>24</sup> Thus, reduction of backlog can reduce undesirable numbers of cases in the inventory and thereby reduce the pending inventory size.

(ii) adjournment policy

This is important to assist cases to progress with more predictability and reliability. It also aids courts in meeting all standards and goals. Any adjournment request is granted only for good reason. Thus an adjournment policy should keep the adjournment rate to a minimum.

(iii) accessibility to justice

This means accessibility in terms of costs of access to the court's proceedings. Courts should ensure that costs '—money, time or the procedures that must be followed—are reasonable, fair and affordable.<sup>25</sup> Case management goals can be set to control costs of justice by the reduction of costs for litigants and the reduction of case-processing times for proceedings. In the USA, Alternative Dispute Resolution (ADR) mechanisms are regarded as a means to reduce time and costs for both litigants and the court.

(iv) maintaining equality, fairness and integrity

'Slow Justice is bad, but speedy injustice is not an admissible substitute.'<sup>26</sup> A case flow management improvement plan needs to be implemented to ensure equality, fairness, and integrity of court processes.

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<sup>24</sup> Ibid. 79.

<sup>25</sup> Bureau of Justice Assistance, *Planning Guide for Using the Trial Court Performance Standards and Measurement System* (1997), Standard 1.5, 59 <<http://www.ncjrs.org/pdffiles/161568.pdf>> at 8 March 2005.

<sup>26</sup> Maurice Rosenberg, 'Court Congestion Status, Causes, and Proposed Remedies,' in Harry W. Jones (ed.) *The Court the Public and the Law Explosion* (1965), cited in Marco Fabri and Philip M Langbroek, *Delay in Judicial Proceedings in Europe: A Preliminary Inquiry* (2003), 10 <<http://www.worldbank.org/publicsector/legal/FabriLangbroek.doc>> at 8 March 2005.

#### b) Monitoring performance

A court has to measure and monitor its performance to ensure that it meets the expectations enshrined in its standards and goals. The use of case flow management information is an important device in conducting court management. Valuable reports are produced from an automated case management information system in three areas: information on pending caseload, age of cases at disposition, and monthly annual aggregate data and reports on continuing cases.

#### c) Enforcing judicial accountability

Accountability of the court is an important feature in a successful case flow management programme. There are three aspects to this. First, as an answerable organisation, a court has to publicly account for its results. Secondly, internal accountability is a specific responsibility assigned to particular persons. In particular, this means that judges have to define their responsibilities for managing cases clearly. Non-judicial court staff also have clear roles and responsibilities in case processing. Finally, external accountability can be measured via the promulgation of a court's standards and goals. This is essential to promote public confidence through expeditious, fair and reliable court functioning.

### 3. Proven Methods and Techniques

Although courts may use a variety of approaches to implement their specific case flow management programmes, the Commission on Trial Court Performance Standards proposed that there are certain fundamental methods or techniques that successful courts have in common. Apart from setting a credible trial date, these techniques include differentiated case management (DCM), meaningful pre-trial court events and realistic pre-trial schedules, management of trials, and management of court events after initial disposition.

#### a) Differentiated case management

DCM is a technique whereby a court differentiates cases filed in terms of the different amount of attention needed from judges and lawyers. The simplest plan for DCM might operate in three groups:

- (i) quick processing of cases with the minimum need of court control
- (ii) contested issues cases requiring conference or court hearing but which are not difficult cases
- (iii) matters that need ongoing and comprehensive judicial intervention whether because of the size, complexity, case participants, or complicated legal issues.

Thus, group (i) would be an expedited track with a little or no judge intervention. Group (ii) would be a standard track for a standard case. Group (iii) would be a complex track for a complicated case. Courts have to set overall timeframes to match each individual case type.

#### b) Meaningful pre-trial court events and realistic pre-trial schedules

Meaningful court events are provided via court control. Judges have to supervise closely to assure the timely events of cases' progress. Courts have to schedule forthcoming events early enough to allow participants to complete their necessary preparation.

#### c) Management of trials

In the USA, trials occur in 5% or less of cases. While non-jury trials take less of a judges' time than jury trials, they take much more time than any non-trial court room event. Judge time is consumed mostly in the trial. Greater control of trial length thus creates more free time for judges and quicker case disposition.



d) Management of court events after initial disposition

There are some steps assisting judges in managing cases after judgment:

- (i) monitoring cases in post-disposition status
- (ii) exercising court control over the pace of post-disposition events
- (iii) managing the post-disposition link to other cases
- (iv) determining when all the court work is done.<sup>27</sup>

#### **2.1.4 Objectives and Performance Standards**

Maureen M. Solomon, a prominent expert in court management, proposed in her study that the fundamental objectives of case flow management are:

- 1) Reducing cost
- 2) Reducing delays
- 3) Making the timing of events more predictable
- 4) Making the timing of events timelier
- 5) Promoting equal treatment of all litigants
- 6) Enhancing the quality of the litigation process
- 7) Promoting public confidence.<sup>28</sup>

These objectives correspond to those identified in the report of the Commission on Trial Court Performance Standards. The Commission categorised the objectives (results) that

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<sup>27</sup> Steelman, above n 15, 27.

<sup>28</sup> Solomon and Somerlot (1988), above n 12, 5.

courts should set in five areas, with corresponding performance standards for achievement of the objectives. The five objectives and their performance standards are set out in Table 2.2.

Table 2.2: Objectives and Performance Standards<sup>29</sup>

### 2.1.5 Careful Planning and Implementation

Steelman concludes that the implementation of a case flow management improvement programme should be carried out in six steps as follows.<sup>30</sup>

Step 1: Establish priorities and readiness for change

- a) Designate a Steering Committee
- b) Plan from a Strategic Perspective
- c) Don't try to go beyond what your court is organisationally ready to do
- d) Involve key stakeholders and seek system-wide effectiveness
- e) From the beginning, build support for change.

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<sup>29</sup> Table - set out in Steelman, above n 2, xvi-xvii; Pamela Casey, *Defining Optimal Court Performance: The Trial Court Performance Standards* (1998) <[http://www.ncsconline.org/WC/Publications/Res\\_TCPS\\_DefiningOptCrtPerfTCSPub.pdf](http://www.ncsconline.org/WC/Publications/Res_TCPS_DefiningOptCrtPerfTCSPub.pdf)> at 15 October 2003.

<sup>30</sup> Steelman, above n 15, 28-43.

Step 2: Assess the current situation and possible alternative approaches in light of goals and objectives and best practices

- a) Conduct a case flow management review
- b) Analyse the pending inventory
- c) Find out how successful courts do it
- d) Weigh the costs and benefits of alternative approaches.

Step 3: Choose the best approach and plan for its implementation

- a) Choose the most desirable approach
- b) Pay attention to detail
- c) Make the case for the desired approach and prepare a plan for managing change
- d) Publish a written case flow management improvement plan
- e) Plan before it starts for the programme to be evaluated.

Step 4: Implement the new programme and make further improvements as needed

- a) Deal with backlog in the pre-programme pending inventory
- b) Manage new cases in keeping with the case flow management improvement plan
- c) Monitor implementation and make midcourse corrections
- d) Overcome resistance to change
- e) Evaluate implementation and refine case flow management operations based on evaluation results
- f) Institutionalise the improved case flow management operation
- g) Capitalise on success and make ongoing programme improvements.<sup>31</sup>

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<sup>31</sup> Ibid. 29.

### 2.1.6 The Use of Case Tracking Systems in Case Flow Management

According to Lane, CFM can be described as a monitoring system implemented in a court to control the movement of cases. As a goal-driven process, one of the fundamental elements of CFM is the use of an information system to monitor the progress of cases through a court. Computerisation and information technology (IT) have been introduced into courts to reduce the time taken to perform repetitive tasks.<sup>32</sup> They have been used to replace manual record keeping and to cope with increasing numbers of cases. The use of computer systems is multi-faceted. Computers can be used to transfer information between a court and other organisations more efficiently. Information can also be transferred more efficiently within the court through local area networks based on personal computers. Furthermore, computers may assist in the performance of specific tasks. As a result, they may also assist CFM by developing programmes to simulate the expected disposition of cases and to predict delay, given access to data on numbers of cases, judges and courtrooms.

The US Professional Development Advisory Committee of the National Association for Court Management (NACM) advised that CFM can be improved by applying technology— 'creating and maintaining records supporting court management of pre-trial, trial and post-dispositional events, conferences and hearings; monitoring case progress; flagging cases for staff and judge attention; and providing needed management information and statistics.'<sup>33</sup> The most important tool generally employed by any court is the automated case management information system, and the case tracking system (CTS) is its most critical part.

#### 2.1.6.1 Automated Case Management Information Systems and Other Court Technologies

A computerised case management information system should contain four modules: person, case, time, and budget and disbursement.<sup>34</sup> Of these four modules, the case-

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<sup>32</sup> Patricia M. Lane, *Court Management Information: A Discussion Paper* (1993), 17.

<sup>33</sup> National Association for Court Management, 'Introduction: What This Core Competency is and Why It is Important' in *Core Competency Curriculum Guidelines: Caseload Management* (2003) <<http://www.nacmnet.org/CCCG/Word/3CFM.doc>> at 8 March 2005.

<sup>34</sup> Steelman, above n 15, 98.

tracking module is the most valuable part. It improves the efficiency of a case flow management system. CFM as a monitoring system needs accurate and adequate information processed via a case tracking system. This tracking system relates to case history. It combines 'docketing or event processing, calendaring, scheduling, noticing, statistical and managerial reporting, and the financial aspects of a case into one process by eliminating repetitive procedures.'<sup>35</sup>

The traditional case tracking process was to collect data in a docket book or register of actions. It was used to provide information mainly in three associated fields: (1) case status and documents received, (2) a double check system, and (3) a quick review of case results. Accordingly, an automated case tracking system should function in at least these three basic areas. A good CTS should track all dates of events, both critical and inconsequential. It should also link to other related electronic files containing the description of events, provide free text capacity and contain files of additional items, such as the name of the judge or the court official who entered the event and so on. In future, CTS should be linked to an electronic document and image system. The tickler-reminder system should be employed in this module to remind a judge and other court officers about the next scheduled event or queued document. It is beneficial to reduce loss of files and to identify blockages in the case flow system.<sup>36</sup> Overall, a good automated CTS should collect, organise, process, store and distribute case information within the court and amongst external users. In an automated case tracking system, information is systematically compiled and run via computers and is generated to the users. The more effective a CTS is, the more accurate the core information delivered to the court will be. This in turn will enable information to be distributed through the court in a more timely manner at lower cost.

#### 2.1.6.2 The Case Tracking System and Its Relationship to Case Flow Management

The concept of CTS is that it is an automated case management system providing information that meets the needs of the court's CFM and the external users in managing

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<sup>35</sup>William E. Gladstone, *Case Management Systems: Executive Summary* (2003) < [http://www.ncsconline.org/WC/Events/KIS\\_CasSysExS.PDF](http://www.ncsconline.org/WC/Events/KIS_CasSysExS.PDF)> at 13 October 2003.

<sup>36</sup> Steelman, above n 2, 102-103.; James E. McMillan, *Case Management System in the USA* (1998), 3-8; National Center for State Courts, *Case Management Systems: Frequently Asked Questions* (2003) <[http://www.ncsconline.org/WC/FAQs/KIS\\_CasSysFAQ.pdf](http://www.ncsconline.org/WC/FAQs/KIS_CasSysFAQ.pdf)> at 13 October 2003.

and tracking their cases. It is an important tool for judges to use to monitor and manage cases in their dockets. A good case flow management system needs this case tracking tool although such a tool requires continuous adjustment for the best fit to the case management system. Inevitably, a good CTS assists effective case flow management in tracking all events, reducing backlog and delay and aiding active judicial management throughout a case. Thus, the development of a CTS is invaluable for the CFM in obtaining information which is important to managing and tracking case events.

## 2.2 Thai Inquisitorial Perspective

In Thailand, the *ACP Act* and a Rule regulate the Administrative Court's proceedings and its management systems. Examination of these laws provides an understanding of case management structure and the approach to it. In this section, I will elucidate the case management system and its tool, the Court's the case tracking system in three core themes: definition, historical development and the relationship between the Court's CFM and its CTS. The Court is currently in the process of implementing new CFM and CTS systems. I will analyse the similarities and differences between the two systems, the old (Administrative Case Administration System, ACAS) and the new (Administrative Case System Programme, ACSP). Such an analysis shows the development of the case management system and case tracking systems of the Court to set the scene for evaluation of the two systems.

The CFM of the Administrative Court is the system that promotes judicial management and monitoring over the progress of an administrative case, with the assistance of case officials. Such managerial and monitoring roles of judges in critical events of administrative case proceedings have been prescribed in two fundamental sources: the *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999) (ACP Act)* and the Rule of the General Assembly of Judges on the Supreme Administrative Court of Administrative Court Procedure B.E. 2543 (2000), summarised as the diagram of the process of administrative cases in the Administrative Courts of First Instance at Appendix D.

To improve the efficiency of the CFM of the Court, a case tracking system was introduced as a tool to provide better management of information to monitor case progress of the Court. It has been developed step by step to meet the needs of its users,

judges in particular. A new, sophisticated CTS has been functioning since 9 March 2004.<sup>37</sup> The Central Administrative Court and the Supreme Administrative Court were the first courts to implement the new CTS, followed by the seven regional administrative courts which then implemented it one by one.

### 2.2.1 Definition

As examined earlier in this chapter, the term 'Case Flow Management' is accepted as the supervised process of time and events to move cases from filing to disposition. Based on this meaning, the case flow management of the Administrative Court is the managerial and monitoring roles of a judge, especially a case judge, with the assistance of case officials. They cooperate in managing the progress of their cases in an expeditious manner. In this case, the managerial role of the judge is unique because his/her role is not completely dependent on each judge or court manager but is incorporated into the management system between judges and their case officials.

### 2.2.2 Historical Development

The study of the historical development of the CFM and CTS of the Administrative Courts is fundamental to gain an understanding of the current characteristics and functioning and to project the future potential of the two systems to serve the overall court management.

#### 2.2.2.1 Case Flow Management

The origins of the system of managing cases can be traced back to the establishment of the Administrative Court on 9 March 2001. The CFM of the Court was designed by an

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<sup>37</sup> President of the Supreme Administrative Court, *Order of the President of the Supreme Administrative Court 5/2547 on 9 March 2547 (2004) 'The Inputting of Data in the Program of the administrative Case System of the Courts of First Instance'* (2004) [trans from: คำสั่งประธาน ศาลปกครองสูงสุด ที่ ๕/๒๕๔๗ ลงวันที่ ๙ มีนาคม ๒๕๔๗ เรื่อง การบันทึกข้อมูลในโปรแกรมระบบงานคดีปกครองของศาลปกครองชั้นต้น]; President of the Supreme Administrative Court, *Order of the President of the Supreme Administrative Court 6/2547 on 9 March 2547 (2004) 'The Inputting of Data in the Program of the Administrative Case*

ad hoc panel in accordance with the *ACP Act*. While employing the CFM system as originally designed, the Court has tailored it by issuing rules such as the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure,<sup>38</sup> the Rule of the General Assembly of Judges of the Supreme Administrative Court on a Division of Case Allocation, Transfer of a Case, Performance of Duties of Judges in an Administrative Case, an Objection of an Administrative Court's Judge, Performance of Duties of a Case official, and an Authorisation to Execute an Administrative Case,<sup>39</sup> and the Rule of the General Assembly of Judges of the Supreme Administrative Court on the Trial and Adjudication Procedure for Administrative Cases Transferring from a Complaint under the *Council of State Act*.<sup>40</sup> These Acts and court rules govern the CFM. During the development and implementation of the CFM system, many training courses and seminars were provided throughout the Court to introduce it to the judges and other court officials and to educate them in its use.<sup>41</sup>

#### 2.2.2.2 Case Tracking System

Like the Court's CFM, a system for tracking case progress has been operating since the opening of the Court. It was designed in parallel to the Court's CFM. The basic CTS was designed for the initial, temporary stage of the Court. As the numbers of cases and officials increased, the Office of the Administrative Courts (OAC) started a project to plan the case tracking system's development to meet the needs of all concerned. Thus

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<sup>38</sup> President of the Supreme Administrative Court, *Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E. 2543 (2000)*, (Office of the Administrative Courts trans, 2000) [trans of: ระเบียบของที่ประชุมใหญ่ตุลาการในศาลปกครองสูงสุดว่าด้วยวิธีพิจารณาคดีปกครอง พ.ศ. ๒๕๔๓].

<sup>39</sup> President of the Supreme Administrative Court, *Rule of the General Assembly of Judges of the Supreme Administrative Court on a Division of Case Allocation, Transfer of a Case, Performance of Duties of Judges in an Administrative Case, an Objection of an Administrative Court's Judge, Performance of Duties of a Case official, and an Authorisation to Execute an Administrative Case B.E. 2544 (2001)* (2001) [trans from: ระเบียบของที่ประชุมใหญ่ตุลาการในศาลปกครองสูงสุดว่าด้วยองค์คณะการจ่ายสำนวน การโอนคดี การปฏิบัติหน้าที่ของตุลาการในคดีปกครอง การคัดค้าน ตลาการศาลปกครอง การปฏิบัติหน้าที่ของ พนักงานคดีปกครอง และการมอบอำนาจให้ดำเนินคดีปกครองแทน พ.ศ. ๒๕๔๔].

<sup>40</sup> President of the Supreme Administrative Court, *Rule of the General Assembly of Judges of the Supreme Administrative Court on the Trial and Adjudication Procedure for Administrative Cases Transferring from a Complaint under the Council of State Act B.E. 2544 (2001)* (2001) [trans from: ระเบียบของที่ประชุมใหญ่ตุลาการในศาลปกครองสูงสุดว่าด้วยการดำเนินกระบวนการพิจารณาและพิพากษาคดีปกครองที่โอนมาจากเรื่องร้องทุกข์ตามกฎหมายว่าด้วยคณะกรรมการกฤษฎีกา พ.ศ. ๒๕๔๔].

<sup>41</sup> Interview with Mr C, high-ranking and experienced court official, Office of the Administrative Courts (Face to face interview, 18 February 2004).



the CTS has been modified periodically to suit the Court and its CFM. At the start of the project an ad hoc panel composed of four high-ranking court officials under the supervision of the First Vice President of the Supreme Administrative Court was assigned the task of planning the CFM, whilst a single IT official of the OAC, a programmer and system analyst, invented a simple case tracking system, the Administrative Case Administration System (ACAS), which was mainly employed in tracking the status of individual cases. This means that at the outset the CTS was not designed to evaluate performance of judges but was fashioned to track the critical events of a case life.<sup>42</sup> It was a tool to assist the Court overall in its managerial roles.

The development of the CTS has closely reflected the development of the CFM and the demands placed on the administrative judges. While legislation has governed the CFM, the CTS has been fashioned at the instigation of the President or the Chief Justices. For these reasons, the modification of the CTS is more simple and pervasive than that of the CFM. Some changes in the CTS have emerged from the needs of the executive judges and/or executive court officials in particular issues. Indeed one of the most important reasons for the building and modifying of a new CTS emerged from the needs of the executive judges, particularly the President and the Chief Justice of the Central Administrative Court, for tracking the events in each case in the Central Administrative Court.<sup>43</sup> After a while it had become clear that ACAS was not able to meet the needs of the executive judges in tracking and controlling productivity, or the enforcement of judgments and orders.

The other two significant reasons for building the new CTS relate to the issue of the systems' ability to meet the needs of the Court and Court policy. Firstly, there were some deficiencies in the original CTS in tracking case events. Some users, especially case judges and their case officials, claimed that the original CTS could not provide up-to-date status of cases. Some argued that the original CTS provided nothing beyond an

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<sup>42</sup> Interview with Ms P1, high-ranking and computer technical official: Bureau of Information Technology, Office of the Administrative Courts (Face to face interview, 20 February 2004).

<sup>43</sup> Interview with Chief Justice of the Central Administrative Court of Thailand, Central Administrative Court (Face to face interview, 21 February 2004); Interview with Mr C, above n 41.

additional obligation on the users. Furthermore, the huge number of administrative cases filed in the Courts required a more sophisticated approach to tracking cases.<sup>44</sup>

Secondly, the process of development of the CTS had been intended since the introduction of the tracking system to the Court. The Administrative Courts are the newest court system in Thailand so the administrative case proceedings themselves are not stable, and the CTS is actually a complex, advanced system. That is to say that the processes of adjustment and balancing of case tracking systems in the Court were understood correctly from the outset as being on-going. Phase One of a new system, the Administrative Case System Programme (ACSP) was developed by a private contractor (PPC & Smart Office Ltd.)<sup>45</sup> and implemented throughout the Administrative Courts on 9 March 2004.<sup>46</sup> At the same time, the original case tracking system, ACAS, was still used in the Courts, creating a dual system.

The ACSP has two main components—a case administration system and a case tracking system. The case administration system is employed in the Examining Plaints Division, the Listing and Making Content Division, and the Issuing Summons Division. It is beneficial to the Case Administration Division because it helps in the administration, collection and control of case files. The case tracking system detects the progress or stage of each case while it is in progress through the Court, that is, not finalised. The usefulness of the CTS in the administrative case area is to alert the executive judges and executive court officials to the progress of cases for which they are responsible. The system reflects the procedure according to the administrative case proceedings, and shows the current progress and status of the case. Is this a repeat of second last sentence? Phase Two of the CTS is to facilitate the work of the Courts via a support system, the Administrative Case Support System Programme, ACSSP. This programme is in development and should be running from January 2005. The support system programme consists of a search engine which enables search operations in five areas: judgments and orders of the Courts; abstracts of the judgments and orders of the Courts; verdicts or decisions of other judicial organisations; laws and regulations; manuals and

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<sup>44</sup> These comments came from the judges' and the case officials' questionnaires.

<sup>45</sup> Interview with Ms K, high-ranking and executive court official, Office of the Administrative Courts (Face to face interview, 18 February 2004).

<sup>46</sup> President of the Supreme Administrative Court, Order 5/2547, above n 37; President of the Supreme Administrative Court, Order 6/2547, above n 37.

academic reports/papers. The progress of Phase Two can be divided into two stages: testing and development. At present, there are three features of the testing stage: judgments and orders of the Courts, abstracts of the judgments and orders of the Courts, and manuals and academic reports/papers. Users can access these databases although they are not yet fully functioning. The other two areas, verdicts or decisions of other judicial organisations and laws and regulations, are still at an early development stage.

The OAC operates other systems that are important to the Courts and to its own functioning as well. These are the digital archive, automated library and personnel system. These systems which have been developed, or are in development, are designed to assist the Court in solving disputes and providing fair and expeditious judgments/orders. From this standpoint, the OAC acts as a support unit for the Court. This support includes the plan to develop all systems to improve the Court's work which reflects the vision and ambition of the executive court officials in increasing the efficiency of the OAC.

In brief, there are three main reasons for the replacement of the original CTS. The first pressure is the increasing demand for information in tracking cases by the system's users, particularly the President and the Chief Justices. Secondly, the deficiencies in the original CTS in providing a complete case history and current status of a case create the need for change. The last reason is the Phase One policy to develop the Administrative Case System Programme as a case tracking system and a case administration system. For these reasons, the Administrative Court, at present, has dual operation of the original ACAS and new ACSP, which is necessary to guarantee the completeness of the transfer of case data.

### **2.2.3 Similarities and Differences between the Previous and the New Systems**

The investigation of similarities and differences in the Court's case management system is much more difficult than to investigate the same things in relation to the CTS. As examined earlier in this chapter, the CFM of the Court has evolved not by a change of system but by gradual adjustments, so it is not easy succinctly to compare and contrast the initial CFM and the current system. This is obviously in contrast with the Court's case tracking tool which was developed in two different periods of time. Another difference between CFM and CTS is that the different groups of people developed the

two case tracking programmes while the CFM has been developed continuously by the executive court officers.

There has been no dramatic change in the characteristics of the CFM. Its important functions can be identified in the Directive on the Performance and Assessment of Work of the Judges of the Courts of First Instance, the Directive on the Performance of a Case Official's Functions in Assisting the Judges of the Administrative Courts of First Instance, and the Memoranda on Speeding Up Policy. The following section examines those directives and memoranda accommodating the case management system to the judges' managerial roles and to meet the needs of the executive judges. The tracking system is elucidated afterwards.

#### 2.2.3.1 Case Flow Management

In the CFM, the newest practical policy of the judges of the Courts of First Instance, including the Central Administrative Court, is the Directive on Performance and Assessment issued by the President of the Supreme Administrative Court in 2003.<sup>47</sup> The essential purpose of the Directive is to promote efficiency in administrative case proceedings by ensuring that judges perform their duties without delay. Timeframes for judges have been set at every step of the process. Reports on the accomplishment of the number of tasks and the timeframes must be submitted by each judge to their Chief Justices. These reports are significant in the promotion process for judges.

The Judges' Performance Directive specifies in detail the timeframe for each step of the judges' operations. They are not timeframes for the judge to impose on the parties to secure compliance with his/her orders, but rather they impose obligations on judges to function without delay. By controlling the implementation of judicial work, the disposal rate should be improved. This Directive inevitably affects the case officials assisting case judges and conclusive judges. A second Directive on the performance of a case official's functions in assisting these judges was issued by the Secretary-General of the OAC

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<sup>47</sup> President of the Supreme Administrative Court, *Directive for the Performance and Assessment of Works of the Judges of the Courts of First Instance (12 June 2003)* (2003) [trans from: แนวทางการปฏิบัติงานและการประเมินผลงานของตุลาการศาลปกครองชั้นต้น ลงวันที่ ๑๒ มิถุนายน ๒๕๔๖].

shortly after.<sup>48</sup> The timeframes for operations of the case officials were set in parallel to those of the judges. The core concept of the second Directive was, again, that the timeframes were designed to assist judges to execute their work without delay. It is likely that the first Directive, setting timeframes for judges, gave rise to the second, setting the timeframes for case officials. To assist in the process of reform, a number of memoranda were issued to carry out the Directives of the President, including an urgent policy contained in memoranda issued in January and February 2004 by the Chief Justice of the Central Administrative Court on Examining and Speeding Up the Cases of Each Judge.<sup>49</sup> The Chief Justice's policy aimed to expedite administrative cases. In the interests of fairness, the Chief Justice focused his policy on the old cases. This was reasonable in terms of the filing sequence of cases; that is, that cases filed earlier should be taken into account before those filed later.

In general, the policy pursued by the CFM of the Court does not change, individual judges are required to begin to supervise and monitor the entire progress of the case early, with cooperation of the case officials. Some changes emerging from the introduction of the Directive on Performance and Assessment and other memoranda are the increased managerial role of the executive judges, particularly the Chief Justices and the Presidents, in controlling the pace of the cases of those individual judges, both case judges and conclusive judges of the Courts of First Instance. In other words, responsibility for CFM has been shifted from the individual judges who supervised the pace of cases and has been placed more firmly under the control of the executive judges.

Three noteworthy issues emerge from the Directives on Performance and Assessment—Judicial Independence, Timeframes, and Judges' Performance and Assessment. Because the Directives give guidance on an approximate timeframe for each case event and dictate the approximate number of judges' tasks in producing judgments, and orders (or memoranda in the case of case judges, and statements in the case of conclusive judges),

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<sup>48</sup> Secretary General of the Office of the Administrative Courts, *Directive for the Performance of a Case Official's Functions in Assisting the Administrative Judges of the Courts of First Instance (30 June 2003)* (2003) [trans from: แนวทางการปฏิบัติงานของพนักงานคดีปกครองปฏิบัติหน้าที่ช่วยตุลาการศาลปกครองชั้นต้น ลงวันที่ ๓๐ มิถุนายน ๒๕๔๖].

<sup>49</sup> Chief Justice of the Central Administrative Court, *Memorandum of 9 January 2004 'Checking and Speeding Up the Cases in Your Docket'* (2004) [trans from: บันทึกข้อความ ที่ ศป ๐๐๐๓.๒/ว ๔ ลงวันที่ ๙ มกราคม ๒๕๔๗ เรื่อง ขอให้ตรวจสอบและเร่งรัดคดีที่อยู่ในความรับผิดชอบ].

judges of the Administrative Court now seem to have less judicial independence in their managerial roles. Furthermore, the approximate timeframe for each event and the approximate number of judges' tasks are used as benchmarks to assess judges' performance. The practicability of the standard is questionable (see discussion of judicial independence in Chapter 4, 4.5.2.1 p. 141). The timeframes are seen as measures imposing obligations on judges in carrying out their duties, rather than timeframes for judges to apply in monitoring cases. Although the setting of timeframes is one of the most significant methods in court-supervised case flow management, generally courts do not create the timeframes for case disposition but instead they develop timeframes for judges to implement at each stage of the individual cases (see discussion of timeframes in Chapter 4, 4.5.2.2, p. 144).

#### 2.2.3.2 Case Tracking System

The new case tracking system was developed in response to increasing pressure from increased user demanding to gain more details of each event in a case, as well as in response to the administrative case system policy. The difference between the new ACSP and the original system is the sophistication of the new system. The fundamental functions of the original system continue in the new ACSP. A study of the case tracking system of the Court shows the following key similarities and differences between the original CTS and the ACSP:

Similarities — 1) Critical events can be tracked

2) Various reports can be served

3) Historical data about a filed case are kept and can be tracked.

Differences — The following are in the new system, but were not in the old system:

1) Security system

2) Barcode system

3) Central database

- 4) Relational database
- 5) Tickler-reminder system
- 6) Case movement record sheet
- 7) Data inputting function
- 8) More sophisticated CTS with better functions such as tracking events, producing multi-faceted reports, and collecting and retrieving case history.<sup>50</sup>

Because some parts of the new system were developed from the original system, the similarities are generally about the functionality of assisting judges to manage cases in line with critical case events. The significant outcomes in the lives of cases and judge workloads are constant and remain the same in both systems. The types of records generated in general are no different, however the new system can automatically produce reports as required and in various styles, and it can produce case movement record sheets while the original system could only generate the current event.

The new case tracking system differs from the original in terms of the security, barcode, central and relational database and the tickler-reminder systems. Security is maintained using passwords, which ensure that only authorised persons can input and retrieve data. The individually assigned passwords allow access only to specified areas of the system. This means that only persons who have direct responsibility at any stage of a case can input what they have done at that stage. They can also retrieve data related to their responsibility to a case. Hence, the Chief Justice of each Administrative Court of First Instance can retrieve data of all cases in their court's jurisdiction and the President of the Supreme Administrative Court can retrieve data of all administrative cases filed. A related area of operation is the process of data input to the CTS.<sup>51</sup> In the original system, there was a single unit called 'case file administration section' for inputting information on

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<sup>50</sup> Interview with Mr A, high-ranking court official: Bureau of Information Technology, Office of the Administrative Courts (Face to face interview, 20 February 2004); Interview with Ms P1, above n 42.

<sup>51</sup> President of the Supreme Administrative Court, Order 5/2547, above n 37; President of the Supreme Administrative Court, Order 6/2547, above n 37.

the movement of a case. The new CTS requires the participation of every person directly related to each stage of a case. This means that the officer (including a judge) who takes an action in any stage of a case life has to input what he/she has done into the computer. The new process ensures that a case life is updated with every movement that occurs.

There are other useful additions in the ACSP. The implementation of the barcode system has benefits in tracking the movement of a case file and also of library books. The central database assists users to check whether cases have been sent to the correct court. The relational database was established in the new CTS to use data of a filed case in preparing the summons. Another function of the CTS, and perhaps its most useful, is the tickler-reminder system. This is a significant aid to individual judges in the successful management of their cases. It operates under the Directive on Performance and Assessment and can be employed effectively by the Chief Justice to speed up all administrative cases in the Court.

#### **2.2.4 Relationship between the CFM and the CTS**

As an instrument in the judges' managerial role, the CTS has been operating in the Court since it opened. The close relationship between the CFM and CTS can be seen clearly from their development, discussed earlier in respect to the development of the CTS, (see 2.2.2.2, p. 42, Case Tracking System). Its subsequent development has been designed to meet the needs of the Court's CFM. A good example of the close relationship between the CTS and the CFM of the Court is the tickler-reminder system of the CTS. This system was designed to assist the executive judges, particularly the Chief Justice, in controlling and monitoring the Administrative judges' work against the timeframes set in the Directive on Performance and Assessment. It is clear that there has been a parallel development of the CFM and the CTS of the Court to promote the court's monitoring and managerial roles.



## 2.3 Australian Adversarial Perspective

In this section, I study the current case flow management system of the Federal Court of Australia, the 'Individual Docket System—IDS', and the use of 'CASETRACK', a new automated case tracking system. I also look at the transition from 'FEDCAMS', an earlier case tracking system to the new one. Finally, I look at the relationship between the two systems in the Court.

The Federal Court implemented an innovative CFM approach called the Individual Docket System (IDS) in 1997. This system was adopted as the basis of the Court's listing and case management system throughout Australia. Under this system, each case is randomly allocated to an individual judge who actively intervenes in managing it from commencement to final disposition. The system facilitates the efficient management of all the Court's cases and also allows for cases to be managed in specialist categories. This system is intended to provide considerable benefits for litigants and lawyers. It is simpler and more predictable than the previous system.<sup>52</sup> A direct result of the introduction of IDS was the new automated case tracking system which supports judges in their new managerial role.

### 2.3.1 Definition

The Federal Court introduced the IDS to reduce and eliminate backlogs of cases and to reduce the time between the commencement of litigation and the hearing of cases.<sup>53</sup> Thus, the definition of IDS is a listing and case management system that requires early judicial control once a case is filed. After filing the case is allocated randomly to a judge who is then answerable for supervising it until finalisation.

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<sup>52</sup> Federal Court of Australia, Case Management Approach: The Individual Docket System (unpublished document), a document related to interview with John Mathieson, District Registrar, Federal Court of Australia (Face to face interview, 7 October 2003).

<sup>53</sup> There are three systems of case flow management: the central docket system, the individual docket system and the hybrid system. In the central docket system, a court manager allocates a case for hearing when all interlocutory steps are concluded. In the individual docket system, all cases are allocated after initiation within a fair allocation system. The hybrid system involves pre-trial stages being controlled by a single judge but when desired, the central allocation may be employed for the most efficient use of judicial time. See Graham Hill, Case Management- International Tax Cases (unpublished document), Federal Court of Australia, June 2003.

### 2.3.2 Historical Development

To grasp the characteristics of the IDS and its tool, CASETRACK, the historical development of both systems is examined below.

#### 2.3.2.1 Case Flow Management (Individual Docket System)

Due to the identified need to review practice and procedure in the Federal Court in 1995, a Practice and Procedure Committee was set up to make recommendations for change. In the middle of 1996, the Court adopted the recommendations of Maureen Solomon, especially those for a case management system in which judges would be allocated cases at their commencement and manage them until final disposition. It was at this point that an Individual Docket System was introduced to the Court.<sup>54</sup>

At the beginning of 1997, the master calendar system was replaced by the IDS as a pilot scheme in the Melbourne Registry. The allocation of cases was on a random numerical basis. The new system was established in the NSW Registry in September 1997 and in other registries of the Court in 1997 and early 1998.<sup>55</sup>

In developing the Individual Docket System and other procedural reforms, the Court identified key case management events and proposed timeframes for each event. Thus the timeline for the Individual Case Management System was accepted into the IDS. Besides this, the use of alternative dispute resolution processes was encouraged and facilitated wherever possible. The change in case flow management of the Court can therefore be seen to be a part of a process of continuing procedural reform.

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<sup>54</sup> Caroline Sage and Ted Wright with Carolyn Morris, *Case Management Reform: A Study of the Federal Court's Individual Docket System* (2002), 3.

<sup>55</sup> *Ibid.* 9.

### 2.3.2.2 Case Tracking System

The Federal Court currently uses CASETRACK, an automated case tracking system, which replaces the previous system, FEDCAMS. The history of this transformation can be looked at in two key areas: the introduction of the IDS and the shortcomings of FEDCAMS. The IDS, the new case flow management of the Court, requires early intervention by judges controlling their individual dockets. They need a tracking tool that supports this new managerial role. FEDCAMS was not considered capable of controlling and tracking cases.

In December 1995, external consultants identified the need for a new case tracking system in an IT Strategic Plan. Then, an eCourt strategy was developed to move the Court closer to its aims: to be an innovative, world-class, superior court.<sup>56</sup> CASETRACK plays a crucial role in the operation of the eCourt system.

Following the preparation of the IT Strategic Plan in 1995, in 1996-1997 consultants researched the case tracking systems available, both in Australia and overseas (particularly in the USA), and examined the potential cost of a new system. In 1997-1998 the Court commenced preliminary identification of its needs under the direction of its IT Committee and then developed detailed requirements for a new tracking system. Between March and June 1998, the Court evaluated its needs in terms of either a whole new system or as a development of the existing system. The Court openly invited court case management system providers to respond. Nineteen contributors responded and six tenders were received. However, while at that point the Court accepted a recommendation made by external consultants that none of the tenders should be accepted, it subsequently decided to sign a contract with Oracle Corporation Australia to develop its new CTS on 22 October 1999. The implementation of the new system, CASETRACK, started at the beginning of 2004.<sup>57</sup>

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<sup>56</sup> Federal Court of Australia, *eCourt* (2003) <[www.fedcourt.gov.au/ecourt/ecourt\\_background.html](http://www.fedcourt.gov.au/ecourt/ecourt_background.html)> at 13 October 2003.

<sup>57</sup> Email on 'Overview of CMS Project', from David Beling, Project Team Manager, to Natacha Vsindilok, 7 October 2003.

### **2.3.3 Similarities and Differences between the Previous and the New Systems**

A review of the literature about the Individual Docket System and the case tracking systems (FEDCAMS and CASETRACK) of the Federal Court shows that there are similarities with and differences between the previous and the new case flow management systems, and between the previous and the current case tracking systems. These similarities and differences can be analysed as follows.

#### **2.3.3.1 Case Flow Management**

The improvements in the IDS over the previous system can be divided into three areas.

1) Case Allocation: In the IDS, cases are randomly allocated to an individual judge after initiation and this judge controls his/her cases until final disposition. This replaces the former master calendar system. Specialist case allocation in the IDS is employed and replaces the former specialist lists.

2) Timeframe: In the IDS, the timeline of a general case is set out as an operating principle. It also provides a timeframe for each crucial event. For example, the model of the case management process provides for four interlocutory hearings occurring along the 18 months' timeframe (see pp. 57-58 and Appendix E). This is the new timeframe for the implementation of the IDS.

3) In this new system, judges play a very active role in managing and controlling their individual dockets. Such active management promotes the use of alternative dispute resolution after identification of suitable cases. Although the Federal Court is in an adversarial system in which the parties generally conduct the proceedings and have the primary responsibility for defining the issues in dispute as well as for the investigation of the case, the IDS requires judges to carry out early intervention thus giving them control of a case's progress which would not normally be the case. Thus the system creates a new administrative function for judges to ensure the timely disposition of their cases.

It is interesting to note that in the study of the Federal Court's Individual Docket System led by Caroline Sage, judges are found to benefit from their managerial roles in the IDS and that they do independently manage their cases. Nevertheless in practice, although they tend to manage their cases in line with a series of directions hearings, the vast majority of judges appeared not to follow any prescribed timeframe, either overall or at any particular stage in their management of cases.<sup>58</sup> The case flow management system (IDS) of the Federal Court provides a guideline for more active management by judges; it is not a measure to supervise judges in their management as in the Administrative Court of Thailand.

#### 2.3.3.2 Case Tracking System

Review of the literature on the Federal Court's case tracking approach reveals that there were some key deficiencies in FEDCAMs that are addressed by CASETRACK. The basic deficiencies are as follows:

1) FEDCAMs was not a user-friendly system because it was not in Windows-based software. (The shift to the Windows environment and the Internet during the 1990s was seen as unsuitable for the mainframe FEDCAMs.)

2) FEDCAMs was not a functional system for judges to manage their individual cases in the way the new IDS permits. For example:

- a) It did not facilitate the methods for maintaining each case history.
- b) It did not support accessibility to updated reports.
- c) It did not provide a convenient means for judges to arrange their time in each case, particularly the ability to arrange hearings via an electronic diary.
- d) It did not allow judges to enter their own notes.<sup>59</sup>

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<sup>58</sup> Sage, above n 54, 85-100.

<sup>59</sup> Email on 'Overview of CMS Project', above n 57.

The introduction of CASETRACK was chiefly to correct the deficiencies of the previous system. The new system makes it easy for users to track cases and for IT officers to maintain and support it. This new system's main function is to create a record of each case in various events, including listings, details of documents filed, orders made, details of parties related to the case and their roles. It also generates multi-faceted outcomes such as producing documents and recording details of documents filed as well as, providing operational and management reporting.<sup>60</sup>

### **2.3.4 Relationship between the CFM and the CTS**

There is a very close relationship between the CFM and the CTS of the Federal Court. A clear example is the change from FEDCAMs to CASETRACK. As discussed in 2.3.3.2, p. 52, one of the most important reasons for the change was the adoption of IDS in the Federal Court. As a tool for the promotion of a new managerial role for the Federal Court's judges, CASETRACK was designed to facilitate the administration of cases in a judge's docket using the IDS. This new system provides benefits including producing reports and recording various Court data. It can facilitate monitoring of case events to comply with the standards set which ensure timely disposition.

### **2.3.5 Principles of the Federal Court's CFM**

The principles of the CFM of the Court have not been examined in any literature, but they can be extracted from the characteristics of the Court's CFM (IDS) and its case management policies, as follows:

#### **2.3.5.1 Characteristics of IDS**

The IDS was adopted in the Federal Court to promote fair, orderly and prompt resolution of disputes and to ensure greater transparency in the court's processes. The core characteristics of the IDS can be seen from its key elements:

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<sup>60</sup> Interview with David Beling, Project Team Manager (Email interview, 3 December 2003).

1. The allocation system in which cases are randomly distributed to the docket of the next judge in rotation or to a specialist panel from commencement.
2. One judge manages his/her cases from filing to disposition.
3. A timeframe for case progress requires 85% of cases to be finalised within 18 months from the date of filing.
4. A model timeframe in which each key event is to occur, encouraging minimum appearances.
5. An active role for judges in managing their cases, including monitoring of parties, compliance with directions and maintaining contact with parties regarding the progress of a case.
6. Earlier identification of cases suitable for alternative (assisted) dispute resolution.<sup>61</sup>

The Court has developed and published a model of the case management process in order to guide the management of cases under the IDS. In this model, four interlocutory hearings (key events) occur along the 18 months timeframe:

1. Directions Hearing (maximum 2 months from filing)—early assessment of cases. It could be decided that cases should transfer to other courts or the Court could make directions to prepare the case for a Case Management Conference.
2. Case Management Conference (maximum 4 months from filing)—Alternative Dispute Resolution, settlement, trial date, and further directions may occur in this event. The review of compliance with directions made at the Direction Hearing may also occur at this stage.
3. Evaluation Conference (maximum 14 months from filing)—this focuses on disposition without trial, arranging a mediation conference if desirable, evaluating the

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<sup>61</sup>Federal Court of Australia, *Annual Report 1997-1998* (2003), 36-37 <<http://www.fedcourt.gov.au/aboutct/ar1997.html>> at 14 October 2003; Federal Court of Australia, *Annual Report 2002-2003* (2003), 18 <<http://www.fedcourt.gov.au/aboutct/ar2002.html>> at 13 October 2003.

state of case preparation including compliance with directions given at the Case Management Conference, encouraging disposition of the case or allocating a trial date.

4. Trial Management Conference (16 months from filing)—this is to establish the ground rules for the conduct of the trial.

Note that the 18-month timeframe is counted from filing to disposition; see the diagram of timeframes of the Federal Court.<sup>62</sup> Other pre-trial hearings and conferences are to be held as required. The timing of each key event is set to achieve the Court's timeframe, having regard to the expected state of case preparation.<sup>63</sup> The performance of the Federal Court is also measured against its goal that 85% of cases (excluding Native Title matters) are to be finalised within 18 months from commencement.

Along with the IDS, Assisted (or Alternative) Dispute Resolution (ADR)<sup>64</sup> was introduced in mid-1996. According to the *Federal Court of Australia Act, 1996* Section 53A, judges can order parties to participate in ADR in order to promote earlier settlement of cases.<sup>65</sup> For this reason ADR is utilised as part of the Federal Court's case management. The IDS aims to speedily dispose cases as its stated time goal benefits from the use of ADR. Matters lodged in the Court must be supervised early in order to identify the appropriate cases for ADR. ADR is thus mainly used as a tool in reducing the volume of the caseload and assisting to narrow and clarify issues in settling cases, as well as promoting the speedy and efficient disposition of a case.<sup>66</sup> ADR in the Federal Court covers mediation, arbitration,

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<sup>62</sup> See Appendix E: Federal Court of Australia: A Typical Timeframe Process.

<sup>63</sup> Federal Court of Australia, Case Management Approach: The Individual Docket System, above n 52.

<sup>64</sup> The Federal Court uses the term 'Assisted Dispute Resolution' rather than 'Alternative Dispute Resolution'. This is because the concept of ADR is to resolve a dispute 'in its own right not as an alternative to some other procedure'. Disputes are resolved based on the agreement of the parties, not the judge's decision. A mediator facilitates the parties to reach the resolution by themselves and does not make the decision on the case. See details in Laurence Street, *ADR a Generic, Holistic Concept* (2002) <[http://www.cedr.co.uk/index.php?location=/library/articles/adr\\_generic\\_holistic.htm](http://www.cedr.co.uk/index.php?location=/library/articles/adr_generic_holistic.htm)> at 15 March 2005.

<sup>65</sup> Sage, above n 54, 11-12.

<sup>66</sup> The Federal Court began a pilot project on an Assisted Dispute Resolution programme (or court-annexed system) in 1987, based on the mediation of the dispute by in-house mediators (registrars). The pilot programme was very successful and the results were well accepted throughout the Court. See details on the development of the ADR of the Federal Court in Michael Black, 'The Court, tribunal and ADR: Assisted Dispute Resolution in the Federal Court of Australia' (1996) 7 *Australian Dispute Resolution Journal* 138; Jamie Wood, 'Federal Court – Annexed Mediation Seventeen years on' (2004) 14 *Journal of Judicial Administration* 89; Australian Law Reform Commission, *Review of the Adversarial System of Litigation: ADR-Its Role in Federal Dispute Resolution*, Issues Paper 25 (1998), Chapter 3 ADR in Federal Litigation.



conciliation and early neutral evaluation. However, only mediation and conciliation are commonly used. This is because they are comparatively cheap and are familiar procedures for legal professionals and their clients and the Court.<sup>67</sup> Hence it can be concluded that ADR is utilised for two main reasons. It is used to encourage participation in order to resolve disputes and to reduce costs and delays in the Court, thereby improving efficiency. As noted earlier, in the Federal Court ADR means mediation in most cases where it is used.<sup>68</sup> Parties may ask for mediation or the judge may order an ADR conference. If the dispute does not dispose at the mediation conference, it can be heard by a judge later.<sup>69</sup> Although mediation may be conducted by both judges and registrars, as well as external mediators, the vast majority of the internal mediations have been conducted by registrars who have been trained in mediation. This is the result of judicial attitudes towards ADR processes. According to a survey of judges of the Federal Court in 1994, most felt that it is preferable to settle cases before trial. However they did not feel they had to be responsible for performing the actual interventions to discuss settlement or negotiation.<sup>70</sup>

In brief, ADR in the Federal Court is mostly conducted as a form of mediation by registrars. It is used to assist the parties to reach an agreement in the litigation process and to reduce backlogs and delays in the Court. It also reduces the cost of litigation for both the Court and parties. It should be noted that ADR (mediation) in the Federal Court has come to be broadly used in different case types. The issue of an appropriate case to refer to mediation has changed. According to a study by Jamie Wood, court-annexed mediation was used by a registrar in public interest cases.<sup>71</sup> Mediation is also successful in taxation, judicial review of administrative decision making<sup>72</sup>, and some immigration cases. Wood concludes that although the most appropriate cases for mediation relate to

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<sup>67</sup> Interview with John Mathieson, District Registrar, (Email interview, 14 March 2005); Interview with John Mathieson, District Registrar, (Email interview, 15 March 2005).

<sup>68</sup> See also Federal Court of Australia, *Mediation: What is Mediation?* (2004) <[www.fedcourt.gov.au/litigants/mediation/mediation.html](http://www.fedcourt.gov.au/litigants/mediation/mediation.html)> at 7 March 2005.

<sup>69</sup> Wood, above n 66, 89-90.

<sup>70</sup> Annesley H DeGaris, 'The Role of Federal Court Judges in the Settlement of Disputes' (1994) 13 *University of Tasmania Law Review* 217.

<sup>71</sup> Also see *Australian Competition & Consumer Commission V Collagen Aesthetics Australia Pty Ltd* [2002] FAC 1134.

<sup>72</sup> Also see *Ruddock V Vadarlis* [2001] FCA 1329.

commercial disputes (trade practices, intellectual property, and admiralty), case type per se does not make a dispute appropriate or inappropriate for ADR. The appropriateness of cases for referral to ADR is to do with the amount of resources and time (which would otherwise need to be allocated for the case) to be finalised. Under the Federal Court jurisdiction all case types can be referred to mediation.<sup>73</sup>

#### 2.3.5.2 Court's Policy

The new IDS only requires early intervention and continuous court control, it also provides timeframes for the entire progress of the case as well as for each step in its progress. CASETRACK was introduced to accommodate the new managerial role of the Federal Court's judges. The development of CASETRACK, replacing FEDCAMs, can be seen as part of the Court policy to improve the pace of disposal of cases by providing an excellent tool for the conduct of IDS.

#### 2.3.5.3 Principles of the Individual Docket System

The principles of the case flow management system of the Federal Court can be analysed from its characteristics, and from Court policy. The twelve principles of case flow management in the Federal Court are illustrated in Table 2.3 below.

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<sup>73</sup> Wood, above n 66, 92.

Table 2.3: Principles of the Individual Docket System

<b>Characteristics</b>	<b>Principles</b>
1. The allocation system in which cases are randomly distributed to the docket of the next judge in rotation or to a specialist panel from commencement	- Maintaining equality and fairness
2. One judge manages his/her cases from filing to disposition	- Court supervision of case progress: individual judges
3. A timeframe limits the life of a case to 18 months	- Timeframe - Judicial accountability - Judicial transparency
4. A model timeframe in which each key event is to occur, encouraging minimum appearances	- Backlog reduction and speeding up policy - Credible trial dates
5. An active role for judges in managing their cases, including monitoring of parties, compliance with directions and maintaining contact with parties regarding the progress of a case	- Judicial leadership
6. Earlier identification of cases suitable for alternative (assisted) dispute resolution	- ADR policy - Judicial accessibility
<b>Court's Policy</b>	<b>Principles</b>
1. The development of CASETRACK (a new case tracking system of the Court)	- Monitoring and information system: via CASETRACK - CTS policy

### 2.3.6 Objectives of the Federal Court's CFM

Case flow management is a system to promote efficiency in judicial management. Ultimately, it has the effect of allowing the Federal Court to reach its twin aims of performing as an outstanding superior court and administering justice with high standards of service. These aims reflect the values of the Court. A study of the IDS is

important as it illustrates the successful implementation of the Court's CFM, which reflects the Court's values in general.

#### 2.3.6.1 Values of the Court

Federal Court policy points out that its aims mirror its values. These are described in its website as:

- a) Courtesy and promptness
- b) Quality in all aspects of service
- c) Accessibility and timeliness
- d) Independence and accountability
- e) Public trust and confidence.<sup>74</sup>

#### 2.3.6.2 Objectives of the Individual Docket System

The new system was introduced with the expectation of increasing judges' responsibility for managing their cases. It was designed to increase degrees of responsibility, continuity, autonomy and accountability. For these reasons, the Courts' objectives in introducing this system are described as:

- a) Savings of time and cost resulting from the familiarity of the docket judge with his/her cases, reducing the need for explanation of each step.
- b) Consistency of approach throughout the cases.
- c) Fewer management events, by reducing the number of members of formal directions hearings and other court events requiring court sittings.
- d) Speedy dispute resolution.

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<sup>74</sup> Federal Court of Australia, *Introducing the Court: Values of the Court* (2003) <[www.fedcourt.gov.au/communit\\_info/introcourt/com\\_values.html](http://www.fedcourt.gov.au/communit_info/introcourt/com_values.html)> at 10 October 2003.

e) Promoting the use of ADR (mediation) by identifying suitable cases for it at an earlier stage.

f) Encouraging earlier settlement or narrowing of the issues in order to reduce court time.

g) Earlier setting of and fixing dates for trial, and maintaining such dates.<sup>75</sup>

In brief, the objectives of the Court's CFM mirrors the values of the Court, in particular the values of promptness, accessibility, accountability and timeliness. They include consistency of approach throughout the case progress, reducing costs, enhancing the transparency of case progress, saving time, reducing formal events requiring court sittings, speedily resolving disputes, promoting the use of DCM, promoting the use of ADR (mediation), encouraging earlier case settlement, narrowing issues, early fixing of trial dates, and maintaining trial dates.

## 2.4 Discussion

Case flow management is a streamlined technique for managing and controlling case progress in courts in the twentieth-first century. The Administrative Court and the Federal Court adopted CFM to promote overall efficiency. In doing so, both courts employ tracking techniques to enhance the functioning of the case flow management system. Below I discuss the CFM and CTS of both courts with reference to the US perspective. I look at the differences and similarities in both systems of both courts. I also point out some noteworthy techniques that each court has implemented as well as some useful techniques suggested in the theory of the USA perspective, not currently found in these courts, but which may be useful to in improving their performance. The last matter is discussed in Chapter 6.

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<sup>75</sup>Federal Court of Australia, *Federal Court of Australia* (2003) <[www.fedcourt.gov.au/pracproc/aboutct\\_IDS.html](http://www.fedcourt.gov.au/pracproc/aboutct_IDS.html)> at 7 October 2003.

### **2.4.1 Issues in the Historical Development of the Case Flow Management**

Initially case flow management was introduced to solve problems of backlog and delay in courts. Subsequently, it has come to be seen as a key to achieving success in overall court management, even where no backlog or delay problems occur. The first mention of the case flow management system was in America in the 1960s and it was developed in the 1970s. Maureen Solomon is one of the best-known experts in the area. Her perspective on developing case flow management, in which courts control the progress of cases from initiation to final disposition, has been adopted in many courts in many countries, including Australia.

In Australia, the Federal Court previously used a master calendar system for its case flow management. However, there were delays and backlogs. The Federal Court therefore adopted the recommendations of Solomon to make procedural reforms in mid-1996. This resulted in the development of its Individual Docket System (IDS) in 1997. Thus, court reform in America and Australia has change CFM in both countries, with delay reduction being the main motivation in such reform.

In Thailand, in contrast, the implementation of an administrative case flow management system was not a development of court reform. It was rather an integral part of the Administrative Court's functioning from the time of its establishment in 2001 under legislation arising from constitution reform. The CFM of the Administrative Court was implemented in line with laws designed to facilitate the managerial roles of its judges and court staff, particularly the judges, and it assists in enhancing the overall performance of the Court. The CFM is a progressive development and it is tailored to suit the judges' management function.

It is interesting to note that as in the USA, the Australian Federal Court functions in a common law system with an adversarial approach. In the past, parties had conducted proceedings using strategies which result in abuse of the procedures. The IDS was introduced to overcome inefficient procedures by adding an active managerial role for the judges. The Thai Administrative Court functions in a different legal context. It is a new court in a civil law system with an inquisitorial approach. Judges are expected to

take on active management in administrative matters in accordance with the laws. Coincidentally, though named differently, there are procedures in the Thai Court which are very similar to the IDS was of the Australian Federal Court, but whereas the IDS was introduced as part of overall reform in Federal Court of Australia, in Thailand the equivalent feature of the CFM was embedded in the Administrative Court's procedures from the outset.

#### **2.4.2 Issues in the Historical Development of the Case Tracking System**

The CTS of the Administrative Court is designed to promote the efficiency of the Court's CFM. It was designed and developed together with the case flow management system. Coincidentally, the new case tracking systems of the Administrative Court and the Federal Court commenced operation in the same year (2004). CASETRACK in the Federal Court was activated at the beginning of the year while the Thai Court's Administrative Case System Programme (ACSP) was launched in the middle of the year. The reasons for the development of both case tracking systems are also very similar. Firstly, in both cases the reason was to assist implementation of the case flow management system, in that judges of both courts need a sophisticated case tracking system to facilitate their managerial roles which includes both individual cases of the Court and in general. Secondly, the existing CTS of each court proved deficient in providing some important information on case life. The Administrative Court had a further reason for developing the new CTS, which was part of its pre-existing plan (see details p. 42).

Another similarity between the two courts is that each chose to develop the new CTS from its previous system by contracting a private IT developer. Finally, each court expected that the implementation of a more sophisticated case tracking programme would move it closer to its aim of being a leading state agency.

### 2.4.3 Special Characteristics of Current the Case Flow Management of the Administrative Court and the Federal Court

The characteristics of CFM of the Administrative Court are compared to that of the Federal Court in Table 2.4 below.

Table 2.4: Comparison of Special Characteristics of the CFM of the Administrative Court and the Federal Court

Thai Administrative Court	Australian Federal Court
<p>1. The judge's role</p> <p>The managerial role of judges in the new CFM is still active but the role of Chief Justices is more active in supervising each judge to actively control and manage cases on his/her docket.</p>	<p>1. The judge's role</p> <p>Changing from passive to more active role in which one judge manages his/her cases from initiation to final disposition.</p>
<p>2. Timeframes</p> <p>There is a timeframe for implementing the judges' duties in each event of a case's progress. Goals of the implementation of the timeframes are to reduce delay and backlog.</p>	<p>2. Timeframes</p> <p>There is an 18-month timeframe for disposition of cases, within which there are timeframes for four key events: 85% of cases should be disposed in 18 months.</p>
<p>3. Case Allocation System</p> <p>This system employs specialist divisions and random allocation within a division.</p>	<p>3. Case Allocation System</p> <p>Random allocation to the docket of next judge in rotation or in a specialist panel.</p>
<p>-</p> <p>(No equivalents)</p>	<p>4. Alternative Dispute Resolution (acting in its full jurisdiction of the Federal Court).</p> <p>Encouragement of the use of ADR by earlier identifying of a suitable case.</p>

Use of timeframes is an essential technique in CFM. They are general standards to dispose of cases in courts. The Federal Court sets timeframes for critical events while the Administrative Court sets very detailed timeframes set for every event both critical



and insignificant. One of the most important reasons for setting timeframes in the Administrative Court, which differs from the timeframe of the Federal Court, is that the Administrative Court employs timeframes to manage both the performance of its judges and its case progress. The Federal Court uses its timeframes as guidelines for its judges to actively supervise their cases. However, the goals of both systems are similar, to reduce delay and backlog.

The case allocation systems of the Administrative Court and the Federal Court are very similar. The case allocation system of the Administrative Court is a system of random allocation to a specialist division for particular case types. In each division, there are either three or four judges, allocated to the particular division on the basis of their specialised knowledge in that area. A senior judge of a division will appoint one of that division's judges as the judge in charge of the case for collecting facts and relevant evidence. This judge also manages and controls the progress of all cases that are his/her responsibility.<sup>76</sup> The Federal Court's case allocation system is one that allocates a case to the next judge in rotation (general cases) or in a specialist panel (special cases).

One of the most valuable methods of CFM is Alternative Dispute Resolution (ADR). ADR processes include mediation, arbitration, early neutral case evaluation, summary jury trial, community dispute resolution and private dispute resolution programmes.<sup>77</sup> It is a means of bringing conflicts to a conclusion without having to proceed to trial. One of the core principles of the IDS is to use alternative dispute resolution pathways, usually mediation, rather than automatically sending every case through the whole court process. However, there are some case types that are not suitable for ADR. Sage's study shows that administrative law cases, migration cases, cases involving the government, test cases on particular points of law or those involving statutory interpretation, as well as cases that involve issues of public interest are not appropriate to refer to an ADR process.<sup>78</sup> However, Jamie Wood says in his article on the history and nature of ADR that all cases that will need considerable time and resources to be finalised are

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<sup>76</sup> *Act on Establishment of Administrative Court and Administrative Court Procedure B.E. 2542 (1999)*, s 56.

<sup>77</sup> Steelman, above n 2, 119.

<sup>78</sup> Sage, above n 54, 135.

appropriate to refer to an ADR process (see pp. 56-58).<sup>79</sup> This raises the issue of what are the genuine, appropriate cases for ADR? This is also important to the Administrative Court of Thailand, which deals with administrative disputes. The Administrative Court has been reluctant to adopt ADR as a principle of the Court's case flow management because of the nature of an administrative dispute dealing with a conflict between state officials or an administrative agency and the public. As this kind of dispute is not limited to disagreement between individual persons, any compromise reached may affect the public interest. On this basis the Thai Administrative Court has considered that ADR techniques are not appropriate for case management in the context of administrative review processes.

However, the nature of an administrative dispute is not the most important issue to consider when referring cases to ADR. Accordingly, some administrative cases could be seen as appropriate cases. As examined previously, ADR is a useful tool to reduce backlogs and delays and to assist in the cheaper and quicker resolution of cases. It may be beneficial to think about adopting and utilising the process in the Administrative Court. I will discuss the appropriateness of the ADR in administrative case later in Chapter 4.

#### **2.4.4 Special Characteristics of the Case Tracking Systems of the Administrative Court and the Federal Court**

The comparison of special characteristics of the case tracking systems of both the Federal Court and the Administrative Court is illustrated as in Table 2.5.

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<sup>79</sup> Wood, above n 66, 92.

Table 2.5: Comparison of Special Characteristics of the CTS of the Administrative Court and the Federal Court

Thai Administrative Court		Australian Federal Court	
ACAS and ACSP	1. Case history:  Case historical data are kept better and are able to be tracked.	1. Case history:  Facilitating the methods for maintaining each case history.	FEDCAMS and CASETRACK
	2. Case movement record sheet:  More types of reports are automatically produced.	2. Case movement record sheet:  Supporting accessibility to updated report.	
	3. Reports:  Multi-faceted reports can be produced.	3. A user-friendly system:  Changed to a Windows-based system.	CASETRACK
	4. Tracking events:  Changing from tracking only critical events to all events.	4. Electronic diary:  Providing a better means for judges to arrange their time in each case including the ability to arrange hearings via an electronic diary.	
ACSP	5. Security System	5. Free text capacity:  Word processor type capabilities exist in the CTS software so that judges can add to the data and produce their own letters.	
	6. Barcode		
	7. Central Database		
	8. Relational Database		
	9. Tickler-reminder system		

As described in 2.2.3.2, the Administrative Court's new case tracking programme, Administrative Case System Programme (ACSP), was expected to overcome deficiencies in the former system, Administrative Case Administration System (ACAS), in nine core areas as listed in Table 2.5 above. The Federal Court has employed CASETRACK with the expectation of improving the efficiency of its previous system FEDCAMS in five main areas. Areas that both courts have developed are the case

history and case movement record sheets. The case history is the heart of a case tracking system, so both courts attempted to improve their systems for collecting complete case histories and to make tracking easy. The case movement record sheet was developed to provide more types of reports (statistical, progressive, general, etc) and an up-to-date record of each case. Additionally, the Administrative Court needs reports to be presented in various styles.

The Administrative Court developed ACSP to advance tracking of all events, both major and minor. Its security and barcode systems are very useful in this respect. A central database now prevents the primary problem of duplication of complaints. A relational database provides efficiency in preparing summonses and in handling, via links to other tables. The most vital innovation is the tickler-reminder system in which judges can log into their workstation and have their daily tasks presented. Chief Justices, in particular, can take advantage of this system to control the active management of judges of Administrative Courts of First Instance. When the date line entered in the timeframes of each case is reached, if the actual implementation cannot be achieved, the system will alert the Chief Justice's workstation. The Chief Justice, therefore, can discuss the situation with the judge and help to eliminate problems as they occur.

The Federal Court was interested in enhancing FEDCAMS using CASETRACK in three areas in particular: by creating a user-friendly system, an electronic diary, and free text capacity. The new system functions in a Windows-based setting, not mainframe, so it is easier to use and maintain. The electronic diary provides a better means for judges to arrange their time electronically. Free text capacity, in particular, facilitates the judges' ability to record data for a case and their capacity to produce their own letters and reports.

In summary, both courts aimed to overcome deficiencies in their previous systems by introducing and streamlining new automated systems which assist in eliminating or dramatically reducing loss of files. Bottlenecks can be identified and coped with in a more manageable way.

## **Chapter 3**

### **Comparative Study of the Federal Court of Australia and the Central Administrative Court of Thailand**

This chapter compares the fundamental characteristics of the Administrative Court of Thailand (a civil law court using an inquisitorial system) and the Federal Court of Australia (a common law court using adversarial system). It starts with a close examination of the Central Administrative Court of Thailand and assesses the need for an organisation dealing exclusively with administrative cases in the legal culture of Thailand. There are three core features of the Court to examine: the historic development of the Court, the influence of the Thai Constitution on the Court, and the structure and capacity of the Court's central administration. The equivalent features of the Federal Court of Australia are then examined: the historic development of the Court, its jurisdiction, the structure of the Court, and the relationship between the Federal Court and the Administrative Appeals Tribunal (AAT). Finally a comparison is made of the Thai Administrative Court and the Federal Court of Australia across four areas: the establishment of the two courts, their review systems, their structure and jurisdiction and the effects of their histories on current characteristics.

#### **3.1 Administrative Court of Thailand and the Need for It**

The reasons for the creation of the Administrative Court are easily understood through an investigation of its historical development. The operations of administrative agencies and their officials involve interaction with people, sometimes to render services to customers. A State agency or official may cause damages to people by an unlawful act or undue, negligent exercise of power resulting in unfair treatment, injustice, malpractice, or inconvenience. The disputes emerging from these often involuntary interactions require an independent organisation to deal with them. To resolve them it is essential to have an organisation which has expertise in law and public administration with the

credibility to tackle such disputes and to make fair, impartial judgments. In Thailand, the body is called the 'Administrative Courts' and consists of Regional Courts, a Central and a Supreme Administrative Court. The Courts are supported by a secretariat, the Office of the Administrative Courts. For the purposes of this project, the term 'the Court' will be used to refer to the overall structure of courts as well as its processes and procedures. 'The Courts' will be used to refer to the Regional Courts, Central Administrative Court and Supreme Administrative Court collectively.

The administrative procedures and principles of law employed in the Administrative Courts are specialised. They differ from civil and criminal court procedures. The adversarial system employed in the Court of Justice is one in which parties are obliged to prepare and present evidence and witnesses in order to prove their cases. The roles of the judges of the civil and criminal courts are only to control and supervise the proceedings and to hear the facts presented. By contrast, the inquisitorial system applied in the Administrative Courts requires a more active role of its judges to inquire into the facts (see details in Chapter 4). The difference in procedure results from the special characteristics of administrative cases in which the principal characteristic of the legal relationship between the parties is the unilateral making of rules and orders by a government body. The relationship is not based on the principle of equality. Parties in administrative litigation are not on an equal standing; a position very different in civil and criminal cases. Additionally, most of administrative regulations are not contained in statutes, but are procedural documents, in the possession of the particular administrative agency. An active investigatory role is thus very important for judges of the Administrative Courts, to enable them to examine and inquire into facts and direct the adjudication as well as set up timeframes for the proceedings.

In Thailand, there have been many different rationales over a long period supporting the establishment of an administrative appeal and procedural review system. Nevertheless, the Administrative Court was only set up under *the Constitution of the*

*Kingdom of Thailand B.E. 2542 (1997)*<sup>1</sup> and the *Act on Establishment of Administrative Court and Administrative Court Procedure of 1999 (ACP Act)*.<sup>2</sup> Although the history of the Administrative Courts can be traced back to the time of King Rama V, it is interesting that most of the 130-year history of what has become the Administrative Court has been overwhelmed with controversy in finding the best structure and functional models for the body. The need for the establishment of the Administrative Court is thus illustrated through its own history.

In the following section, I will look at three important aspects of the Administrative Court of Thailand. First, I start with an historical explanation of the vital events in its development from the Council of State (established in 1874) to the Administrative Courts (established in 2001). I also discuss the effect of the establishment of the Administrative Court on the Thai Court system, that is, the replacement of a 'single jurisdiction' system with a 'duality of jurisdiction' system and the introduction of an inquisitorial system with the Administrative Courts.<sup>3</sup> Secondly, I show how the present Constitution affects the establishment of the Administrative Court and how public expectations have been transferred from the Constitution to the justice system and the Administrative Court. I also identify other relationships between the Constitution and the Court, such as the regulation by the Constitution of efficiency or deficiency in the Court and comment on the efficiency of the Court. Finally, the overall structure of the Administrative Court is examined and the three core elements of the Central Administrative Court (CAC) (caseload, jurisdiction, and procedure) are investigated to give a clear picture of the court's actual operation.

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<sup>1</sup> *Constitution of the Kingdom of Thailand B.E.2542 (1997)* (Office of the Council of State trans, 2001) [trans of: รัฐธรรมนูญแห่งราชอาณาจักรไทย พุทธศักราช ๒๕๔๐], published in the *Government Gazette*, Vol. 114, Part 55a, dated 11 October B.E. 2540 (1997).

<sup>2</sup> Published in the *Government Gazette*, Vol. 116, Part 94a, dated 10 October B.E. 2542 (1999).

<sup>3</sup> Thailand employed a single jurisdiction system before the promulgation of the Constitution of 1991, which was amended in 1995, and the present Constitution of 1997.

### 3.1.1 Historical Development

The attempts to establish the Administrative Court in Thailand can be divided into four periods.<sup>4</sup> These have been described by Charnchai Sawangsagdi as:

- a) early beginning: establishment of the Council of State in 1874
- b) first period (1933-1973): determining whether or not Thailand should establish an Administrative Court
- c) second period (1974-1995): finding out whether the Administrative Court should be separated from the Courts of Justice (as a duality of jurisdiction system) or it should be integrated in the existing court system (as a single jurisdiction system)
- d) third period (1996-present): the establishment of the Administrative Court was prescribed in the Constitution as a duality of jurisdiction system.

The beginnings of the Administrative Court can be traced back to the reign of King Rama V in 1874.<sup>5</sup> The Council of State, modelled on France's 'Conseil d'Etat', served on the one hand as an organ providing advice to the King on issues relating to the management of state affairs and legal drafting, and, on the other hand, as an organ to consider petitions presented to the King by his aggrieved subjects. During this period of absolute monarchy, the Council was created as a prototype of the Administrative Court in Thailand. However, at that stage, the purpose of the Council was more to give legal advice or the drafting of laws, than to engage in considering petitions involving state affairs.

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<sup>4</sup> Charnchai Sawangsagdi, *The Explanation of Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)* (1999), 79-110 [trans from: คำอธิบายกฎหมาย จัดตั้งศาลปกครองและวิธีพิจารณาคดีปกครอง (พระราชบัญญัติจัดตั้งศาลปกครองและวิธีพิจารณาคดีปกครอง พ.ศ. ๒๕๔๒)].

<sup>5</sup> Ibid. 79-82.



In 1932, there was a radical transformation of the system of government in Thailand, from an absolute monarchy to a constitutional monarchy. A new kind of Council of State was created under the Council of State Act. Under this Act, the principal responsibilities of the Council were the giving of legal advice, drafting laws and adjudicating in administrative disputes. However, the adjudicative function was subject to specific legislation which was never enacted.

Sawangsagdi describes the second period<sup>6</sup> (1974-1995) as a time in which decisions were made whether the system of administrative appeal should be integrated into the existing court system or kept separate from it. The advocates of the single jurisdiction system proposed that the Administrative Court should be a specialised court but operate at a Court of First Instance level. However, the supporters of the duality of jurisdiction approach insisted that the administrative appeal and review system should be separated from the Court of Justice system which went along with the rationale of the *Council of State Act B.E. 2522 (1979)*. Under this Act, a body called the Petition Committee was formed in order to redress people's grievances by adjudicating in administrative cases. However, it was not a court, so the decision of the Committee had to be forwarded to the Prime Minister to take appropriate action in his capacity as 'Head of the Government'.

The procedures of the Petition Committee formed the basis of the inquisitorial system, which was transferred to the Administrative Court when it was created later. In other words, the adjustment which occurred in the Council of State was the preparation to establish the Administrative Court in a duality of jurisdiction system with an inquisitorial procedure. For these reasons and in this way the administrative judicial institution and the inquisitorial system were developed twenty years before the establishment of the Administrative Courts. The core difference between the Council of State and the Administrative Court is that while the decision made by the Council of State was forwarded to Prime Minister for appropriate action in his capacity as Head of the Government, the Court employs its own judicial power and the judgment/order made is final.

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<sup>6</sup> Ibid. 81-99.

In the third period, the establishment of the Administrative Court was prescribed in the Constitution. In 1995, the Parliament amended the *Constitution of the Kingdom of Thailand of 1991*. Sections 195-195(e) added a provision to establish the Administrative Courts as a separated entity away from the Court of Justice.<sup>7</sup> In other words, the Constitution created the duality of jurisdiction system of the Court. Furthermore, the government of Prime Minister, General Chavalit Yongchaiyuth, submitted a bill on the Establishment of Administrative Courts and Administrative Court Procedure to the House of Representatives on 4 February 1997.<sup>8</sup> This bill was aimed at terminating the petition jurisdiction of the Council of State and converting the petitions into administrative cases. In addition, under this bill, the Administrative Court was given a new secretariat in place of the Office of the Council of State.

By the end of 1997 the current Constitution was promulgated. The Constitution (sections 246-280, particularly sections 276-280) affirmed the principle of establishing the Administrative Court separate from the Court of Justice.<sup>9</sup> In 1999, a new Act on the Establishment of Administrative Court Procedure was proclaimed. Its provisions are mainly in accordance with those of the previous bill submitted to the House of Representatives in 1997.

In conclusion, throughout its evolution to the actual establishment of the Administrative Court, the importance of an entity to provide fairness in administrative disputes was always a concern. The development of such an entity can be seen from the Council of State under the absolute monarchy, through the constitutional monarchy regime to the Administrative Court of today.

Its history apart, the establishment of the Court was significant in the present Constitution. This Constitution has a special characteristic as the People's Constitution and is grounded in political reform. Following is a study of the importance of the Administrative Courts to this Constitution and the public, and vice versa, including the inter-relationship between the Court and the Constitution in terms of objectives, performance, efficiency, success and

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<sup>7</sup> Ibid. 100.

<sup>8</sup> Ibid. 105-106.

<sup>9</sup> Ibid. 107.

expectations. The principles and concepts of the Constitution relate to the principles/concepts of the Courts and meet the expectations of the public.

### 3.1.2 The Thai Constitution

The Thai Constitution declares that the Administrative Court was established to provide fairness in the resolution of administrative disputes. The operation of the Court is supported by the Office of the Administrative Courts (OAC). The central issues of the establishment of the Court under the Constitution can be broken down and understood in the following different areas.

#### 3.1.2.1 Establishment of the Administrative Court

The *Constitution of the Kingdom of Thailand B.E.2542 (1997)*, the sixteenth Constitution of Thailand, was drafted by Thailand's Constitution Drafting Assembly, consisting mostly of the representatives of the Thai people from seventy-two provinces.<sup>10</sup> This is why it is known as the People's Constitution. It was the direct result of political reforms introduced into Thailand from 1994. The new Constitution was designed to overcome the deficiencies in former Constitutions and to promote good governance. Three main principles lie behind its drafting: the safeguard and ratification of freedom and rights of Thai citizens; checks and controls on the exercise of the state's power; and the reinforcement of stability and efficiency of the government.<sup>11</sup> It is regarded as the best Constitution possible to come out of such a participatory democratic process. It is comprehensive because it includes twelve chapters and a transitional provision (336 sections) addressing the issues of consistency and transparency in civil society as well as the need for a predictable social support system.

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<sup>10</sup> Thailand's Constitution Drafting Assembly, *Database for Thailand's Constitution Drafting Assembly Record Constitution of The Kingdom of Thailand, B.E. 2540 (1997)* (2004) <[http://www.kpi.ac.th/dar\\_cons/instruction.htm](http://www.kpi.ac.th/dar_cons/instruction.htm)> at 13 November 2004.

<sup>11</sup> Kriengkrai Charuanthanawat, *Constitutionalism of Thai Constitution (section 1)* (2004) [trans from: รัฐธรรมนูญในแนวคิดรัฐธรรมนูญนิยม (ตอนที่ 1)] <[http://www.pub-law.net/article/ac050246\\_2.html](http://www.pub-law.net/article/ac050246_2.html)> at 13 November 2004.

Many specialised organisations were established to provide the checks and controlling principles required by the Constitution. While examination of the legitimacy of the exercise of state power is undertaken by the Constitutional Court and the Administrative Court, the examination of corruption of high-ranking officials of state agencies comes under the responsibility of four organisations: the National Counter Corruption Commission, the Ombudsmen, the National Human Rights Commission and the Auditor General. Measures available to check corruption include removal from office of high-ranking officials by the Senate and criminal proceedings against persons holding political positions.<sup>12</sup>

According to the commentary attached to the *Act on Establishment of Administrative Courts and Administrative Court Procedure of 1999 (ACP Act)* and the principles of the Constitution of 1997, the Administrative Courts were created for the following reasons and included the following characteristics:

- a) to adjudicate administrative cases under the Act;
- b) to adjudicate under the principles of the public laws;
- c) to implement the inquisitorial system in administrative proceedings;
- d) to provide adjudication by administrative judges with specialised knowledge;
- e) to be examinable by the legislative, administrative and public sectors;
- f) to have its own secretariat office as an independent government agency.

As previously noted, the inequality of juristic relations between state officials/agencies and the public, the unique nature of administrative cases and the specialised administrative judges made it essential to establish the Administrative Court separately from the Court of Justice. This provides assurance of justice to the people and sets standards of performance for official tasks.

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<sup>12</sup> Kriengkrai Charuanthanawat, *Constitutionalism of Thai Constitution (section 2)* (2004) [trans from: รัฐธรรมนูญในแนวคิดรัฐธรรมนูญนิยม (ตอนที่ 2)] <[http://www.pub-law.net/article/ac050246\\_3.html](http://www.pub-law.net/article/ac050246_3.html)> at 13 November 2004.

### 3.1.2.2 Relationship between the Court and the Constitution

The Administrative Court is a judicial organisation under the Constitution, officially established to check and control the exercise of power by administrative agencies and state officials, to balance the people's rights and public interest and to lay down proper standards of public administration.<sup>13</sup> The examining power of the Administrative Courts is vital in the promotion of greater accountability and transparency in public sector management.

As the Constitution of 1997 and the *ACP Act* of 1999 confirmed, the Administrative Court itself has important implications for the Constitution. Its establishment and operation embodies the principles of the Constitution in both concept and structure. As already noted, the Constitution emerged from national consultative processes through a representative assembly. Thus it can be said that the expectations of the public influenced the establishment of the Court and its relationship to the Constitution. The relationship to the public's expectations continues because, as statutory authorities, the Court and its secretariat are accountable to parliament, hence to the public. I look at this relationship later.

### 3.1.2.3 Effects of the public's expectation on the Constitution and the Court

The origin of the People's Constitution lies in political reform. The aim of the Drafting Assembly was clearly to create the best Constitution to promote efficiency in political and governmental institutions while protecting the rights and freedoms of the Thai people. It cannot be denied that public expectations of the present Constitution are very high. In order to reach the Constitution's ideals, it was crucial to create and improve many organisations

The Administrative Court is one of those new organizations that was established to improve the efficiency of the justice system. Inevitably, there were rather high levels of expectation of the new Court to implement the principles of the Constitution. As an organisation established under the Constitution, the efficiency of the Court is a direct result of the aspirations of constitutional reforms. That is because, if the organisations created under the

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<sup>13</sup> Office of the Administrative Courts, *Useful Tips on the Administrative Court* (2003) (Office of the Administrative Courts trans, 2003) [trans of สารานุกรมเกี่ยวกับศาลปกครอง].

Constitution are able to function efficiently, the principles of the Constitution can be considered to be upheld.

Another important characteristic of the Court contained in the Constitution is that it was established as a 'People's Court'. The principles of People's Constitution were transferred to the People's Court. The Court also belongs to the people by virtue of their representation on the assembly. For instance, the appointment of the President of the Supreme Administrative Court and judges of the Supreme Administrative Court are approved by the Senate,<sup>14</sup> the appointments of a number of judges of Administrative Courts are approved by the Parliament;<sup>15</sup> the Regulations on Administrative Court Procedure issued by the general assembly of judges of the Supreme Administrative Court are submitted to the House of Representatives for scrutiny;<sup>16</sup> the membership of the Judicial Commission of Administrative Judges (JCAJ), as the neutral organisation dealing with the personnel management of the Administrative Court, is open to outsiders and there are two elected representatives of the Senate and one representative of the Council of Ministers as its members.<sup>17</sup>

As for the direct relationship between the Courts and the public, the Court is linked to the people though the assistance given to plaintiffs in preparing their cases;<sup>18</sup> the giving of advice, publishing and public dissemination to the public of the administrative judgments or orders made by the Administrative Court,<sup>19</sup> and giving the public the opportunity to criticise adjudications of the Court in good faith and in academically justifiable means without being guilty of an offence of contempt of Court or defamation of the Court or a judge.<sup>20</sup>

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<sup>14</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 15.

<sup>15</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 17.

<sup>16</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 6.

<sup>17</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, ss 37, 38.

<sup>18</sup> President of the Supreme Administrative Court, *Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E. 2543 (2000)*, (Office of the Administrative Courts trans, 2000) [trans of: ระเบียบของที่ประชุมใหญ่ตุลาการในศาลปกครองสูงสุดว่าด้วยวิธีพิจารณาคดีปกครอง พ.ศ. ๒๕๔๓], clause 37.

<sup>19</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 77.

<sup>20</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 65.

In brief, there is popular pressure for both the Constitution and the Court to meet social expectations. The efficient implementation of the Courts' work is one part of the attainment of the principles of the Constitution. It means the Court has to employ some policies to meet the expectations of the public and ultimately to support the Constitution. Fulfilling public expectations is also a part of the formal administration of the Court by the elected representatives, and the examination of the Court's work via the avenues of direct participation mentioned above.

### **3.1.3 The Administrative Court's Structure and Capacities**

This section describes the general structure of the Administrative Court; however, for the purpose of this comparative study, comment on the capacities of the Court is limited to the examination of caseload, jurisdiction and procedure in the Central Administrative Court.

#### **3.1.3.1 Overall Structure**

Under section 276 of the Constitution and the *ACP Act* Chapter 1, sections 7, 8 and Transitory Provision section 94, the Central Administrative Court (the CAC), and the Supreme Administrative Court (the SAC) and sixteen Regional Courts are to be established. Owing to budgetary constraints and caseload, the system has gradually built up over the years since 1997. In the initial stage, the Central Administrative Court (as the Court of First Instance) and the Supreme Administrative Court were established with jurisdiction over all administrative cases throughout Thailand. Regional Courts have been added year by year and there are now seven: Chiang Mai, Khon Kaen, Nakhon Si Thammarat, Nakhon Ratchasima, Rayong, Songkhla and Phitsanulok Administrative Courts. Nevertheless, the Court is not always the first avenue for resolution of administrative disputes. In some cases it may not review decisions until after an internal review by the department or agency that made the primary decision.<sup>21</sup>

The 'administrative cases' are disputes between government officials or organisations and members of the public, or occasionally between one government organisation and another.

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<sup>21</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, ss 9, 42.

Judges of the Court must be qualified in 'the fields of law, political science, public administration, economics, social science or in the administration of state affairs in accordance with the rules prescribed by the JCAC.<sup>22</sup> It contains the judicial personnel responsible for selecting, transferring and expelling the Administrative Court's judges.<sup>23</sup> To pass a resolution expelling the judge the JCAC has to prove:

(1) malfeasance in office; (2) a gross disciplinary breach as prescribed in the disciplines for administrative judges; (3) imprisonment by a final judgment except for an offence committed through negligence or a petty offence.<sup>24</sup>

The King makes a Royal Appointment of Administrative Court judges selected by the JCAC.<sup>25</sup> However, the President of the Supreme Administrative Court has to be approved by the Senate who will tender his/her application to the King.<sup>26</sup> While the President is empowered to ensure the orderly operation of the Administrative Court, each Chief Justice holds the same responsibility in each respective Administrative Court of First Instance. The President may entrust official duties to the Vice President. Each Chief Justice may also entrust powers to assist in such duties to the Deputy Chief Justice in each court.<sup>27</sup>

In all cases, administrative procedure and principles of administrative law are employed through the inquisitorial system. For these reasons, the Courts are not only hearing the facts claimed by the parties but examining and inquiring into the facts and directing the adjudication as well. This includes the setting-up of timelines for the parties to present their evidence and witnesses and the procedure for interrogating the parties in Courts. Judges in

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<sup>22</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)* Chapter II Administrative Judges, s 13.

<sup>23</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)* Chapter II Administrative Judges, ss 19, 23, 27.

<sup>24</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)* Chapter II Administrative Judges, s 23.

<sup>25</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)* Chapter II Administrative Judges, ss 13, 15, 16, 18, 19.

<sup>26</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)* Chapter II Administrative Judges, s 15.

<sup>27</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)* Chapter II Administrative Judges, s 28.



the Administrative Courts have an active role in the proceedings as well as in the managing of their cases.

In order to promote effective performance in the Administrative Courts, the Office of the Administrative Courts (OAC), an independent governmental agency under the Constitution, was established.<sup>28</sup> It functions as a secretariat, which is generally supervised by a Secretary-General, with the assistance of the Deputy Secretary-General. The Secretary-General is directly answerable to the President of the Supreme Administrative Court.<sup>29</sup> The powers and duties of the OAC were prescribed in section 77 of the *ACP Act*.<sup>30</sup>

The three primary responsibilities of the OAC can be summarised as:

- 1) Secretariat work: all routine work of the Administrative Courts;
- 2) Academic work: such as studying and collecting information beneficial to the Administrative Courts' performance, analysing the reasons for the filing of administrative cases; and providing training programmes
- 3) Case work: managing and executing all cases undertaken by the Administrative Courts.

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<sup>28</sup> *Constitution of the Kingdom of Thailand B.E. 2542 (1997)*, s 280.

<sup>29</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 78.

<sup>30</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 77.

'The Office of the Administrative Courts shall have the powers and duties, as follows:

- (1) to be responsible for secretarial work of Administrative Courts;
- (2) to carry on activities with respect to administrative cases as directed by the Administrative Courts;
- (3) to conduct execution of decrees made by the Administrative Courts;
- (4) to study and compile information in the interest of the performance of work of Administrative Courts;
- (5) to analyse causes for the filing of administrative cases for the purpose of making suggestions to State agencies concerned with regard to direction for the improvement of public administration;
- (6) to publish and disseminate judgments or orders of Administrative Courts;
- (7) to provide training and knowledge development for administrative judges, officials of the Office of the Administrative Courts and other State officials concerned as well as co-ordinate with other agencies concerned with developing principles of public law, administration of State affairs and personnel administration in the field of public law;
- (8) to perform other acts under the provisions of this Act or as the law prescribed to be under the responsibility of the Office of Administrative Courts.'

Two groups of officials perform the OAC's work: administrative officers and case officials. While the former are generally responsible for secretariat and academic work, the latter are mainly in charge of case work and, sometimes, academic work. In the respect of case work, which directly supports the judicial work, section 75 of the *ACP Act* prescribes the function of a case official as being to assist the case judge.<sup>31</sup> Furthermore, the duties of an official might be assigned by the Secretary-General of the OAC. Overall, the vision of the OAC is to be a mechanism to promote the effective performance of the Administrative Court and to encourage the principles of the legitimacy of administrative decisions and fairness people and government agency.

### 3.1.3.2 Caseload

The CAC was the first Administrative Court of First Instance to be established, in 2001.<sup>32</sup> However, the OAC was established in 1999 under the *ACP Act*.<sup>33</sup> In the first three years of operation,<sup>34</sup> the eight Administrative Courts of First Instance had 14,168 cases filed. 9,403 cases or 66% of cases filed were disposed. 4,765 or 34% were outstanding cases. In the CAC, 9,095 cases were filed during the same period and 6,190 (68%) were finalised.<sup>35</sup> Of all administrative cases filed, 64% were in the CAC.

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<sup>31</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 79.

<sup>32</sup> President of the Supreme Administrative Court, *Notification of the President of the Supreme Administrative Court, 'The Venue and Commencement of Operation Day of the Central Administrative Court', on 23 February 2001* (2001) [trans from ประกาศประธานศาลปกครองสูงสุด เรื่อง สถานที่ตั้งและวันเปิดทำการของศาลปกครองกลาง ลงวันที่ ๒๓ กุมภาพันธ์ พ.ศ. ๒๕๔๔].

<sup>33</sup> Charnchai Sawangsagdi, *Policy and Direction of the Office of the Administrative Courts' Operation in 2004* (2003) [trans fromชาญชัย แสวงศักดิ์, นโยบายและทิศทางการดำเนินงานของ สศป. ในปี ๒๕๔๗, การสัมมนาเชิงปฏิบัติการเพื่อเพิ่มประสิทธิภาพการปฏิบัติงานของสำนักงานศาลปกครอง ณ หอประชุมใหญ่ ดิกร้านวยการสถาบันเทคโนโลยีราชมงคล วิทยาเขตเทคนิคกรุงเทพฯ, ๒๐ ธันวาคม ๒๕๔๖].

<sup>34</sup> These statistics were collected from 9 March 2001 to 13 February 2004.

<sup>35</sup> *Administrative Courts and Office of the Administrative Courts, 3 Years of the Administrative Court* (2004), 15-16 [trans from ๓ ปี ศาลปกครอง].

At present, the CAC has 77 judges in 17 divisions.<sup>36</sup> Each division has responsibility to deal with different areas of administrative dispute. For example, Divisions 2-5 have responsibility in administrative cases related to land, public property and natural resources. In addition, Division 4 also exercises power in cases related to education, religion, culture, social, public health, public personnel, discipline of public servants, pensions and welfare. Division 5 also exercises power in matters related to procurement, administrative contract, investment, public finance and banking. Generally, each judge has two case officials as associates to assist in performing all assigned work.

The Chief Justice of the CAC, Assoc. Prof. Dr. Vorapot Visrutpich, is responsible for ensuring the orderly operation of the Court.<sup>37</sup> He entrusts his power to the three Deputy Chief Justices to assist in the operation. The three deputy Chief Justices supervise all core work in the different divisions and supervise the case judges in those divisions and the conclusive judges who are assigned to give a statement in those divisions. That is, the Deputy Chief Justice, Dr. Ruthai Hongsirir, was assigned to (1) supervise Divisions 10, 11, 12, and (2) allocate cases to the divisions. Deputy Chief Justice, Assoc. Prof. Dr. Vishnu Varunyou, was assigned to (1) supervise Divisions 9, 16, 17, and (2) administer all academic and training work and foreign relations. Deputy Chief Justice, Dr. Prasat Pongsuwan, was assigned to (1) supervise Divisions 2, 3, 14, 15, and (2) administer all works related to administrative case procedures, court administration and a drafting of rules, regulations, notifications, and orders of the Central Administrative Court.<sup>38</sup>

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<sup>36</sup> Chief Justice of the Central Administrative Court, *Notification of the Chief Justice of the Central Administrative Court, 'Categorisation of Administrative Court of First Instance's Judges in Specialised Divisions'*, on 27 September 2002, Updated 15 August 2003 (2003) [Trans from ประกาศอธิบดีศาลปกครองกลาง เรื่อง จัดแบ่งตุลาการศาลปกครองกลางเป็นองค์คณะ ลงวันที่ ๒๗ กันยายน พ.ศ. ๒๕๔๕ แก้ไขเพิ่มเติมถึงวันที่ ๑๕ สิงหาคม ๒๕๔๖]; Chief Justice of the Central Administrative Court, *Notification of the Chief Justice of the Central Administrative Court, 'Categorisation of Administrative Court of First Instance's Judge in Specialized Divisions (No. 4)'*, on 9 August 2003 (2003) [trans from ประกาศอธิบดีศาลปกครองกลาง เรื่อง จัดแบ่งตุลาการศาลปกครองกลางเป็นองค์คณะ (ฉบับที่ ๔) ลงวันที่ ๙ สิงหาคม ๒๕๔๖].

<sup>37</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, Chapter II Administrative Judges, s 28.

<sup>38</sup> Chief Justice of the Central Administrative Court, *Order of the Chief Justice of the Central Administrative Court 2/2546 on 28 January 2003 'Delegation of the Chief Justice of the Central Administrative Court to Deputy Chief Justices of the Central Administrative Court'* (2003) [Trans from คำสั่งอธิบดีศาลปกครองกลาง ที่ ๒/๒๕๔๖ ลงวันที่ ๒๘ มกราคม ๒๕๔๖ เรื่อง มอบอำนาจให้รองอธิบดีศาลปกครองกลางปฏิบัติหน้าที่แทนอธิบดีศาลปกครองกลาง].

### 3.1.3.3 Jurisdiction

The CAC's territorial jurisdiction covers all localities where a Regional Administrative Court has not yet been established. In addition, any administrative disputes arising outside the jurisdiction of the CAC may be brought before that Court.<sup>39</sup> It is, therefore, the court with general administrative jurisdiction and may exercise its power outside its territorial jurisdiction when appropriate.

Administrative cases that may be filed in the Court are prescribed under the Constitution section 276 in accordance with sections 271, 62, 197 and 198 and under the *ACP Act* sections 9 and 11. However, the administrative cases that may be filed in the Central Administrative Court and other Regional Administrative Courts of First Instance are principally prescribed under section 9 of the *ACP Act*.<sup>40</sup>

The *ACP Act* gives the CAC powers to adjudicate administrative cases involving the following matters:

- (1) cases involving a dispute in relation to an unlawful act by an administrative agency or State official, whether in connection with a by-law or order or in connection with any other Act. The case may arise by reason of an official acting without or beyond the scope of their powers and duties or inconsistently with a law or the form, process or procedure which is a material requirement for such act, or in bad faith or in a manner indicating unfair discrimination or causing unnecessary process or excessive burden to the public, or amounting to undue exercise of discretion;

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<sup>39</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 8.

<sup>40</sup> The Administrative Courts consist of the Supreme Administrative Court and the Administrative Courts of First Instance. The jurisdiction of the Central Administrative Court is the same as that of the other Administrative Court of First Instance but the jurisdiction of the Supreme Administrative Court is different based on s 11 of the *ACP Act*. It covers administrative disputes in four main areas: (1) a decision of a quasi-judicial council, (2) the legality of a Royal Decree or by-law issued by the Council of Ministers or with its approval, (3) a case prescribed by the law to be within the jurisdiction of the SAC, and (4) appealing a case made against a judgment or order of an Administrative Court of First Instance.

(2) cases involving a dispute in relation to an administrative agency or State official neglecting official duties required by the law to be performed or performing such duties with unreasonable delay;

(3) cases involving a dispute in relation to a wrongful act or other liability of an administrative agency or State official arising from the exercise of powers under a law or by-law, administrative order or other order, or from the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay;

(4) cases involving a dispute in relation to an administrative contract;

(5) cases prescribed by law to be submitted to the Court by an administrative agency or State official to mandate a person to do a particular act or to refrain therefrom;

(6) cases involving a dispute in relation to matters prescribed by the law to be under the jurisdiction of Administrative Courts.

The same Act describes the matters that are not within the jurisdiction of Administrative Courts:

(1) actions concerning military disciplines;

(2) actions of the Judicial Commission under the law on judicial service;

(3) a case within the jurisdiction of the Juvenile and Family Courts, Labour Courts, Tax Courts, Intellectual Property and International Trade Courts, Bankruptcy Courts or other specialised Courts.<sup>41</sup>

According to section 9 of the *ACP Act*, administrative disputes that are in the Court's jurisdiction are limited to seven main types: (1) unlawful making of administrative orders such as permission orders, approval orders and appointment orders; (2) an unlawful act, unlawful making of rules such as Ministerial Regulations and Notifications of a Ministry;

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<sup>41</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 9.

(3) unlawful making of a by-law; (4) an act of neglect of official duties, (5) undue delay in performing official duties, (6) a wrongful act or other liability, and (7) administrative contracts. Administrative cases are prescribed by law to be within the jurisdiction of Administrative Courts of First Instance employing general powers to adjudicate administrative cases.

Although administrative cases filed in the Court are pursuant to section 9, the Court is limited by section 72 in particular (1)-(5).<sup>42</sup> This means the Court's powers to issue a decree are limited according to the characteristics of the administrative cases. The limits placed on the types of decrees possible are:

1) a case in relation to a unilateral administrative act: ordering revocation of a by-law or order or restraining an act in whole or in part;

2) a case in relation to an act of neglect or undue delay of official duties: ordering performance within a period of time imposed by the Court;

3) a case in relation to administrative contracts or a wrongful act or other liability: ordering the monetary payment or the delivery of property or the execution or omission of an act;

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<sup>42</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999), s 72.*

'In delivering a judgment, an Administrative Court has the power to issue a decree for any of the following:

(1) ordering revocation of a by-law or order or restraining an act in whole or in part, in the case where it is alleged in the case filed that an administrative agency or State official has done an unlawful act under s 9 paragraph one (1);

(2) ordering the head of an administrative agency or State official concerned to perform the duty within the time prescribed by the Administrative Court, in the case where it is alleged that the case filed is in connection with a wrongful act or liability of an administrative agency or State official or in connection with an administrative contract;

(3) ordering the payment of money or the delivery of property or the performance or omission of an act with or without prescribing the time and other conditions, in the case where the case filed is in connection with a wrongful act or liability of an administrative agency or State official or in connection with an administrative contract;

(4) ordering a treatment\* towards the right or duty of the person concerned, in the case where it is requested in the case filed that the Court give a judgment declaring the existence of such right or duty;

(5) ordering a person to act or refrain from any act in compliance with the law...'

\* Treatment – an order that a person be treated as if having a certain right and duty.

4) other cases: ordering a remedy would be entitled to a person if they had a certain right or duty under the law.<sup>43</sup>

#### 3.1.3.4 Procedures

The procedures in administrative cases in the Central Administrative Court are set out in a diagram of administrative case processing in Appendix D. The process begins when the plaintiff files a plaint in the Court. The Deputy Chief Justice assigned case allocation duties distributes the case file to a specialised division. The senior judge of the division to which the plaint has been allocated appoints a judge to take charge of the case and to examine the plaint, inquire into the facts and to prepare a summary of his/her opinion. In this inquiry process, case officials may be assigned to do any task to support the function of the judge. Next the case is forwarded to the Chief Justice to be examined and submitted to a judge who makes the conclusion. When the judge who makes the conclusion has finished his/her statement, the file is sent back to the senior judge to whom the case was allocated. He/she will determine the first hearing day and ask for ratification from the Chief Justice. Then the case is sent back to the judge in charge of the case. At the first hearing day, the judge in charge of the case explains the facts of the case. The two or three other judges on the panel for the case sit on the bench with the judge in charge. The parties to the case will present additional statements, then the judge who makes the conclusion in the case will give his/her statement to the Court. Then the judicial panel will make a decision. Further discussion occurs in camera before a final decision is reached. The judge who made the conclusion may participate in this process but does not participate in the resolution. Finally, the judge in charge of the case settles the judgment according to the resolution deriving from the in camera discussion and will read the verdict in open court. If the verdict contains any enforcement measures, the OAC has the duty to execute the decree.

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<sup>43</sup> Bhokin Bhalakula, *Central Issues on Act on Establishment of Administrative Courts and Administrative Court Procedure* (2004) [trans from: สารสำคัญของกฎหมายว่าด้วยศาลปกครองและวิธีพิจารณาคดีปกครอง] <[www.admincourt.go.th](http://www.admincourt.go.th)> at 11 February 2004.

## 3.2 Federal Court of Australia and the need for it

The Federal Court of Australia was established in 1976 and has been in operation since 1977. It has a broad federal jurisdiction including almost all civil federal matters. However, the history of the Federal Court shows that originally it was a specialised court and its jurisdiction was restricted. It is interesting to examine the historical development of the Court to find out the reason why its jurisdiction was limited in its early stages and why the court, at present, exercises its power as a court of general federal jurisdiction. For the purpose of this comparative study, the administrative law jurisdiction of the Court and its relationship with the AAT are the focus.

### 3.2.1 Historical Development

Using the same approach as was used with the Thai Administrative Court, the historical development of the Federal Court is investigated from two crucial perspectives: its legislative and non-legislative background.

#### 3.2.1.1 Legislative Background

The legislative background of the Federal Court is based on two fundamental laws: the Commonwealth Constitution, and the *Federal Court of Australia Act 1976*.

##### a) **The *Commonwealth of Australia Constitution Act 1900* (Imp)**

The Australian Constitution is an Act of the British Imperial Parliament, which brought about the Federation of the six Australian colonies.<sup>44</sup> The formulation of the judicial provisions of the Constitution was a combination of the unitary model from the United Kingdom and a federal model from the United States. The High Court of Australia, which was established by sections 75 and 76 of Chapter III of the Constitution has extensive original jurisdiction in federal matter.<sup>45</sup> In addition, power was conferred on the

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<sup>44</sup> Jeff Kennett, *The Crown and the States* (1993) <<http://www.samuelgriffith.org.au/papers/html/volume2/v2addr.htm>> at 29 October 2004.

<sup>45</sup> Australian Law Reform Commission, 'The Judicial Power of the Commonwealth: A Review of the Judiciary Act 1903 and Related Legislation' (Discussion Paper No 64, Canberra, ACT, Australian Govt. Pub. Service, 2000).



Commonwealth Parliament to establish other federal courts to assist the High Court in its application of federal law. At the same time, State Courts, as courts of general jurisdiction, exercised federal and state jurisdiction except in some matters where federal courts were given exclusive power. The Commonwealth Parliament was also given power to invest State Courts with federal jurisdiction in federal matters. The Supreme Courts of each state allowed appeals to the High Court, as a general appellate court, in both state and federal matters. The Commonwealth Parliament plays an important role in the Australian judicial system by entrusting federal matters to existing State Courts or establishing federal courts with exclusive jurisdiction to determine cases arising under federal laws.<sup>46</sup> However, in the first 75 years of operation of the Australian Constitution, the Commonwealth Parliament chose to create only two specialised federal courts: the Industrial Court, in its various forms, in 1904 and the Federal Court of Bankruptcy in 1930.<sup>47</sup> During this period, the Commonwealth Parliament therefore had the choice of entrusting jurisdiction over new areas of federal laws to State Courts or to the High Court itself.

#### **b) *The Federal Court of Australia Act 1976 (Cth)***

In 1976, the Federal Court was established under the *Federal Court of Australia Act*. The Act did not itself invest substantive original jurisdiction in the Court but prescribed that the Court's original jurisdiction 'is vested in it by laws made by the Parliament.'<sup>48</sup> Consequently, original jurisdiction of the Court derives mainly from Acts of Parliament. Initially, the Court took over jurisdiction from the two existing specialised federal courts: the Federal Court of Bankruptcy and the Australian Industrial Court. The latter had acquired some non-industrial jurisdiction. Thus the original jurisdiction of the Federal Court was in bankruptcy, industrial law, the review of federal administrative action appealed from the AAT and compensation for Commonwealth government employees.<sup>49</sup> Since then the jurisdiction of the Federal Court has changed from a restrictive federal jurisdiction to a general one. Over thirty years of its development the Federal Court's jurisdiction has continually increased under new federal laws.

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<sup>46</sup> James Crawford, *Australian Courts of Law* (2003), 26-27.

<sup>47</sup> Ibid. 28.

<sup>48</sup> *Federal Court of Australia Act 1976* (Cth), s 19.

<sup>49</sup> Robert French, 'Federal Courts Created by Parliament' in Brian Opeskin J. and Fiona Wheeler (eds), *The Australian Federal Judicial system* (2000), 123-159.

### 3.2.1.2 Reasoning behind the Establishment of the Federal Court

The idea for the establishment of the Federal Court occurred more than a decade before it was set up and the reasons for its creation were controversial. There are two main approaches to the argument. First, M.H. Byers and P.B. Toose,<sup>50</sup> supported the Labor Government's Bills of 1973 and 1974 that proposed conferring State Courts with federal jurisdiction. It caused a congestion of complaints and inconsistency in interpretation and application, particularly in matters of procedure. Thus it was seen as essential to create a federal court to manage the vast amount of cases brought under federal law, leaving only ancillary matters to the State Courts.

The other approach was espoused by Sir Garfield Barwick in 1964.<sup>51</sup> His reasoning was that the general jurisdiction of the High Court affected its efficiency. It was therefore necessary to unburden the High Court's caseload into some miscellaneous jurisdictions. In other words, the proposal for the establishment of a federal court was encouraged in order to relieve the High Court of its original jurisdiction workload.<sup>52</sup>

The establishment of the Federal Court under the *Federal Court of Australia Act* was in line with the second approach, that is, to reduce of the High Court's caseload with a restricted Federal Court. The new Federal Court was vested with the High Court's jurisdiction to hear appeals from Territory Supreme Courts and from individual judges of the State Supreme Courts in certain matters.<sup>53</sup>

In short, the legal background of the Court and the rationale of relieving pressure on the High Court's caseload narrowed the jurisdiction of the Federal Court to some specific

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<sup>50</sup> Toose Paul Burcher. 'The Necessity for a New Federal Court (1963) 36 *Australian Law Journal* 308, 308-9 in *Australian Law Librarian* V. 11, 198.

<sup>51</sup> Garfield Barwick was Chief Justice of the High Court of Australia from 1964-1981 and Commonwealth Attorney-General from 1958-1963. Law Council of Australia, *Law Council Saddened by Loss of Sir Garfield Barwick* (1997) <[www.lawcouncil.asn.au/read/1997/1957000625](http://www.lawcouncil.asn.au/read/1997/1957000625)> at 12 Nov 2004.

<sup>52</sup> Crawford, above n 46, 146-147.

<sup>53</sup> *Ibid.* 148.

federal matters. It was a specialist court. However, that status gradually changed and now, the Federal Court has a much broader jurisdiction. The development of the Court's jurisdiction is outlined below.

### 3.2.2 Jurisdiction

The jurisdiction of the Federal Court can be divided into three areas: original, associated and accrued and appellate. For the purpose of this comparative study with the Administrative Court of Thailand, I examine in detail the federal administrative law jurisdiction, which has the power not of merit review but of judicial review under the original jurisdiction of the *Federal Court of Australia Act 1976*, in particular its jurisdiction is related to the jurisdiction of the Administrative Appeals Tribunal (AAT) under the *Administrative Appeals Tribunals Act 1975*, the Judiciary Act of 1903 and the jurisdiction of the *Administrative Decision (Judicial Review) (ADJR) Act 1977*.

#### 3.2.2.1 Expansion of the Original Jurisdiction of the Federal Court

As mentioned above, the original jurisdiction of the Federal Court is found in the *Federal Court of Australia Act*. However, the development of the Court's jurisdiction from specialised to general federal jurisdiction is to be found in other Acts investing it with new jurisdiction. These include the *Conciliation and Arbitration Act 1904*, sections 118A and 118B (transferring the industrial jurisdiction of the Australian Industrial Court), the *Bankruptcy Act 1966*, section 28 (transferring the bankruptcy jurisdiction from the Federal Court of Bankruptcy) and the *Federal Court of Australia (Consequential Provisions) Act 1976* transferring from the Australian Industrial Court to the Federal Court of Australia jurisdiction under other Acts including the *Prices Justification Act 1973*, the *Trade Practices Act 1974*, the *Financial Corporations Act 1974* and the *Administrative Appeals Tribunal Act 1975*. The administrative decision review jurisdiction of the Federal Court was conferred by the *ADJR Act 1977*.<sup>54</sup> Now, there are 167 principal Acts which confer jurisdiction in addition to the Court's original jurisdiction<sup>55</sup> (increasing from 13 Acts in its

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<sup>54</sup> Leslie Zines, *Cowen and Zines's Federal Jurisdiction in Australia* (3<sup>rd</sup> ed., 2000), 111-112.

<sup>55</sup> Federal Court of Australia, *Annual Report 2002-2003* (2003), app 4 <<http://www.fedcourt.gov.au/aboutct/ar2002.html>> at 13 October 2003.

establishment year 1976<sup>56</sup> to 155 Acts in 2002)<sup>57</sup> in six main areas: trade practices, industrial relations, review of federal administrative action, admiralty, bankruptcy and Native Title.

In 1983, under section 39B of the *Judiciary Act*, jurisdiction was conferred on the Court to grant the remedies referred to in section 75(v) of the Constitution. In 1987, the Court's jurisdiction with respect to taxation matters was made exclusive to the Court and employed concurrent original jurisdiction under legislation relating to intellectual property. It was invested with concurrent jurisdiction with the Supreme Courts of the States and Territories in admiralty jurisdiction under the *Admiralty Act 1988*. It also was given corporations law jurisdiction under the *Corporations Act 1989*. The Court was invested with jurisdiction over Native Title matters under the *Native Title Act 1993*. The change in the Court from specialised to broad jurisdiction really progressed when section 39B of the *Judiciary Act* conferring jurisdiction with respect to section 75(V) remedies was amended to add original jurisdiction under sub-section (1A) Para (a), (b), (c).<sup>58</sup> With the provision of original jurisdiction, it can no longer be denied that the Federal Court is a court of general federal jurisdiction possessing almost all important federal jurisdiction under section 75(v) and section 76 (i), (ii) and (iii) of the Constitution.<sup>59</sup>

In brief, according to the laws steadily passed by the Commonwealth Parliament, the jurisdiction of the Federal Court has increased. Such growth in its jurisdiction particularly through the amendment of section 39B of the *Judiciary Act*, plays a most important role in its transformation from a Court of specialised jurisdiction to one with a broad jurisdiction.

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<sup>56</sup> Crawford, above n 46, 150.

<sup>57</sup> Federal Court of Australia, *Annual Report 2001-2002* (2002), app 5 <<http://www.fedcourt.gov.au/aboutct/ar2001.html>> at 13 October 2003.

<sup>58</sup> *The Judiciary Act 1903*, s 39B (1A) para (a), (b), (c) provided that

'(1A) The original jurisdiction of the Federal Court of Australia also includes jurisdiction in any matter:

- (a) in which the Commonwealth is seeking an injunction or a declaration; or
- (b) arising under the Constitution, or involving its interpretation; or
- (c) arising under any laws made by the Parliament.'

<sup>59</sup> Zines, above n 54, 113-114.

### 3.2.2.2 Federal Administrative Jurisdiction

It is necessary to have judicial review of administrative decisions in all countries, including Australia. This is because the performance of duties of government departments and officers create a number of administrative decisions affecting the public. Judicial review was necessary to examine the actions of the Commonwealth Public Service. Courts are judicial bodies which can ensure minimum standards of consistency and justice.

At present, while the power of administrative judicial review belongs chiefly to the Federal Court, the administrative merit review jurisdiction belongs to the Administrative Appeals Tribunal (AAT). The judicial review jurisdiction of the Federal Court was conferred by the *ADJR Act* 1977. Before the establishment of the Federal Court the jurisdiction was exercised by the Supreme Courts and, especially in federal matters, the High Court. To grasp the scope of the Federal Court's jurisdiction in federal administrative law, the historical development of legal reform of the system of review of federal administrative decisions is examined.

#### *Importance of Review System of Federal Administrative Decisions of Australia*

##### **a) Original Jurisdiction in Australian Administrative Laws**

Section 75 (v) of the Constitution confers a judicial review jurisdiction on the High Court in its original jurisdiction in 'all matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth.'<sup>60</sup> This means that the entrenched judicial review was remedy-based: mandamus, prohibition and injunction. Grounds of judicial review are not mentioned in this provision, they are settled in the *ADJR Act*.<sup>61</sup> Under section 75 (v), a judicial-review claim became an important part of the High Court's caseload.

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<sup>60</sup> *Commonwealth of Australia Constitution Act 1900* (Imp), Chapter III The Judicature, s 75 (v).

<sup>61</sup> Peter Cane, 'The Making of Australian administrative law' (2003) 24 *Australian Law Journal* 2.

## **b) Judicial Review Move to the Federal Court**

The sources of power for judicial review of Commonwealth action by the Court essentially derives from the *Judiciary Act 1903* and the *ADJR Act 1977*. It is the result of a legal system reform in Australia in 1970s. In this section, I examine this fundamental jurisdiction in three sub-sections: the importance of an administrative review system of Australia, the *Judiciary Act 1903* and the *ADJR Act 1977*.

## **c) Process of Reform**

According to the 1971 report of the Kerr Committee and the 1973 Ellicott Committee, there was growing discontent with the performance of duties by Commonwealth government agencies or officials. In the past this was due to the substantial increase in the interaction between the state and the public after the World War II. The post-war development programme had sought to improve the living standards of the people. In addition, the both committee reports that common law rules of administrative review did not permit judicial review to be conferred on a non-judicial body. This is the difference between the concepts of judicial review and merit review. A court has no direct power to review the merits of a decision of an administrative body, that is, the power granted to an administrator by parliament. Hence, a court can only investigate the legitimacy of the exercise of power of an administrative agency. Even though a court may employ its judicial review power in an administrative dispute, the applicable rules and remedies of common law are very complex and may not redress the grievance of the injured person suitably.<sup>62</sup> According to the Kerr Committee's report by that time, such a review system would cause decision makers to be avoided and promote arbitrariness in primary administrative decisions.<sup>63</sup>

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<sup>62</sup> Crawford, above n 46, 151.

<sup>63</sup> Deirdre O' Connor, 'Lessons from the Past/Challenges the Future: Merits Review in the New Millennium' (Paper presented at the 2000 National Administrative Law Forum, 30 September 2004) <[www.aat.gov.au/CorporatePublications/speeches/oconnor/lessons.htm](http://www.aat.gov.au/CorporatePublications/speeches/oconnor/lessons.htm)> at 30 October 2004; Administrative Review Council, *Overview of the Commonwealth System of Administrative Review* (2004) <[http://www.ag.gov.au/agd/WWW/arcHome.nsf/Page/Overview\\_Overview\\_of\\_the\\_Commonwealth\\_System\\_of\\_Admin\\_Review](http://www.ag.gov.au/agd/WWW/arcHome.nsf/Page/Overview_Overview_of_the_Commonwealth_System_of_Admin_Review)> at 30 October 2004.

Reforms in two main areas resulted from these discussions. First, in 1975, the Administrative Appeals Tribunal was established with jurisdiction for reviewing the merits of decisions of Commonwealth officers. As mentioned above, because the remedially focussed system in administrative disputes was a complicated, technical system and it was necessary to create a new reviewing technique for administrative decisions, the Kerr Committee proposed the AAT as a merits-review tribunal. This proposal was implemented in the *Administrative Appeal Tribunal Act 1975* (Cth).

Secondly, in the *Administrative Decisions (Judicial Review) (ADJR) Act 1977*,<sup>64</sup> a system of judicial review of federal administrative decisions was created. It provided efficient tools for review of executive action. In addition, there was a conferral of extensive judicial review authority on the Federal Court under both section 39B of the *Judiciary Act* and the *ADJR Act*. The *Judiciary Act* allows the Federal Court to share with the High Court judicial review powers under section 75 (v). It gives the Federal Court jurisdiction to hear any matter arising under any laws made by the Commonwealth Parliament even though it is not related to judicial review.<sup>65</sup>

In summary, the demand for an administrative review system, to provide redress for the injured person with a suitable remedy, gave rise to the AAT functioning as a merits-review tribunal. Additionally, the *Judiciary Act* and the *ADJR Act* conferred original jurisdiction on the Federal Court in administrative cases via a judicial review power. Thus the administrative reviews system was developed through legislative reform. The AAT and the Federal Court are the core elements of a review system.

#### *Judiciary Act 1903*(Cth)

As we can see, legislative reform of administrative law led to the conferring of jurisdiction on the Federal Court. In 1983, the Federal Court was given concurrent jurisdiction under section 75 (v) of the Constitution as prescribed in section 39B of *Judiciary Act*.<sup>66</sup> The

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<sup>64</sup> Crawford, above n 46, 151-152.

<sup>65</sup> Mark Aronson, Bruce Dyer and Matthew Groves, *Judicial Review of Administrative Action* (2004), 26.

<sup>66</sup> Crawford, above n 46, 153.

powers under the *Judiciary Act* were expanded in section 39B, which was added in 1997 and 1999 in exercise of the power in section 76 (ii) of the Constitution to invest any federal court with jurisdiction over the entire body of federal law by conferring jurisdiction on the Court in matters arising under any laws made by the Parliament, other than criminal matters. This provision enables the Court to deal with any matter which is federal in nature and it makes the federal jurisdiction of the Court more general.<sup>67</sup> Hence, under the Act, all civil cases, including administrative law matters, arising under any law made by the Commonwealth Parliament can be filed in the Federal Court.

#### *Administrative Decision (Judicial Review) Act 1977 (Cth)*

As mentioned above, the *ADJR Act* has played a very important role in the reform of the Australian administrative review system. The jurisdiction of the High Court was a complex, technical and remedy-based system of judicial review under section 75 (v) of the Constitution. Its role, as a final court of appeal, was to hear appeals from decisions of the State Courts exercising their judicial review jurisdiction. Historically, the diversity of bodies involved in passing judgments in Australian judicial review resulted in inconsistency, creating an urgent need for administrative system reform.<sup>68</sup> Under the *ADJR Act*, the focus of judicial review shifted from procedure to substance and from a remedy-oriented approach to grounds of review.<sup>69</sup> The Act redefines availability of judicial review by reference to decisions of an administrative nature made under any Commonwealth enactment. While grounds of review are specified in section 5, the remedies are specified in section 16. Note that, the jurisdiction of the Federal Court under the *ADJR Act* coincided with that of the High Court to hear a case in which a constitutional writ was sought against a Commonwealth officer under section 75 (v) of the Constitution. So, there is overlap in the

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<sup>67</sup> Ibid. 150; Zines, above n 54, 113.

<sup>68</sup> Cane, above n 61, 9.

<sup>69</sup> The overall grounds of (judicial) review are that 'the repository of Public Power has breached the limits placed upon the grant of that power.' The breach is composed of the donee exercising his/her authorised power more than is authorised or in unauthorised way. It, sometimes, includes the neglect of the donee in performing his/her duties required to be performed by the law. So the grounds for review may come from the act or neglect of a State agency or State official and it causes the outcome that the court can remedy such a consequence. See Aronson, above n 65, 85.



jurisdiction of the two courts.<sup>70</sup> However, the Act did not affect the remedy-focused jurisdiction of the High Court under section 75 (v) of the Constitution or that of the Federal Court under section 39B. Therefore, an injured person can establish his/her right to seek a remedy in two different theatres. The *ADJR Act* confers most of the jurisdiction on the Federal Magistrates Court as well<sup>71</sup> in order to 'free up judges in the federal courts and allow them to focus on more complex matters requiring their attention.'<sup>72</sup> The *ADJR Act* thus is a very important law, simplifying judicial review of an administrative action and providing proper redress for abuse of an administrative action.

### 3.2.3 The Federal Court's Structure and Capacities

The Federal Court of Australia, established under the *Federal Court of Australia Act 1976* (Cth), has operated since 1 February 1977.<sup>73</sup> It is a superior court and sits in all capital cities throughout Australia.<sup>74</sup> The Court's jurisdiction includes almost all civil cases arising under Australian federal law as well as some criminal matters. It also has jurisdiction to adjudicate any matter arising under the Constitution and its interpretation.<sup>75</sup> Administrative law is one of the most important areas of its jurisdiction. Under the *Administrative Decisions (Judicial Review) Act 1977*, most administrative law cases come under the Federal Court's jurisdiction. It exercises judicial review of most administrative decisions made under Commonwealth laws. Such review relates to the legality, rather than to the merits of decisions previously reviewed by the Administrative Appeals Tribunal (AAT). The Court also exercises jurisdiction to hear appeals on questions of law from the AAT.

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<sup>70</sup> Crawford, above n 46, 153.

<sup>71</sup> 'In 1999 the Commonwealth established the Federal Magistrates Court, known as the Federal Magistrates Service. The Court began hearing cases in July 2000. Its purpose is to provide a cheaper, simpler, and faster method of dealing with less complex civil matters that would otherwise be heard by the Family Court or the Federal Court. Thus the Federal Magistrates Court shares a substantial part of the Federal Court's judicial review jurisdiction but it is dealing with less complex matters. Its jurisdiction includes administrative law so some of the cases appealed from the AAT might go to the Federal Magistrates Court instead of the Federal Court.' See Ibid. 121.

<sup>72</sup> Commonwealth Attorney-General, 'Federal Magistracy to be Established' (News Release, 8 December 1998) in French, above n 49, 158.

<sup>73</sup> Federal Court of Australia, *Annual Report 2001-2002 (2002)*, above n 57, Chapter 1 Overview of the Federal Court of Australia.

<sup>74</sup> *Federal Court of Australia Act 1976* (Cth), ss 5, 12, 18.

<sup>75</sup> Federal Court of Australia, *Annual Report 2002/2003 (2003)*, above n 55; Federal Court of Australia, *About the Court* (2003) <[www.fedcourt.gov.au/aboutct/abouttct.html](http://www.fedcourt.gov.au/aboutct/abouttct.html)> at 10 October 2003.

The *Judiciary Act* also vests the Court with power to hear applications for judicial review of decisions made by Commonwealth officers. Its jurisdiction includes review of cases under the *Migration Act 1958* and other decisions of the Migration Review Tribunal and the Refugee Review Tribunal. The Court also has jurisdiction in taxation cases against the Commissioner of Taxation. Other significant divisions of the Court's jurisdiction are conferred in the *Native Title Act*, the *Admiralty Act*, the *Corporations Act*, the *Australian Securities and Investments Commission Act* and the *Bankruptcy Act*.<sup>76</sup> The Court has appellate jurisdiction over decisions of individual judges of the Court; decisions of the Supreme Court of Norfolk Island; decisions of Federal Magistrates in non-family law matters; and some specific decisions of Australian State Supreme Courts employing federal jurisdiction.<sup>77</sup>

The Chief Justice manages the administrative matters of the Court and may delegate any of his administrative powers to judges or a registrar.<sup>78</sup> There are about fifty judges in the Court. They are appointed by the Governor-General under the Australian Constitution and cannot be removed unless there is proven misbehaviour or incapacity.<sup>79</sup> A registrar is appointed under the *Public Service Act 1999* by the Governor-General on the nomination of the Chief Justice as a head of a Statutory Agency of the Australian Public Service. The other court staff are appointed or employed under the same Act.

There is a Registry in every State and Territory to support the Court's operations and provide information to the public. A registrar administers each registry, conducts mediation conferences and hearings, and makes orders in bankruptcy cases.<sup>80</sup> The Sydney Registry of the Court is accountable for the overall administrative policies and operations of the Court's registries.<sup>81</sup>

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<sup>76</sup> Federal Court of Australia, *Annual Report 2002/2003* (2003), Ibid.

<sup>77</sup> Federal Court of Australia, *Annual Report 2001-2002* (2002), above n 57, Chapter 1: Overview of the Federal Court of Australia.

<sup>78</sup> Federal Court of Australia, *About the Court*, above n 75.

<sup>79</sup> Federal Court of Australia, *Introducing the Court: The Judges* (2003) <[www.fedcourt.gov.au/communit\\_info/introcourt/com\\_judges.html](http://www.fedcourt.gov.au/communit_info/introcourt/com_judges.html)> at 10 October 2003.

<sup>80</sup> Ibid.

<sup>81</sup> Federal Court of Australia, *Introducing the Court: The Registry* (2003) <[www.fedcourt.gov.au/communit\\_info/introcourt/com\\_registry.html](http://www.fedcourt.gov.au/communit_info/introcourt/com_registry.html)> at 10 October 2003.

### 3.2.4 The Federal Court and the Administrative Appeals Tribunal

The administrative law jurisdiction of the Federal Court is related to the jurisdiction of the Administrative Appeals Tribunal (AAT). To clearly understand the jurisdiction of the Federal Court the relationship between the two organisations needs to be explored.

#### 3.2.4.1 The Administrative Appeals Tribunal (AAT)

The establishment of the AAT in 1975 was a key development in administrative review in Australia. It is an independent body that reviews the merits of administrative decisions made by Commonwealth Government ministers and officials, authorities and other tribunals, as well as the decisions of some non-government bodies; that is, federal administrative decisions. The establishment of the AAT was a means to review the correctness and value of decisions. It was employed to replace judicial review, which was expensive, excessively technical and did not review the decision's merits.<sup>82</sup> As the AAT is not a Court but a non-judicial body, it cannot decide questions of law. Nonetheless, it can give advisory opinions in those matters referred to it under the provisions of the Act.<sup>83</sup> The Tribunal's jurisdiction is to review decisions made under 395 Acts of Parliament, covering areas such as taxation, social security, veterans' entitlements, Commonwealth employees' compensation and superannuation, criminal deportation, civil aviation, customs, freedom of information, bankruptcy, student assistance, security assessments undertaken by ASIO, corporations and export market development grants.<sup>84</sup>

The President of the Tribunal is a judge of the Federal Court, acting in his/her personal capacity. The Tribunal reviews decisions on the basis of the correctness of a case and provides a preferable decision. Such a decision may affirm, vary or set aside the primary decision. The Tribunal can be both the first avenue and final review of an administrative decision. In some cases, there is a condition that an application for appeal is first internally

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<sup>82</sup> O' Connor, above n 63, 1.

<sup>83</sup> Crawford, above n 46, 283-285.

<sup>84</sup> Administrative Appeals Tribunal, *Annual Report 2002-2003* (2003), 8  
<<http://www.aat.gov.au/CorporatePublications/annual/AnnualReport2003.htm>> at 13 October 2003.

reviewed by the government official or agency making the original decision. In others, the AAT reviews only after intermediate review by a specialist tribunal.<sup>85</sup>

In 1995, the Administrative Review Council recommended an amalgamation of the AAT and four other specialist review tribunals (Immigration Review Tribunal, Refugee Review Tribunal, Social Security Appeals Tribunal and Veterans Review Board) and the introduction of a new tribunal – the Administrative Review Tribunal (ART). In 2000, a bill for the establishment of the ART and implementation of other administrative reforms departed from a quasi-judicial model to a less formal, more expeditious, accessible and economical body. This process of change is continuing because of concerns about losing some degree of the fairness, justice and independence in the merits review system.<sup>86</sup> On 6 February 2003, the Attorney-General insisted that it was necessary to improve the federal merits review tribunal system. This process will be started by streamlining procedures and increasing the flexibility and efficiency of the tribunals' operations.<sup>87</sup> It can be concluded that the proposed legislative reforms appear to be aimed at ensuring a fair and efficient merit review tribunal system and laying down a high standard of government decision-making.

#### 3.2.4.2 The Relationship between the Federal Court and the AAT

The relationship between the Federal Court and the AAT is examined below in a study of two important laws: the *Administrative Decision (Judicial Review) Act 1977* and the *Administrative Appeals Tribunal Act 1975*.

##### *Federal Court's Jurisdiction to Review*

The Federal Court has wide jurisdiction to review federal administrative actions under the *Administrative Decision (Judicial Review) Act 1977* (Cth) (*ADJR Act*), and in particular those actions from the *Administrative Appeals Tribunal Act 1975* (Cth) (*AAT Act*). Section 3 of the *ADJR Act* requires an applicant to be able to show that the review sought

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<sup>85</sup>Council of Australasian Tribunals, *Register of Tribunals-Australia* (2004) <[www.coat.gov.au/register.htm](http://www.coat.gov.au/register.htm)> at 13 October 2004.

<sup>86</sup> Crawford, above n 46, 285.

is of a decision which is of an administrative character and made under a relevant enactment. Sections 5-7 of the Act set out the grounds of review.<sup>88</sup> It can be said that this Act provides for judicial review of most administrative decisions made under Commonwealth enactments. Such grounds of review relate to the legality, rather than to the merits of the decision. Whilst the Court exercises a judicial review power, the AAT employs another review called administrative/merit review power. The *AAT Act* created the AAT as the senior administrative review body with powers to review decisions made under relevant enactment.<sup>89</sup> Consequently, these two Acts are the principal avenues for review of federal administrative decision-making.

*Appeals from the AAT to the Federal Court: The Administrative Appeals Tribunal Act 1975*

The Federal Court also has jurisdiction to review decisions of specialist courts and tribunals. However, questions referred to the Court are limited to questions of law.<sup>90</sup> The Court is closely related to the AAT because many of its cases arise under the AAT Act. The Act provides for review on the merits of many Commonwealth administrative decisions, and also provides a right of appeal from the Tribunal to the Court on questions of law. Therefore, the AAT itself or the parties may refer a question of law to the Federal Court for decision.<sup>91</sup> Note that, since the establishment of the Federal Magistrates Court in 1999, some of the administrative cases are transferred to the new inferior Court when appropriate.<sup>92</sup>

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<sup>87</sup> Administrative Appeals Tribunal, *Annual Report 2002-2003* (2003), above n 84, 23.

<sup>88</sup> Northern Territory University, *Introduction to Administrative Law Judicial Review* (2004) <[www.ntu.edu.au/faculties/lba/schools/Law/apl/Administrative\\_Law/int...](http://www.ntu.edu.au/faculties/lba/schools/Law/apl/Administrative_Law/int...)> at 30 October 2004.

<sup>89</sup> *Administrative Appeals Tribunal Act 1975* (Cth), ss 3(1), (3), 25(4).

<sup>90</sup> Crawford, above n 46, 165-166.

<sup>91</sup> *Administrative Appeals Tribunal Act 1975* (Cth), s 45.

<sup>92</sup> *Administrative Appeals Tribunal Act 1975* (Cth), ss 44, 44AA.

### 3.3 Comparative Issues

This last section discusses similarities and differences in four significant issues relating to the Thai Administrative Court and Federal Court of Australia as follows.

#### 3.3.1 Establishment

The *raison d'être* of administrative law is distinct from private law, as it privileges the administrator over the private citizen. To protect people's rights and shape the state's performance, it is essential to establish an external review entity to examine administrative decisions.

In this thesis, the study of the historical development of both the Federal Court of Australia and the Administrative Court of Thailand has shown that the substantial increase in the level of interaction between government and citizen, and the public request for more protection of citizen's rights and liberties gave rise to demands for a merit review system. In the case of Australia, improvements in the individual's quality of life through post-war development provided the impetus for such reforms, which occurred in the 1970s. That is, growth of activities in civil society in Australia resulted in reforms in administrative review systems which reflected the awareness of increasing needs for greater efficiency, consistency and fairness. The establishment of the Federal Court and the Administrative Appeals Tribunal were the direct result of this, providing the mechanisms to review a large and growing range of decisions made by public servants and statutory authorities.

In Thailand, it was political reform in 1994 that was the turning point for the legal system. The present Thai Constitution was the direct result of the reform. One of the most important reasons for the drafting of this Constitution was to promote a system of checks and controls on the exercise of the state's power. The Administrative Court, with its long historical development since 1874, was officially established under section 276 of the Constitution. The core characteristic of the Court is to adjudicate on administrative cases under the *Act on Establishment of Administrative Courts and Administrative Court Procedure of 1999 (ACP*

*Act*). The Court is a judicial organisation conferring administrative jurisdiction ensuring justice for Thai people and laying down standards of performance for official tasks.

### 3.3.2 The Review System

Both the Federal Court and the Administrative Court employ judicial review in all administrative cases. This means that both courts have power only to examine or review the legality of an administrator's decision, not its merits. The Federal Court is granted prerogative judicial review under section 39B of the *Judiciary Act*. This jurisdiction is concurrent with the High Court's jurisdiction to grant judicial review against a Commonwealth officer by prerogative writ or injunction, a jurisdiction which is constitutionally guaranteed by chapter III particularly section 75 (v) of the Commonwealth Constitution. The Federal Court also has a statutory right to judicial review under legislation, particularly the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (*ADJR Act*).

The jurisdiction of the Thai Administrative Courts was guaranteed under the Thai Constitution (particularly section 276) and the *ACP Act* (particularly sections 9 and 72). Under those provisions, the Courts have the power to adjudicate in cases of disputes between state officials or state governments and individuals, and between different state officials or state governments. The Courts may adjudicate or make an order in six matters under section 9 of the *ACP Act*. For example, the Courts have power to 'adjudicate or give orders over the case involving a dispute in relation to an unlawful act by an administrative agency or State official', 'a dispute in relation to an administrative agency or State official neglecting official duties required by the law to be performed or performing such duties with unreasonable delay' and 'a dispute in relation to a wrongful act or other liability of an administrative agency or State official arising from the exercise of power under the law or from a by-law,...'<sup>93</sup> In addition, the Administrative Courts have the power to issue six decrees under section 72 of the *ACP Act*. Under such provisions, the Administrative Court is a court of law employing judicial review powers in general administrative cases.

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<sup>93</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 9.

### 3.3.3 Court Structure and Jurisdiction

In many respects the Thai Constitution and the *ACP Act* are the most important laws for the Administrative Court. They endowed the Court with a general administrative case jurisdiction. These laws contain the principles of administrative law to be applied to cases of dispute in order to strike a balance between the public interest and the individual and they employ an inquisitorial approach to inquire into the facts. Many principles of the Court have derived from the Act. For example, the Act provides that Administrative Court judges are to have a special qualification in some specific area of knowledge such as law, political science, economics and so on. Accordingly, an Administrative Court judge does not need to have a legal background or to be a member of a profession, but they must pass an exam which demonstrates their knowledge of the administrative laws. This ensures judicial independence via the establishment of the JCAC (see Chapter 4, p. 114.); and therefore, the fairness and justice of judgments and orders are also ensured. The provision of the *ACP Act* requiring Senate approval for the appointment of the President is one means of creating judicial accountability. However, the independence of an Administrative Court judge in his/her managerial role may be questioned because of the execution of the Directive for the Performance and Assessment of works of the judges of the Courts of First Instance. This Directive affects the independence of judges in managing and executing their cases. As a result, the Federal Court's judges have more independence than judges of the Administrative Court in the managerial roles of their case flow. The IDS of the Federal Court provides a guideline for judges in the active control of their cases while the Directive of the Administrative Court prescribes a measure to supervise judges to ensure an active managerial role in supervising their cases.

The *ACP Act* also provides that the management of administrative matters of the Court is undertaken through the Secretary-General and the Office of the Administrative Courts (OAC). He/she is responsible to the President. The case officials of the Administrative Court judges have to assist their judges in both case and secretarial work. Accordingly, the CFM of the Court is unique in the assistance given by the case officials to the judges' managerial role. This is slightly different



from the USA concept where only judges or court managers can be made responsible for managing and controlling cases.

Case officials of the Administrative Court are the strength of the Court's procedure. They not only assist judges in collecting and narrowing issues of fact and law, they also encourage unrepresented parties to use the administrative justice system. The evidence of self-represented parties can be unclear or inadequate and can cause difficulties for judges inquiring into the facts. Case officials assist the case judge to make conclusions about unorganised facts and give opinions on questions of law. Unrepresented parties, therefore, have better access to the Court due to the work of the case officials.

The Federal Court's jurisdiction, in turn, was invested under many Acts. However, its administrative law jurisdiction was principally invested by the *Administrative Decisions (Judicial Review) Act* and the *Judiciary Act*. Thus both the Federal and Administrative Courts were granted judicial power to review state officials' decisions via specific laws. Furthermore, in both countries many of the court's principles have been established by statutory laws. For example, the Australian Constitution guarantees judicial independence through its provision that judges cannot be removed without proven misbehaviour or incapability. In the Federal Court, the registrar of each registry has responsibility similar to the Thai Secretary-General of the Administrative Court, running all routine functions of the Courts. In brief, both organisations are similar in many structural respects. They render a judicial power to provide justice in administrative matters and their operations are safeguarded in principles emanating from specific legislation. However, case officials, a unique feature of the Thai Administrative Court, clearly promote a principle of accessibility to the Court. Although the Federal Court has almost equivalent positions amongst its registry staff, the responsibilities of these officers are not related to a Federal Court judge's case work. To a certain degree, a registrar may assist a judge in the Court's proceedings; however, he/she is usually responsible only for the ADR process.

### 3.3.4 Effects of the Historical Development of the Federal Court and the Administrative Court on both Courts' Features

One of the clearest reasons for the establishment of the Federal Court was to reduce congestion in the State Courts, as well as creating consistency amongst those courts. Decreasing the High Court's caseload was another reason for the Court's establishment. The history of the establishment of the Federal Court is based on legislative reform in Australia in response to demand for protection and promotion of citizen's rights and for scrutiny of the exercise of the Government's power. The development of the Federal Court affected the Court's characteristics, in particular the Court's jurisdiction. We have seen how the Federal Court's jurisdiction has broadened over the years. The Federal Court was not established as a superior court with full original jurisdiction, like the State Supreme Courts. Its jurisdiction is defined by statute.

The Commonwealth Parliament has power under the Constitution to entrust federal matters to existing State Courts or to establish a new federal court with exclusive jurisdiction to adjudicate cases. Under the *Federal Court of Australia Act*, the original jurisdiction of the Court is invested by Acts of the Parliament. So the Parliament is important in the growth of the Federal Court and the expansion of the Court's jurisdiction depends on laws made by the Parliament. At present, the Federal Court is invested with jurisdiction under 167 Acts; thus it is a Court with broad federal civil jurisdiction. One of its key jurisdictions is the administrative law area. The Court has original jurisdiction over administrative law cases but only on questions of law. The most important source of appeals to the Court in administrative cases is the AAT. The Court also makes decisions on questions of law in cases transferred from a merit review tribunal in accordance with legislation investing such power in the Federal Court. It has also been shown (p.96) that one response to the cost of judicial review in the Federal Court was the establishment of the Federal Magistrates Court in 1999. It was designed to provide a cheaper (as well as faster and simpler) ways of handling less complex civil matters.

In contrast to the gradual increase of jurisdiction of the Federal Court, the Thai Administrative Court was granted broad administrative review power under both the Thai Constitution and the *ACP Act*. The jurisdiction of the Court is wide but only in

administrative disputes, not civil disputes. The Court also provides dispute resolution in a cheap and expeditious manner. This is because many types of administrative cases 'require neither court fees nor a lawyer or legal advisor to file a suit.'<sup>94</sup> The proceedings in the Court are also simpler because of the intention to establish the Court as a People's Court. For instance, the initial stage of the case filing is simpler because if a plaint does not contain all essential details, or is incomprehensible, the Office of the Administrative Courts (OAC) gives necessary advice to the plaintiff to make corrections to the plaint. In the inquiry stage, the Court could inquire into the facts and relevant evidence to the extent that it deems appropriate in order to expedite proceedings and provide justice to the parties. Unlike Australia's Federal Court (employing an adversarial system), the Administrative Court employs an inquisitorial system to inquire into all related facts and evidence. The Administrative Court, too, established a guarantee process using its conclusive judges to prepare a summary of issues of fact, issues of law and opinions. This is so the public can be assured that a party who lacks knowledge of law will not be prejudiced in the justice system of the Administrative Court. An uncomplicated system is provided in every step of Administrative Court procedures. People may be obliged to comply with some regulations to ensure the co-operation of the parties and to keep the Courts in order.<sup>95</sup> Such considerations of cost and time reduction and simpler court proceedings were not part of the brief for the establishment the Federal Court although they were for the Administrative Appeals Tribunal.

In terms of the functioning of the two Courts, there are some similarities. Both courts employ judicial review in administrative cases pursuant to the Constitutions under which each court was conferred power and under Acts of Parliament giving jurisdiction in administrative law to the Federal Court and to the Thai Administrative Court. In order to manage and control cases filed from beginning to end, the Administrative Court employs case flow management. In 1997, the Federal Court implemented an innovative model of case flow management called the Individual Docket System (IDS).<sup>96</sup> One of the Court's key principles is the establishment of time goals for the disposition of cases and the delivery of judgment. Such time goals are encouraged by the careful management of cases in the IDS

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<sup>94</sup> Office of the Administrative Courts of Thailand, *The Administrative Court of Thailand* (2002), 27.

<sup>95</sup> Ibid. 28-29.

<sup>96</sup> Caroline Sage and Ted Wright with Carolyn Morris, *Case Management Reform: A Study of the Federal Court's Individual Docket System* (2002), 1.

and some practices and procedures designed to promote efficient disposition of cases under law.<sup>97</sup> To manage the caseload of the Court, it is important to introduce a high-quality case management system combining 'docketing or event processing, calendaring, scheduling, noticing, statistical and managerial reporting, and the financial aspect of case into one process by eliminating repetitive procedures.<sup>98</sup> In the Federal Court, a new case management system (CASETRACK) was introduced to replace the existing one (FEDCAMS). The introduction of the new CMS is considered to support the IDS.<sup>99</sup>

As discussed in Chapter 1, the Thai Administrative Court, too, has introduced case flow management since the initiation of the Court in 2001. The Court invented a simple system, the Administrative Case Administration System, ACAS, to assist in the initial case flow management scheme. These days, the Court employs a more sophisticated tracking system called Administrative Case System Program, ACSP, although the ACAS is still being employed as a dual system. The reasons for the implementation of case flow management and for employing both a new and existing tracking system for the Administrative Court are similar to those of the Federal Court. The systems are capable of meeting the demands of the Court's work in line with the objective of providing expedition of administrative proceedings. CFM is one of the most important techniques in promotion of judicial accountability and accessibility and a core concept of the new millennium court.

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<sup>97</sup> Federal Court of Australia, *Annual Report 2002-2003* (2003), above n 55, Chapter 3: The Work of the Court in 2002-2003.

<sup>98</sup> National Center for State Courts, *Case Management Systems: Executive Summary* (2003) <[http://www.ncsconline.org/wcds/Topics/topic1.asp?search\\_value=Case%20Management%20Systems](http://www.ncsconline.org/wcds/Topics/topic1.asp?search_value=Case%20Management%20Systems)> at 13 October 2003.

<sup>99</sup> Email on 'Overview of CMS Project', from David Beling, Project Team Manager, to Natacha Vsindilok, 7 October 2003.

## Chapter 4

### **Principles of Case Flow Management in the Administrative Court of Thailand**

This Chapter elucidates the principles of the Administrative Court's CFM system in three areas. The first section defines the principles. The second compares the principles with those of the Federal Court of Australia and the USA context. The third considers how the principles work in the everyday functioning of the Court from the points of view of the judges, case officials and parties.

The study of the principles of the Administrative Court's CFM is not easily achieved by reviewing the literature because they have not been mentioned in any publications. This research project's examination of the principles, therefore, started with an investigation into the origins of the establishment of the Court. As elucidated in Chapter 3, the Thai Constitution and the *Act on Establishment of Administrative Courts and Administrative Court Procedure 1999 (ACP Act)* are the foundations of the Court. As a result, an examination of the principles of judicial administration of the Court can be undertaken through an analysis of that legislation. In addition to this, the CFM of the Administrative Court, in line with the USA context of case flow management, was introduced to the Court as the controlling and monitoring process of time and events of an administrative case and facilitates the implementation of the Court's principles. The principles of the CFM system, therefore, reflect the principles of judicial administration adopted by the Administrative Court. Other sources of the principles of the Court's CFM system are the Court's policies and measures for implementation of the CFM. This is because the execution of the CFM system reflects the principles behind its implementation. It is therefore necessary to examine internal documents and memoranda of the Court.

In the second section, the principles of CFM in the Administrative Court are compared to those of the Federal Court and to the theoretical framework, that is, the USA perspective examined in Chapter 2. The third section presents some of the results of the

questionnaires and interviews conducted with a range of Court officers, judicial and non-judicial, and parties to cases to ascertain their views on the actual operation of the CFM system. Details of the research methodology, samples and population are contained in Appendix C: Methodology in Thailand.

## **4.1 Principles of Judicial Administration of the Administrative Court**

The principles of judicial administration, that is, accessibility to justice, judicial independence, judicial accountability, and the use of information technologies as well as alternative means to resolve disputes, which are the mainstream of a modern court, can be discerned from the study of the Thai Constitution and the Act. As previously stated in Chapter 3, the rationale behind the Act and the Administrative Court's provisions in the Constitution is that the Court is a judicial organ adjudicating administrative disputes under the principles of the public laws and employing an inquisitorial approach. However, examination of the Constitution, sections 249 and 279 and the Act Chapter II Judicial Commission of the Administrative Courts and sections 55, 56, 57, 61, 64, 65, 69, expound the principles of CFM of the Court as: fairness of the Court (independence, transparency, and equal treatment), judicial control (inquisitorial system, active role), judicial accessibility (cost reduction, expansion of the Regional courts), and judicial accountability (accountability to the public, internal accountability). These principles are discussed in more detail below.

### **4.1.1 Fairness of the Court**

An examination of the Constitution sections 249 and 279 and the Act sections 27, 30, 56, suggests that fairness is one of the most important principles of the Court's CFM system. It is constituted by three fundamental elements: independence, transparency and equal treatment.

#### 4.1.1.1 Independence

The intention of judicial independence is not that the Court is immune from public criticism, rather, it is the principle of independence from proscription or intervention.<sup>1</sup> In order to preserve this immunity, two elemental areas, the independence of the institution and of individual judges need to be maintained. The independence of individual judges involves features such as security of tenure and stability in the level of salary. The independence of the institution relates to the way that the court is run by the judges themselves. For example, judges control the processes of selection of a new judge and the procedure of case allocation. The independence of the Administrative Courts is also laid down in the Constitution and the Act.

#### *Independence of the Institution*

##### 1) Adjudication of cases

This is the basic principle for judges in providing independent adjudication of a case 'in accordance with the Constitution and the law.'<sup>2</sup> Under such a principle, judges can implement their judicial roles without interference from any external powers, political for example, and provide impartial judgment in cases.

##### 2) The assignment of cases

This includes the procedure of case allocation and reallocation.<sup>3</sup> When the cases are filed in the Administrative Court, the President or the Chief Justices allocates the case to a division, then the senior judge of a division allocates it to other judges within the division. This means that the President or the Chief Justice controls the process of case allocation and of the particular category of a case that has to be distributed to a specialist division. In addition, if a case cannot be allocated to a particular division, it is distributed randomly.

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<sup>1</sup> Patricia M. Lane, *Court Management Information: A Discussion Paper* (1993), 14-17.

<sup>2</sup> *Constitution of the Kingdom of Thailand B.E.2542 (1997)*, s 249 para 1.

<sup>3</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 56 para 3; *Constitution of the Kingdom of Thailand B.E.2542 (1997)*, s 249 para 3, 4.

Redistribution, recall or transfer of the case is not possible except in the interests of justice. Additionally, the process of recall or transfer of a case has to be carried out under the Act, section 56, and the regulation prescribed by the General Assembly of judges of the Supreme Administrative Court.<sup>4</sup>

### 3) Structure of the Judicial Commission

The Judicial Commission of the Administrative Court (JCAC) was established under the Constitution<sup>5</sup> and implements its roles and functions as prescribed by the Act.<sup>6</sup> It is an administrative unit which is responsible for judicial personnel including selection, transfer, promotion, removal, expulsion and assessment of performance fitness.<sup>7</sup> The executive board of the Commission consists of a Chairperson and twelve qualified members. Under the Constitution, section 279, the President of the Supreme Administrative Court is the Chairperson. Nine out of twelve qualified members have to be administrative judges who are elected from amongst the administrative judges of the Court. The other three members are not administrative judges. Two out of the three are elected by the Senate and another member is elected by the Council of Ministers. Consequently, in the structure of the JCAC, the vast majority of members are Administrative Court judges, which ensures its independence as a unit of the Court's personnel. The judges themselves have control over their personnel administration while the Court is accountable to the public through the Senate and the Council of Ministers.

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<sup>4</sup> This process is prescribed in the Rule of the General Assembly of Judges of the Supreme Administrative Court on a Division of Case Allocation, Transfer of a Case, Performance of Duties of Judges in an Administrative Case, an Objection of an Administrative Court's Judge, Performance of Duties of a Case Official, and an Authorisation to Execute an Administrative Case, 2001, in President of the Supreme Administrative Court, *Rule of the General Assembly of Judges of the Supreme Administrative Court on a Division of Case Allocation, Transfer of a Case, Performance of Duties of Judges in an Administrative Case, an Objection of an Administrative Court's Judge, Performance of Duties of a Case official, and an Authorisation to Execute an Administrative Case B.E. 2544 (2001)* (2001) [trans from: ระเบียบของที่ประชุมใหญ่ตุลาการในศาลปกครองสูงสุดว่าด้วยองค์คณะการจ่ายสำนวนการไต่สวน การปฏิบัติหน้าที่ของตุลาการในคดีปกครอง การคัดค้าน ตุลาการศาลปกครอง การปฏิบัติหน้าที่ของ พนักงานคดีปกครอง และการมอบอำนาจให้ดำเนินคดีปกครองแทน พ.ศ. ๒๕๔๔].

<sup>5</sup> *Constitution of the Kingdom of Thailand B.E.2542 (1997)*, s 279.

<sup>6</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, Chapter II Administrative Judges.

<sup>7</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, Chapter II Administrative Judges.



## *Independence of the Individual Judges*

### 1) Security of Tenure

The Constitution ensures security of tenure in section 249 para 5:

The transfer of a judge without his or her prior consent shall not be permitted except in the case of termly (periodic) transfer as provided by law, promotion to a higher position, being under a disciplinary action or becoming a defendant in a criminal case.<sup>8</sup>

The transfer of a judge has to have not only the consent of the judge, as prescribed in the Constitution, but also an order of appointment from the President with the approval of the JCAC, as prescribed in the Act.<sup>9</sup> It can therefore be concluded that judges have security of tenure that is protected by both the Constitution and the Act.

### b) Stability in the Level of Salary

This is secured by section 30 of the Act, which states that the Administrative Courts' judges 'receive salaries and emoluments in accordance with the list attached to the Act.'<sup>10</sup>

This section provides stability in the level of salary of the judges in order to ensure that annual increments in salaries provide the security of a certain level of income for judges, thus lessening their potential susceptibility to financial inducements. Because of this, judges should be able to maintain their individual independence and provide fair adjudication.

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<sup>8</sup> *Constitution of the Kingdom of Thailand B.E.2542 (1997)*, s 249 para 5.

<sup>9</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 27.

<sup>10</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 30 para 1.

In conclusion, the independence of the Administrative Court, both individual judicial and institutional, is prescribed by the Constitution and the Act. It is clear that the principle of judicial independence is established in the Court.

#### 4.1.1.2 Transparency

While the principle of independence in the Court is well established, its independence does not make the Courts immune from public evaluation. It is possible to criticise the Court or a judge if it is done in good faith using academic means. In this case, the Court cannot impose punishment for contempt of Court or defamation of the Court or the Judge.<sup>11</sup> Besides this, an order inflicting punishment for contempt of Court has to be issued with caution and only of necessity. If it is an order to imprison for a term not exceeding one month or a fine not over 50,000 baht<sup>12</sup> or both, the division responsible for the adjudication of the case is forbidden to impose the punishment. Such a sentence has to be issued by another division.<sup>13</sup> Hence the public can examine the Court's performance which enhances the Court's transparency.

#### 4.1.1.3 Equal Treatment

As previously stated, a case judge plays a crucial role in inquiring into the facts. In doing so, the judge has to afford an equal opportunity to the parties to present evidence and give explanations relating to the case<sup>14</sup> and to know the allegations of the other party. The judge allows the parties adducing their evidence to confirm or rebut issues of fact and law.<sup>15</sup> Besides this, the judge is not able to hear evidence that is not disclosed to the parties.<sup>16</sup> If a judge examines a place, person or any other object to supplement his/her

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<sup>11</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 65 'Any person who criticizes a trial or adjudication of an Administrative Court in good faith and by an academic means shall not be guilty of an offence of contempt of Court or defamation of the Court or Judge.'

<sup>12</sup> Baht is a Thai currency. 50,000 baht is about Aus\$1670.

<sup>13</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 64.

<sup>14</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 55 para 1.

<sup>15</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 57 para 2.

<sup>16</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 55 para 2.

consideration, he/she shall give the parties advance notice of all details pertaining to the inspection.<sup>17</sup> The parties, therefore, may present an objection or give an explanation of fact or attend the inspection.<sup>18</sup> In brief, the inquiry procedure of the Court guarantees its due process.

#### 4.1.2 Judicial Control

The principle of judicial control of the Administrative Court can be deduced from judges' managerial roles. There are two types of managerial roles for judges: active and passive. Generally, under an adversarial system, in which the parties are obliged to present evidence and witnesses to the court to prove their case, judges have duties to oversee the proceedings and the presentation of evidence by witnesses presented by the parties. That is, the party who presents the stronger evidence has more chance of winning the case. The judicial role in an inquisitorial system is the examination and inquiry into facts in order to establish the 'truth', which is gained from an entire presentation of evidence and witnesses and then the making of a decision.<sup>19</sup> This process includes the setting-up of timeframes for the parties to present their case as well as the interrogation of the parties in Court. As a result, judges in an adversarial system generally have a more passive role than judges in an inquisitorial system. CFM, however, even in an adversarial system, requires more involvement of judges in the progress of the cases with the assistance of court officers. It cannot be denied that judges in any court that employs CFM have to be more active in management.

In the case of the proceedings of the Administrative Courts, the judicial roles established in the Act are as follows.

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<sup>17</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 61 para 2.

<sup>18</sup> President of the Supreme Administrative Court, *Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E. 2543 (2000)*, clause 56 (Office of the Administrative Courts trans, 2000) [trans of: ระเบียบของที่ประชุมใหญ่ตุลาการในศาลปกครองสูงสุดว่าด้วยวิธีพิจารณาคดีปกครอง พ.ศ. ๒๕๔๓].

<sup>19</sup> James Warmenhoven, *The Courts and the Conduct of Litigation* (1992).

#### 4.1.2.1 Inquisitorial System

An inquisitorial approach is embedded in the Act on Establishment of Administrative Courts and Administrative Court Procedure as follows.

Firstly, section 55 para 3 of the Act prescribes that:

In the trial and adjudication, the Administrative Court may examine and inquire into facts as is appropriate. For this purpose, the Administrative Court may hear oral evidence, documentary evidence or experts or evidence other than the evidence adduced by the parties, as is appropriate.

This means that the Court may examine and inquire into facts in order to gain enough evidence to make a decision. Additionally, the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, issued under sections 44 and 66 of the Act, obviously ratifies the inquisitorial system as a basic principle of the Administrative Court's procedure.<sup>20</sup> It is clear that the Administrative Court's proceedings are based on an approach which requires judicial control to carry out an inquisitorial function.

#### 4.1.2.2 Active Role

Again, under the *Act on Establishment of Administrative Courts and Administrative Court Procedure*, section 55 para 3, as well as the Rule, judges have an active role in examining and inquiring into facts and also employ active control and monitoring of the court procedure.<sup>21</sup> Besides this, four critical events in which judges, particularly case judges and their case officials, are involved in active management are examining the

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<sup>20</sup> President of the Supreme Administrative Court, *Rule on Administrative Court Procedure*, above n 18, clause 5.

<sup>21</sup> *Ibid.* clause 50 para 1.

'In the trial and adjudication, the Court has the power to inquire into facts as is appropriate. For this purpose, the Court may inquire into facts by hearing oral evidence, documentary evidence of experts or evidence other than that adduced by the parties as apparent from the pleadings, the answer, the objection to the answer or the supplementary answer. In conducting such inquiry of facts, the Court may pursue the proceedings as prescribed in this Part as it thinks fit.'

facts in the plaint, examining the facts in the answer, examining the facts in an objection to the answer and examining the facts in the supplementary answer. At these stages, judges inquire into the facts using documentary evidence submitted by the parties. Judges might shorten the case by conducting only an examination of the facts in the plaint and the answer. Judges also can shorten the case's life by specifying a shorter period of time for submitting the plaint, answer, objection to the answer and supplementary answer. In some complicated cases, judges may exercise their power to inquire into any related evidence to collect sufficient facts to deliver a judgment. The active managerial role of the judge in the Court is the centrepiece of the Court's procedures.

### **4.1.3 Judicial Accessibility**

The accessibility of a court is pivotal to create a court for the public. Normally, the cost of litigation is criticised as an obstacle to accessibility. Inevitably, enhancing access by reduction of cost is one of the objectives of a court. The Administrative Court's proceedings are based on such a principle of accessibility. The Court provides both financial and geographical accessibility. The former occurs via cost reduction and the latter by increasing the number of Regional Administrative Courts.

#### **4.1.3.1 Cost Reduction**

Legal services which are not affordable are inaccessible and cannot meet the public needs. A reduction of legal costs is laid down and executed in recent court reform. The cost of litigation is the entire expense of resolving a matter. In the particular case, it includes fees for the lawyer, the cost of the time of a judge, the parties and other participants in the court's proceedings, as well as the cost of court operation and administration.<sup>22</sup> As a result, decreases of the total cost are achieved by diminishing the opportunities for disputes, efficient dispute resolution and making provision for self-represented parties.<sup>23</sup>

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<sup>22</sup> Warmenhoven, above n 19, 1.

<sup>23</sup> Ibid. 2.

The Administrative Court, under its statute law, enforces two core means of cost reduction. Firstly, under section 45 para 4 of the Act, the filing of an administrative case is exempt from the Court's fee unless the case is filed for an order to pay money or deliver a property in conjunction with a wrongful act or other liability of an administrative agency or state official under section 9 (3) or an administrative contract under section 9 (4).

Secondly, under section 45 para 5 of the Act, the parties may represent themselves or appoint an attorney or other person to represent them in filing a case or carrying out any act. The self-represented parties' techniques employed in the Administrative Court relieve parties of the burden of a lawyer's fee. Note that the Court's process assures that no one can take advantage of an unrepresented party who may lack knowledge of the law. That is, the case judge, with the assistance of case officials, collects the facts and all relevant evidence. The principle of access to justice is ascertainable in the Court.

#### 4.1.3.2 Expansion of the Regional Courts

Increased expenditure by a court using its budgetary allocations may reduce the expenses of parties and increase accessibility. The Administrative Court also promotes accessibility by its expansion into regional areas. In doing this, the Court has to meet the costs of the buildings and the employment of court staff, both judicial and non-judicial, to facilitate accessibility to the public. Under section 94 of the *ACP Act*, the Administrative Court has to be established in at least sixteen regional areas. At present, seven Regional Administrative Courts were established: Chiang Mai, Songkhla, Nakhon Ratchasima, Khon Kaen, Pitsanulok, Rayong, and Nakhon Si Thammarat, respectively. The first Regional Administrative Court, Chiang Mai, has exercised its jurisdiction since 30 July 2001<sup>24</sup> while the newest was established on 15 August 2003.<sup>25</sup> The Regional Courts are Administrative Courts of First Instance. The expansion of the Regional Courts is a straightforward way of enhancing accessibility, as required by law.

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<sup>24</sup> President of the Supreme Administrative Court, *Notification of the President of the Supreme Administrative Court of the Venue and Commencement of Operation Day of the Chiang Mai Administrative Court (20 July 2001)* (2001) [trans from ประกาศประธานศาลปกครองสูงสุด เรื่อง สถานที่ตั้งและวันเปิดทำการของศาลปกครองเชียงใหม่ ลงวันที่ ๒๐ กรกฎาคม พ.ศ. ๒๕๔๔].

<sup>25</sup> President of the Supreme Administrative Court, *Notification of the President of the Supreme Administrative Court of the Venue and Commencement of Operation Day of the Nakhon Si Thammarat Administrative Court (17 July 2003)* (2003) [Trans from

#### 4.1.4 Judicial Accountability

A central characteristic of the new philosophy of judicial administration is the increase in judicial accountability. Judges have to be responsible for their work. There are two mechanisms of accountability: hard and soft. Hard political accountability of the judiciary is traditionally grounded in an open court and an appeal process structure. Soft accountability concerns the responsibility to the public. The community can examine a court's decision both directly and through the media.<sup>26</sup>

It is interesting to note the relationship between accountability and independence. While accountability ensures high standards of judicial decision-making, and increases public confidence in and acceptance of the judiciary, independence protects judicial impartiality and provides a just decision. Superficially, judicial accountability undermines judicial independence. Accountability which requires a more answerable approach to the judges' work might create opportunities for improper interference from either internal or external sources and reduce impartiality. However, if judicial accountability encourages more openness, responsiveness, representativeness and efficiency and requires judicial performance with fairness, courtesy and speediness, it can reinforce judicial independence.<sup>27</sup> Greater accountability to the community increases public confidence, shielding judges from interference and maintaining their independence.

Under the Constitution and the Act, the core features of the Administrative Court guarantee its accountability as discussed below.

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ประกาศประธานศาลปกครองสูงสุด เรื่อง สถานที่ตั้งและวันเปิดทำการของศาลปกครองนครศรีธรรมราช ลงวันที่ ๑๗ กรกฎาคม ๒๕๕๖].

<sup>26</sup> Kate Malleson, *The New Judiciary: The Effects of Expansion and Activism* (1999), 37-43.

<sup>27</sup> Ibid. 69-73.

#### 4.1.4.1 Accountability to the Public

##### *An Open Court*

The Administrative Court is an open court. Public can enter the Court and the verdict is read in open court. The judgment or order of the Court, as well as the opinion of the conclusive judge of the case, is published for dissemination purposes.<sup>28</sup> Additionally, the Court is open to public criticism without the critic being guilty for an offence of contempt of the Court or defamation of the Court or judge (see also Chapter 3.1.3.4, p. 89).<sup>29</sup>

##### *Responsiveness and representativeness*

The character of the Court as a people's court can be seen in the structure of the JCAJ and the origin of the President of the Supreme Administrative Court. Three qualified members of the JCAJ are elected from amongst the Thai parliamentary representatives (the Senate and the Council of Ministers) and the Senate approves the appointment of the President (see also Chapter 3, p. 79). The Court, therefore, is accountable to the public via these representatives.

#### 4.1.4.2 Internal Accountability

This is accountability in terms of the individual judge's assignment. Under the provisions of the *Act on Establishment of Administrative Courts and Administrative Court Procedure*, judges of the Administrative Court have to carry out their duties with expedition and fairness.<sup>30</sup> The procedural due process of administrative proceedings is implemented using one inquisitorial system in which the case judges and their assistants play a key role. Individual administrative judges actively control the progress of the case.

In short, the Court performs its duties with openness and accountability to the public and to itself. Such principles are well established under the law.

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<sup>28</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 69.

<sup>29</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 65.

<sup>30</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 55.



## **4.2 Principles of the Court's CFM Ascertained via the Constitution and the *ACP Act***

The four principles of the Court analysed earlier affect the six principles of the Court's CFM system. An outline of each principle of the Court's CFM system and a description of the relationship of the principles to the Court follows.

### **4.2.1 Judicial Independence**

Under the *ACP Act*, judges independently manage their cases from the time they are allocated to them. For example, a case judge independently instructs 'the parties to present their evidence within the specified time.'<sup>31</sup> The case judge can diminish or extend a period of time in the administrative court proceedings.<sup>32</sup> These examples illustrate that judges independently supervise and monitor the pace of litigation. The independence of the judicial role is thus a principle of the Court and its CFM system.

### **4.2.2 Transparency**

Court transparency is a principle not only of the Court but also of its case management. Transparency in judicial performance can be seen throughout the Court's proceedings. For instance, where evidence is not disclosed by the Court in order to prevent loss in order to avoid disclosure of a state secret (or sensitive government information) such evidence cannot be taken into account in the Court's trial and adjudication.<sup>33</sup> Consequently, the transparency of case proceedings results in the Court's case management being executed in a transparent manner.

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<sup>31</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 57 para 3.

<sup>32</sup> President of the Supreme Administrative Court, *Rule on Administrative Court Procedure*, above n 18, Clause 6.

<sup>33</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 55 para 2.

### **4.2.3 Equal Treatment**

As explored in the first section of this chapter, the equal treatment principle is established throughout the administrative case proceedings. A case judge has to provide an equal opportunity for all parties to adduce their evidence. Such a principle of judicial administration affects the performance of judges in establishing the equal management of their cases and is a principle of the Court's CFM system.

### **4.2.4 Judicial Control**

This principle of court administration accords with the principles of the Court's CFM. Under the inquisitorial system, the Administrative Court's judges have to actively supervise and monitor their cases. Thus judicial control of case progress is evident in Court procedure and management.

### **4.2.5 Judicial Accessibility**

These days, the accessibility of the Court is a core principle of the Court and of its case management. Reduction of the cost of litigation is the most important measure to achieve this principle. The administrative case proceedings are designed to provide administrative justice without a Court fee. The active role of a case judge in inquiring into the facts of a case, with considerable assistance from their case officials, also offers more accessibility to judges by the public. Thus accessibility is a principle of both case flow management and court administration.

### **4.2.6 Judicial Accountability**

This principle of the Court's CFM has two aspects to it: accountability to the public and internal accountability. In the case flow management of the Court, the principle is demonstrated in the internal accountability of individual judges responsible with the

cooperation of their case officials for their managerial roles in case progress. Under the *ACP Act*, after a case is assigned to a particular case judge, he/she manages and controls the entire case progress. The administrative case's judges are accountable in their managerial role to control and manage cases in the docket. The system of continuous monitoring of these cases in their docket by judges represents an inbuilt self-checking process in which judges demonstrate their individual accountability. In addition, the monthly assessment reports and annual performance assessments that all judges must present to the Chief Justice encourage their accountability.

### **4.3 Principles of the Court's CFM Established in Practical Measures or Court Policies**

Apart from the Constitution and the Act, some measures or policies which reflect principles of case flow management have been established by the Court. Three core measures and policies evident from the study of the practical implementation of the Court system are timeframes, the speeding up and backlog reduction policy, and the new case tracking system policy.

#### **4.3.1 Timeframes**

The time goal for each critical event of a case is laid down in the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure. For example, the maximum period of time for an answer and an objection to the answer to be submitted is 30 days while that for the supplementary answer is 15 days. A case judge may specify a submitting period less than that provided by the Rule.<sup>34</sup> Judges, therefore, actively control the pace of litigation. However, since the introduction of the Directive on Performance and Assessment on 1 July 2003, timeframes for all events of administrative case proceedings, both crucial and less

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<sup>34</sup> President of the Supreme Administrative Court, *Rule on Administrative Court Procedure*, above n 18, clauses 43, 47, 49.

significant, have been specified.<sup>35</sup> The events controlled start from the order allocating a case (to a case judge) and end with the giving of a judgment. Moreover, if the case is appealed to the Supreme Administrative Court, the timeframes for the case judge to make an order accepting or refusing the appeal are specified. This means that judges have to carry out their duties within the approximate times designated for each event. Such frames are employed to control individual judge's performance. These timeframes affect the new case flow management system of the Court requiring not only an active role in managing cases for the individual judge but securing the participation of the Chief Justice and the President in the process (see also Chapter 2, 2.2.3.1, p. 46 ).

The Directive prescribes timeframes for eight critical events: case allocation, examination of a case, inquiry into facts, memorandum of the case judge and statement of a judge who makes a conclusion, hearing and adjudication, appeal, provisional remedial measure before delivery of judgment, and other issues such as an opinion related to disagreement of jurisdiction between the Administrative Court and other courts or a provision which is contrary to the Constitution. In each significant event, there are sub events including all possible orders or activities that can occur. The processes used in each case may be different, resulting in different disposal times.

The aim of the Directive is not to set timeframes or goals per se but to ensure that the time consumed in each event is not excessive and that delay, if any, is not a result of a judge's performance. It also provides the standard of performance for an individual judge in managing a case. Ultimately, the result of enforcement of the Directive will be to promote predictability and punctuality of the timing in events, and will ensure an active managerial role for a judge and encourage credibility and public confidence. The Directive, therefore, is a measure that the Court employs to promote the principles of case flow management of the Court, as set out in the establishing legislation. In itself the Directive embodies the principle that the Court's CFM procedures should be responsive to changing needs arising in the operation of the Court.

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<sup>35</sup> President of the Supreme Administrative Court, *Directive for the Performance and Assessment of Works of the Judges of the Courts of First Instance* (12 June 2003) [trans from: แนวทางการปฏิบัติงานและการประเมินผลงานของตุลาการศาลปกครองชั้นต้น ลงวันที่ ๑๒ มิถุนายน ๒๕๔๖].

The Directive is comprised of three sections: the timeframes for the execution of the judges' work and the quantities of judgments, orders and/or statements they should produce, the report on the productivities of each judge per month (a direct report to the Chief Justice of each Court of First Instance) and the report of a judge's annual performance review. The Directive, therefore, aims to examine the whole of the judges' performance. In terms of case flow management, the Directive sets and controls judicial standards for managing each case. It is different from the procedure specified in the Rule which encourages a judge to actively control parties and measures the pace of individual cases.

Some case flow management systems include specific overall case disposition expectations, usually in terms of the percentage of cases to be finalised within a particular period of time. The Thai Administrative Court does not do this—neither the Rule nor the Directive specifies overall case disposition expectations for the Court. Nevertheless, through an analysis of the Directive and the Rule, the case life of administrative cases can be described in approximate terms as follows. In a normal case with inquiry into facts by examination of documents and evidence lodged in four stages, plead, answer, objection to the answer and supplementary answer, the lapse of time counted from case allocation to delivery of the judgment is about 169 days. If it is an uncomplicated case in which the facts can be collected simply from a plead and an answer, the period of time for finalisation is very much quicker, 118 days. If a case is disposed of by an order to refuse a plead, the case life is only 17 days in length. In some complex cases requiring more inquiry, not only from documents and evidence adduced by parties but also from other oral, documentary or expert evidence as the judge sees fit, the timeline is prolonged. As has been shown, the disposal time for administrative cases emerging from this study indicates that the most important mechanism for expediting a case is a clear indication of the timeframes within which events should take place in a case's life, and the imposition of responsibility for reaching a timely resolution on the judge who manages the case.

The Office of the Administrative Courts, a secretariat unit, has responded to the Directive issued by the President of the Supreme Administrative Court by issuing the Directive on the performance of a case official's functions in assisting the

administrative judges of the Courts of First Instance.<sup>36</sup> Case officials who have been assigned to assist a case judge and a conclusive judge have to carry out their duties to facilitate their judges' work according to these timeframes. Under the second directive, case officials have to carry out their work under the timeframes in an expeditious manner. The implementation of both directives ultimately aims to improve overall performance in the Court, and to make it an expeditious administrative court, which has predictable, punctual, standardising and credible court procedures.

### 4.3.2 Backlog Reduction and Speeding Up Policy

The importance of this policy on the case flow and case tracking systems can be seen clearly in the many practical measures implemented in the CAC to expedite cases filed there and eliminate backlog, particularly the cases which were filed in the years 2001, 2002 and 2003. These policies were disseminated in memoranda of the Chief Justice issued early in 2004.<sup>37</sup> As examined in Chapter 2, the Chief Justice's policy started with expedition of administrative cases filed in the year 2001 and expected that the CAC's judges would finalise those cases as a first priority and at Court by 9 March 2004.<sup>38</sup> The Chief Justice also pursued his policy by issuing a memorandum mentioning particular central administrative judges and requesting an explanation of difficulties in making decisions to

<sup>36</sup> Secretary General of the Office of the Administrative Court, *Directive for the Performance of a Case Official's Functions in Assisting the Administrative Judges of the Courts of First Instance* (30 June 2003) [trans from: แนวทางการปฏิบัติงานของพนักงานคดีปกครองปฏิบัติหน้าที่ช่วยดูแลการศาลปกครองชั้นต้น ลงวันที่ ๓๐ มิถุนายน ๒๕๔๖].

<sup>37</sup> Chief Justice of Central Administrative Court, *Memorandum of 9 January 2004 'Checking and Speeding Up the Cases in Your Docket'* (2004) [trans from: บันทึกข้อความ ที่ ศป ๐๐๐๓.๒/ว ๔ ลงวันที่ ๙ มกราคม ๒๕๔๗ เรื่อง ขอให้ตรวจสอบและเร่งรัดคดีที่อยู่ในความรับผิดชอบ]; Chief Justice of Central Administrative Court, *Memorandum of 14 January 2004 'Unfinalised Cases Filed in 2001'* (2004) [trans from: บันทึกข้อความ ที่ ศป ๐๐๐๓.๒/ว ๗ วันที่ ๑๔ มกราคม ๒๕๔๗ เรื่อง คดีปี ๒๕๔๔ ที่อยู่ระหว่างการพิจารณา]; Chief Justice of Central Administrative Court, *Memorandum of 17 February 2004 'The Progress of the Proceedings in an Administrative Case'* (2004) [trans from: บันทึกข้อความ ที่ ศป ๐๐๐๓.๒/ว ๕๑ วันที่ ๑๗ กุมภาพันธ์ ๒๕๔๗ เรื่อง ความคืบหน้าของการดำเนินกระบวนการพิจารณาคดี]; Chief Justice of Central Administrative Court, *Memorandum of 19 February 2004 'The Progress of the Proceedings in an Administrative Case'* (2004) [trans from: บันทึกข้อความ ที่ ศป ๐๐๐๓.๒/ว ๕๕ วันที่ ๑๙ กุมภาพันธ์ ๒๕๔๗ เรื่อง ความคืบหน้าของการดำเนินกระบวนการพิจารณาคดี].

<sup>38</sup> Chief Justice of Central Administrative Court, *Memorandum on Checking and Speeding up the Cases*, *Ibid*; Chief Justice of Central Administrative Court, *Memorandum on Unfinalised Cases*, *ibid*.

accept or refuse the complaints which were filed between the years 2001 and 2002,<sup>39</sup> and in the year 2003.<sup>40</sup> Such memoranda are employed to ask the judges in charge of those cases the reasons for the lengthy execution and to specify a limited period of time for finalisation of the cases. These are measures to reduce the numbers of cases that have taken too long in the view of the Chief Justice. They are designed to produce speedy performance by judges and backlog reduction. If the Court does not have any exact timeframe or goal for a case disposition, backlog cannot be seen in terms of a case pending longer than the timeframe, rather the memoranda refer to the cases which have obviously been pending too long to receive justice.

### 4.3.3 The Use of a New Case Tracking System (ACSP)

The OAC supports the policies of the Court. It also promotes a judge's functioning in managing his/her cases through the improvement of the Court's case tracking system and enhancement of other IT systems, such as the digital archive and automated library services. The new case tracking system of the Court, ACSP, has been operating since 9 March 2004. Two Orders of the President provided the foundation of the Court's internal administration for the operation of the new program in both the Administrative Courts of First Instance and the Supreme Administrative Court. (See details about the case tracking system of the Administrative Court in Chapter 2, 2.2.2.2.)<sup>41</sup>

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<sup>39</sup> Chief Justice of Central Administrative Court, *Memorandum on the Progress of the Proceedings in an Administrative Case* (17 February 2004), above n 37; Chief Justice of Central Administrative Court, *Memorandum on the Progress of the Proceedings in an Administrative Case* (19 February 2004), above n 37.

<sup>40</sup> Chief Justice of Central Administrative Court, *Memorandum on the Progress of the Proceedings in an Administrative Case* (19 February 2004), Ibid.

<sup>41</sup> President of the Supreme Administrative Court, *Order of the President of the Supreme Administrative Court 5/2547 on 9 March 2547 (2004) 'The Inputting of Data in the Program of the Administrative Case System of the Courts of First Instance'* (2004) [trans from: คำสั่งประธานศาลปกครองสูงสุด ที่ ๕/๒๕๔๗ ลงวันที่ ๙ มีนาคม ๒๕๔๗ เรื่อง การบันทึกข้อมูลในโปรแกรมระบบงานคดีปกครองของศาลปกครองชั้นต้น]; President of the Supreme Administrative Court, *Order of the President of the Supreme Administrative Court 6/2547 on 9 March 2004 'The Inputting of Data in the Program of the Administrative Case System of the Supreme Administrative Court'* (2004) [trans from: คำสั่งประธานศาลปกครองสูงสุด ที่ ๖/๒๕๔๗ ลงวันที่ ๙ มีนาคม ๒๕๔๗ เรื่อง การบันทึกข้อมูลในโปรแกรมระบบงานคดีปกครองของศาลปกครองสูงสุด].

The essence of both Orders concerns the method of inputting data to the system. One of the key mechanisms for the execution of the Orders is the Court's use of case officials, particularly those who assist case judges, because the majority of a case's events occur under the responsibility of the case judge. The aim of the Orders is to enhance the operation of the case tracking system and to take advantage of the system to advance court management in general. The implementation of the ACSP is both a tool to promote the principle of case flow management and a principle in itself.

In conclusion, the principles of the Court's CFM deriving from the analysis of the measures and policies of the Court are timeframe, speeding up and backlog reduction policy and implementation of a new case tracking system policy. Therefore, there are nine principles (including six principles from the investigation of the Act) of the CFM of the Administrative Court.

#### **4.4 Comparison of the Principles of CFM**

In order to clearly understand the principles of the Administrative Court's CFM, those principles (from the principles of the administration of justice of the Court and the Court's measures and policies) are compared to the principles of the Federal Court of Australia (analysed from characteristics of the IDS and the Court's measures and policies) and the theoretical framework (based on the USA perspective discussed in Chapter 2). The comparisons are illustrated in Table 4.1 below.



Table 4.1: Comparison of Principles

<b>Theoretical Framework</b>	<b>Administrative Court</b>	<b>Federal Court</b>
Judicial Leadership	Judicial Control	Judicial Leadership
Standards and Goals: - Timeframe - Other goals - Size of a court's pending list and backlog reduction; judicial accountability; restrictive continuance policy; automated case information policy; maintaining equality, fairness and integrity policy	Standards and Goals: - Timeframe - Backlog reduction and speeding up policy - Securing judicial independence - Enforcing equal treatment - Enforcing judicial transparency - CTS policy - Enforcing judicial accessibility - Enforcing judicial accountability	Standards and Goals: - Timeframe - Backlog reduction and speeding up policy - Maintaining equality and fairness policy - ADR policy - Enforcing judicial transparency - CTS policy - Enforcing judicial accessibility - Enforcing judicial accountability
Monitoring and information system: via the case tracking system	Monitoring and information system: via the Administrative Case System Program (ACSP)	Monitoring and information system: via CASETRACK
Court supervision of case progress: individual judges	Court supervision of case progress: individual judges and the Chief Justice	Court supervision of case progress: individual judges
Credible trial dates	-	Credible trial dates

### *1. Judicial Leadership/Judicial Control*

Judicial leadership, in theory, requires that a judge is the key person to control a case from initiation to disposition. This principle needs the commitment and support of both the judicial and the court staff including all participants, such as practitioners and parties. Judicial communication and judicial consultation are important in seeking such support.

The Federal Court's judges, under the IDS, play an active managerial role in monitoring parties' compliance with directions and are in continual communication with the parties in relation to case progress. Even though the adversarial approach requires less judicial intervention and control, this new IDS principle changes the original approach. Because of this, the introduction of the IDS is an innovation in the Federal Court system.

The Administrative Court established the principle of judicial control in its fundamental laws. An inquisitorial approach and an active role for the judge encourage this principle to be exercised throughout the Court's proceedings, particularly in the fact inquiry process of the case judge. The judge is a key person in the control of the pace of litigation. Under the Court's laws and regulations, judges actively perform their duties with the assistance of case officials (court officers who are charged to assist judges in case work). Judges and case officials have to function as a team to execute the Court's case work. Because the Administrative Court proceedings are mostly carried out through written documents, the case judge may communicate with the parties to collect crucial evidence quickly in an order instructing the defendant to prepare an answer, or an order instructing the plaintiff to prepare an objection to the answer.<sup>42</sup> In doing this, the judge may specify a particular issue that he/she sees as essential to making a decision. From time to time a judge, through his/her case officials, may ensure the cooperation of the parties via telephone, fax, etc. These methods guarantee that the administrative case will be finalised with promptness.

In brief, the introduction of judicial leadership to the Federal Court's CFM has given it greater similarity with the case flow management system of the Thai Administrative Court where the principle of judicial leadership was established from the outset. For a good case management system in any court this principle should be well established in the theoretical framework. For the first principle, it can be said that both the Federal and the Administrative Court have formulated appropriate fundamental case management systems for their managerial implementation.

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<sup>42</sup> President of the Supreme Administrative Court, *Rule on Administrative Court Procedure*, above n 18, clauses 42, 47.

## *2. Standards and Goals*

A study of the standards and goals in the theoretical framework indicates that timeframes are the most important measures to ensure the execution of all case events. They assist a judge to actively manage and monitor the case and to control its progress. A judge can set a realistic timeframe in each case with consultation in all participants. In general, timeframes can be set in two steps: overall and intermediate. There is an expectation that there are timeframes within which individual and overall percentages of cases should be finalised. Reasonable guidelines are based on the average speed of a case type. Other goals and court policies are created to promote the judge's managerial role and to ensure the success of case flow management. For instance, a goal could be related to the size of a court's pending list and the need for backlog reduction, a restrictive continuance policy, an automated case information policy, accessibility to justice policy, maintaining equality, fairness or integrity policy. These goals and policies are introduced to a court's case flow management system to guarantee predictable and reliable procedures and to ensure that the timeframes can be met.

The Federal Court has an overall timeframe (within 18 months) for the finalisation of cases and one for four key intermediate case events: Directions Hearing, Case Management Conference, Evaluation Conference and Trial Management Conference. The standard for each key event is laid down to ensure that the overall timeframe is being achieved. The Court also sets other goals and court policies to promote the managerial role of judges and guarantees that the timeframes can be met. These goals and policies are backlog reduction and speeding up policy, maintaining equality and fairness policy, CTS policy, ADR policy, judicial accessibility, judicial transparency and judicial accountability.

The Administrative Court did not create a general timeline or regulate the percentage of general cases that should be finalised, but it provides a timeframe for every event that could occur in a case. Although specific goals for finalisation of cases, either in general or specific case types, are not set, the active participation of judges in the Court's CFM is encouraged. The timeframes are implemented internally to guide the judges and are not a published policy of the Court. Nevertheless, the core timelines in administrative

case proceedings are prescribed in the Act and the Rule of the Court. In addition to this, the Court implements many policies to ensure the success of its case flow management, that is, backlog reduction and speeding up policy, case tracking policy, accessibility policy, and fairness via the principles of independence, transparency, and equal treatment. This is because the Court wishes to promote the efficiency of its performance through speedy finalisation of cases and backlog elimination and to ensure predictability, transparency and equal treatment in the Court's CFM. Ultimately, the Administrative Court can provide accessible justice through efficient case flow management.

In short, a timeframe is the most important standard and goal for the success of the implementation of a court's case flow management program. The Federal Court set a timeframe in both overall and intermediate events which corresponds to the theoretical framework's standard of a good court's case management system. However, the Administrative Court has set timeframes for each event in a general case. The goals of the timeframes of the Federal Court and those of the Administrative Court are similar, ensuring credibility in all case events and assisting a judge in actively managing and monitoring the progress of the case. In other standards and goals in both courts, they set similar goals and policies such as the policies on backlog reduction and speedy case finalisation, CTS policy, judicial accessibility and accountability. These policies and goals encourage the achievement of the timeframes of the Federal Court and those of the Administrative Court which result in strong court performance in an expeditious and timely manner.

### *3. Monitoring and Information System*

The theoretical framework of this principle is that fairness and efficiency are delivered by having a system operating in the Court to monitor each case from filing to finalisation and to provide information on the cases. The system can also help to ensure that the standards and goals of the Court can be reached. An automated case tracking system is used to provide information on cases and produce reports, such as information on the pending caseload, disposition age of each case and monthly or annual reports of the court.

The Federal Court introduced CASETRACK (replacing FEDCAMs) to improve the monitoring and information system. It is a user-friendly system including updated records of listings, documentation of lists, order list and other records pertaining to parties. It provides multi-faceted reports including operational and managerial reports.

The ACSP was introduced to the Administrative Court to enhance the capacity of the former case tracking system. ACSP is expected to have function better in collecting a case's history, producing multifaceted reports, identifying bottlenecks and promoting the Court's CFM (see details in Chapter 2, 2.2.2.2). This principle of the Court ensures the success of both case flow management and court management.

In short, the monitoring and information system principle is established in both the Federal Court and Administrative Court. Both courts introduced a new CTS to provide better information for the systems' users, particularly for the judges to monitor and track their cases. This principle is an important measure to improve court management and case management in general.

#### *4. Court Supervision of Case Progress*

The framework of this principle requires a judge to respond to case movement in order to identify a suitable speed for each case being tracked. Differentiated Case Management (DCM) is a technique usually employed in courts. Under this principle, a case may be resolved early which helps to reduce the costs to both the court and the parties.

Court supervision of case progress is established in the Federal Court's CFM and manifested in the supervision of a case by a single judge from the beginning to disposition; that is, judges of the Court practice early intervention and continuous control of case progress. This principle encourages the judges to control the pace of litigation in line with the timeframes of the Court.

In the Thai Administrative Court, a case judge actively supervises the movement of his/her case from its initiation. In addition, the Chief Justice of each Administrative

Court of First Instance also supervises case movement using the case tracking system, the ACSP. In doing so, the Chief Justice will encourage the judges to be highly aware of the movement of their cases, in order to finalise them in an expeditious and fair manner. This principle ensures timely implementation of the Court's timeframes resulting in higher disposal rates and an increase in public confidence. While it is not laid down in Court procedures that DCM should be used, this research shows that it is employed by individual judges in managing their own dockets and disposal rates. Although this research does not investigate the relationship between the use of differential case management techniques and overall case disposal rates, individual judges appear to be satisfied that use of the techniques does enhance their work.

To conclude, court supervision of case progress is a principle of the CFM of both the Federal Court and the Administrative Court. In both courts, a single judge supervises and monitors the entire process. Unlike the Federal Court, in the Administrative Court the Chief Justice also supervises the case progress by the examination of each judge's performance. The supervision is from a managerial perspective rather than a judicial one. This is because the Administrative Court's judges can independently give a judgment or statement. Only their managerial performance is controlled by the Chief Justices under the Directive on Performance and Assessment. Therefore, judicial independence is not affected by such a practice. (See discussion on judicial independence in 4.5.2.1, p. 141)

### *5. Credible Trial Dates*

In the Federal Court, the principle of credible trial dates is promoted via the model of the overall and intermediate timeframes. This is because the execution of the timeframe ensures that all crucial events occur as expected and the trial dates are timely.

Credible trial dates are not a principle per se of the inquisitorial court's case flow management. This is because the Court found that delays in an administrative case stem from the managerial style of judges who may not supervise their cases actively enough. Under court procedure, judges are provided with various means to monitor and control their cases but some undue delays can still occur. For this reason, the President issued

the Directives to ensure an active role by the Administrative Court's judges. This was one of the origins of the timeframe. In this context, the trial date provided by the Administrative Court is generally credible. As mentioned earlier, in general the Administrative Court's proceedings involve examining facts from documentary evidence. Consequently, the Court basically conducts only one hearing in the division responsible for the trial in order to provide an opportunity for parties to make oral statements.

In brief, credible trial dates are a very important principle for an adversarial court system such as the Federal Court. They have a positive effect on early case settlement and the reduction of delays that stems from lack of trial preparation by participants because of unreliable trial dates. However, in the Administrative Court only one trial date is required and it is to provide an opportunity for parties to participate in the trial. Credible trial dates are seen as a principle of the Administrative Court.

#### **4.5 Practical Implementation of the Principles of CFM**

So far in this chapter, the principles of CFM of the Administrative Court arising from legislation and court policies have been discussed. In this section I elucidate the views of judges, case officials and parties on practical implementation of the principles in the Court elicited in interviews and questionnaires in six focus areas: managerial style—active or passive, independence/dependence, timeframe, alternative dispute resolution (ADR), case tracking system (CTS), and differentiated case management (DCM). The discussion discloses some interesting features of the principles of the Court's CFM. The 'judicial control' principle is elucidated through the study of managerial style. The section on 'standards and goals clarifies some noteworthy points through the study of three topics: independence, timeframe, and ADR. The 'monitoring and information system' principle is explained via the study of the CTS. Then, the 'court supervision of case progress' is elucidated in relation to the study of DCM.

The interpretation of data from questionnaires is illustrated in a table and graphs. In the graphs, the answers 1 to 5 represent the degrees of agreement to each question.

Answer 1 = disagree strongly

Answer 2 = disagree

Answer 3 = don't know

Answer 4 = agree

Answer 5 = agree strongly.

#### **4.5.1 Practical Implementation of Judicial Control: Managerial Style**

Judicial control of the Administrative Court's CFM can be seen in the active role of administrative judges, with the assistance of their case officials. For this reason, the implementation of such a principle can be studied in terms of the managerial style, active or passive, of the judges and case officials.

*Managerial style— active or passive*

The controlling and monitoring aspects of the managerial roles of judges are demonstrated in the responses given to the questionnaires circulated to judges, case officials and parties in this research. The three groups of opinions on judges' managerial style are presented in Table 4.2 below.



Table 4.2: Managerial Style of the Administrative Court's judges

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<sup>43</sup> In the non-executive judge's questionnaire, judges were asked 'You are actively managing your cases in your docket', 'You monitor the general progress of cases in your docket', 'You decided the timetable for a case', 'You work to an overall timeframe' and 'The OAC and its staff play an important role in helping you manage your cases.' The first to fourth statements were rated to indicate an actual managerial style of the judges and presented in the judges' column from row one to four, respectively. The fifth statement was rated to indicate the role of their case officials in assisting the judges in managing and monitoring their cases and is presented in the judges' column, row five.

<sup>44</sup> In the case official's questionnaire, case officials were asked 'A judge manages and controls their cases by him/herself', 'A judge decides the timetable for a case', 'The OAC or its staff helps the judges in managing cases' and 'The OAC or its staff actively monitor judges' docket.' The first and second statements were rated to indicate a managerial style of the judges and presented in the case officials' column, row one to two, respectively. The third statement was rated to indicate the role of the case officials in assisting their judges in managing and monitoring their cases and presented in the case officials' column, row three. The fourth statement was rated to indicate the role of the case officials themselves in monitoring the judges' cases and presented in the case officials' column, row four.

<sup>45</sup> According to parties' questionnaire, parties were asked 'The Court always makes an order in every stage of your case' and 'The timetable for a case was only decided by a judge.' Both statements were rated to indicate the role of the judge in charge of the parties' case in managing their case and presented in the parties' columns in rows one and two, respectively.

According to Table 4.2, more than two-thirds of judges felt that they were actively managing their own cases with significant assistance from their case officials (e). Over half of the case officials agreed with the judges about their active management; however, approximately four-fifths of case officials felt that they themselves played a very important role in helping judges in such management (h). With respect to case monitoring, there was a significant division amongst case officials, with nearly equal numbers answering that the role of monitoring the progress of cases belongs to either judges or case officials (i). I note here that the degree of involvement in monitoring and managing by case officials depends on the assignment methods of their judges (see p. 113).

Some areas of practical management that reveal the active role of the judges were also examined in this study. According to Table 4.2, almost all judges and case officials agreed that the setting up of the timetable is always done by judges, not parties or case officials (c, g). However, when the judges were asked about working to an overall timeframe, only two-thirds replied that they made their decisions on such a basis (d). They tend to control the process of a case step by step rather than decide on an overall timeframe.

The views of parties about the managerial role of judges were gained from their experience in the Court. About two-thirds of parties answered in agreement with both judges and case officials that the administrative judge who was in charge of their case actively managed the progress of the case by making an order at every stage (i). Over half of the parties felt that the judge set up the timetable of their case by him/herself (k). It is important to note that an appreciable number (nearly one-third) of parties did not know or think about the style of management of the judge in charge of their case.

Data from interviews with all selected judges of the Court concurred with the questionnaire responses that judges had an active role in managing and controlling their cases with the assistance of their case officials. Judges said that they actively managed their cases in every stage of the case life. Mostly, they assigned their case officials to check and report the progress of the cases. While some judges managed their cases

largely by depending on the data reported by their case officials or the OAC, many employed data reported by those officers for re-checking with their own records.

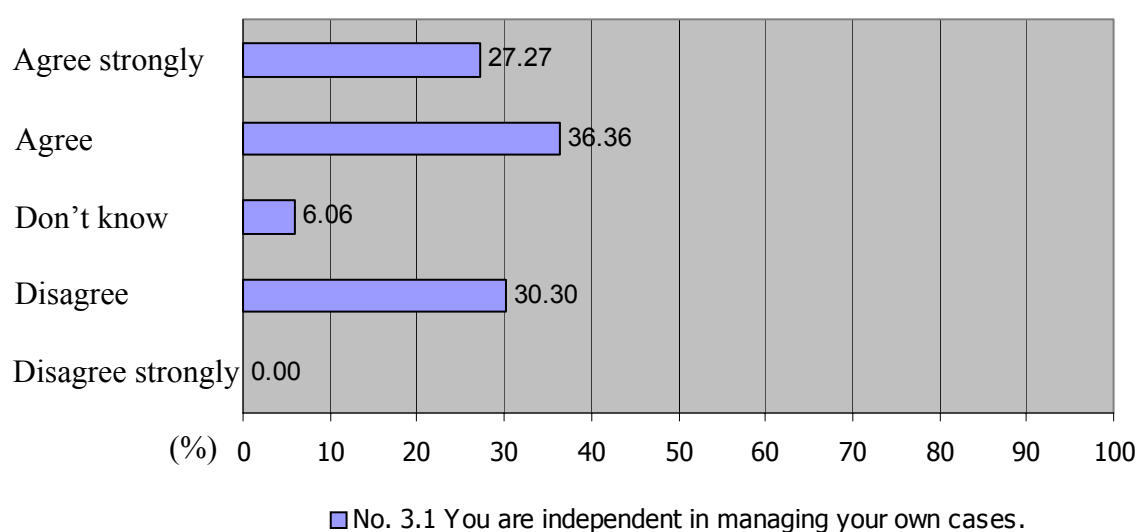
It can be concluded that judges in the Administrative Court engage in very active management in their cases with the assistance of their case officials. Although the degree of assignment of functions to their case officials differed depending on the individual management style of each judge, most judges believed they were in control of their cases.

#### **4.5.2 Practical Implementation of Standards and Goals**

Views on the practical implementation of 'standards and goals' were sought in questionnaires and assessed by three groups: non-executive judges, non-executive case officials and parties. Their responses on the elements of judicial independence, timeframe, ADR and case allocation are elucidated through Graphs 4.1-4.8 below.

##### **4.5.2.1 Judicial Independence**

As mentioned earlier, the independence of the Administrative Court, of both the institution and individual judges, has been laid down under the Constitution and the Act. Because cases are managed and controlled by judges, they are in the best position to consider the independence of their managerial role. Graph 4.1, below, clarifies the actual implementation of this principle from the non-executive judges' standpoint.



Graph 4.1: Judicial independence from a non-executive judges' standpoint

Two-thirds of judges felt that they were independent in managing and supervising their cases. Thirty percent felt they were not independent. This means that the majority of judges were satisfied with their freedom in managing their own cases.

Apart from data in the judges' questionnaire, the interview data of judges, both case judges and conclusive judges, showed a tendency to be satisfied with their managerial independence. Almost all case judges who participated in the interviews asserted that they have independence in employing their monitoring and managing styles in their docket. They were also independent in producing judgments and making decisions on their cases. All conclusive judges who participated in the interviews stated that they had independence in both judicial and managerial roles, in the process of both writing statements and in the choice of sequence for cases to be considered.

Nevertheless, it is also valuable to examine the 30% of non-executive judges who were dissatisfied with their managerial independence. According to the interview data, Justice P, a case judge, was dissatisfied with the degree of independence in his managerial functions. The dissatisfaction stems from the policy on providing standard output; that is, case judges should issue 3 judgments, 3 memoranda, and 4 orders rejecting the plaintiff and striking the case out of the Case List at the rate of 10 cases per month, while conclusive judges should issue 10 statements a month. In addition, there is an

approximate timeframe for each case event.<sup>46</sup> It was felt that this policy deprives a judge of independence in managing cases. However, this judge's concerns did not extend to the degree of independence in the judicial role in giving an opinion in the judgment.<sup>47</sup> In addition, the interviews of all case and conclusive judges show that no one claims that they can issue ten cases per months. The result of the interviews shows that can be finalised varied from judges to judges. However the numbers of judgments and memoranda of case judges and written statements of conclusive judges that can actually be completed are about four to six cases per month. Another example of dissatisfaction with the degree of judicial independence can be found in the view of Justice T, a case judge. He asserted that if that policy was able to control the judges in supervising their docket, sooner or later a verdict might be guided and recommended.<sup>48</sup> In the interviews, the other judges who were satisfied with the level of independence of their management nonetheless indicated the weakness of the policy on standards of output. They thought that such standards are impractical and are based on a purely quantitative assessment approach. At the same time these judges did not feel that the implementation of the policy pushed them excessively to fulfil its goals. They felt that the policy acts as a standard and that if the guidelines are not being achieved, there is no sanction. In brief, although some judges complained that the Directive undermines the principle of judicial independence, particularly independence of an individual judge in the managerial role which might possibly be extended to freedom in making his/her decision, the flexibility of the Directive, in allowing reasons to be submitted for non-attainment of the monthly goal by giving reasons or identifying obstacles, appears to be adequate to maintain judicial independence. This means that such a Directive is only a guideline for a judge's speedy monitoring of his or her cases. Judges still have independence in their managerial practice to manage their cases as they see fit.

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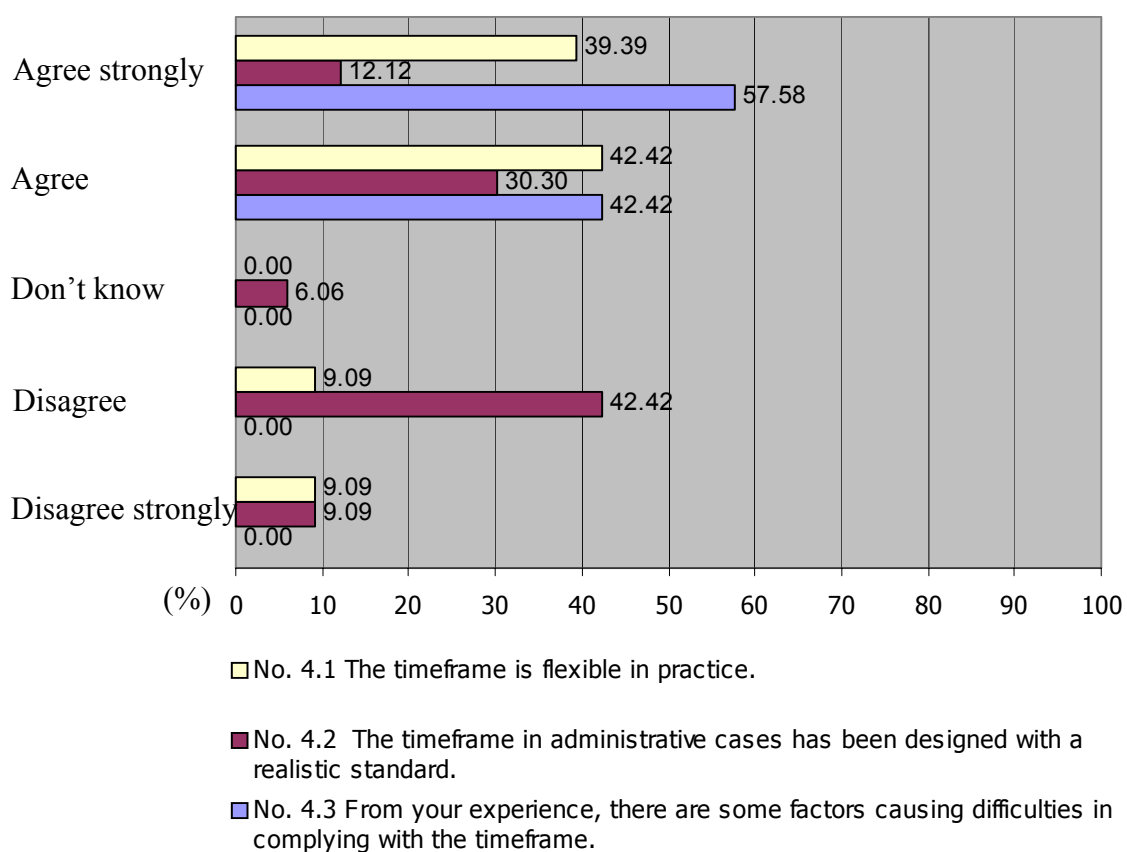
<sup>46</sup> President of the Supreme Administrative Court, *Directive on Performance and Assessment*, above n 35.

<sup>47</sup> Interview with Justice P, Case Judge, Central Administrative Court (Face to face interview, 19 February 2004).

<sup>48</sup> Interview with Justice T, Case Judge, Central Administrative Court (Face to face interview, 18 February 2004).

#### 4.5.2.2 Timeframes

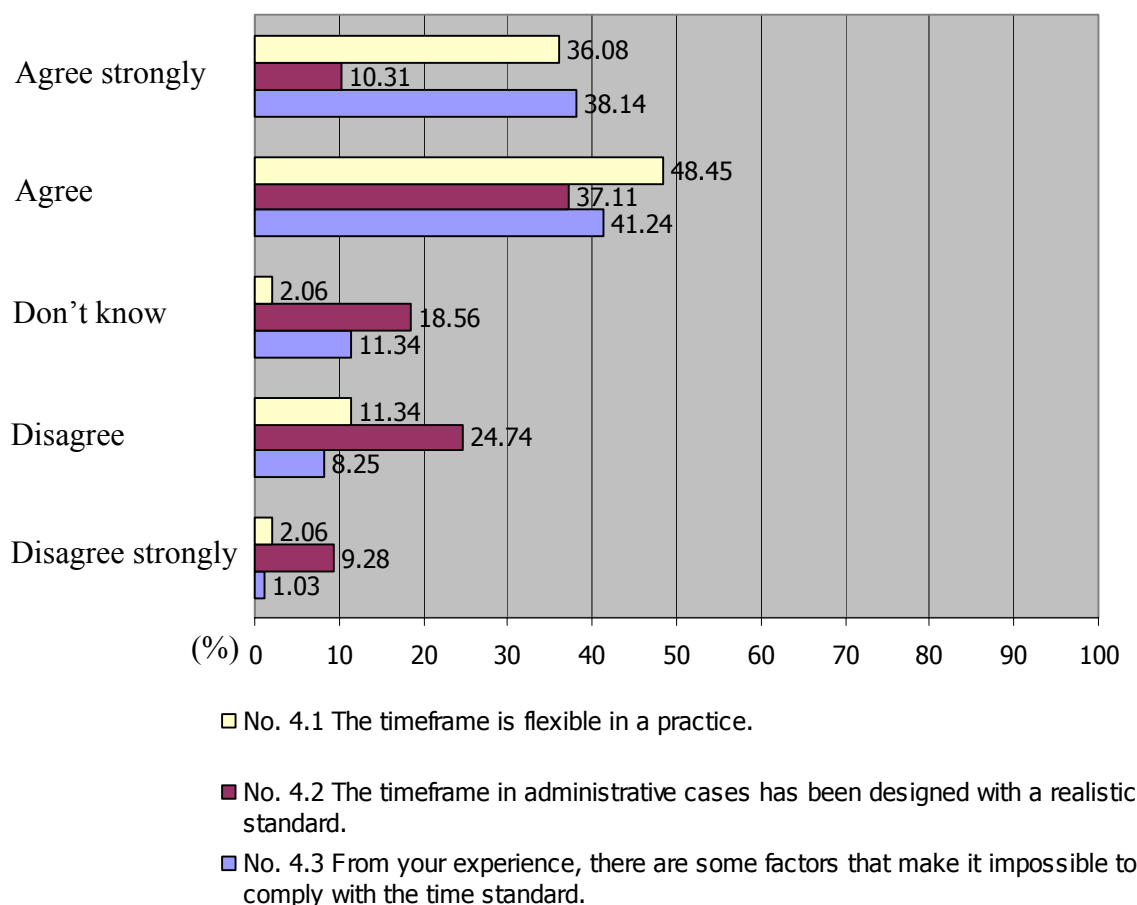
Instead of creating a timeframe that provides expected numbers or percentages of disposed cases, the Administrative Court designed an estimated timeframe for each event that could occur in any case. As previously analysed, timeframes were laid down in the Directive to ensure the active, speedy managerial role of the Administrative Court's judges. The opinions of judges, case officials and parties on the practicality of the timeframes were investigated through the questionnaires. The responses are illustrated in Graphs 4.2-4.4 below.



Graph 4.2: Timeframes from a non-executive judges' standpoint

Graph 4.2 points out that every judge strongly agreed that the timeframes were flexible, so they were able to independently supervise their dockets. The Directive provided only guidelines for judges to monitor and control the pace of litigation; therefore, judges are able to adjust the timeframes as they see suitable to each case. Nevertheless, about half

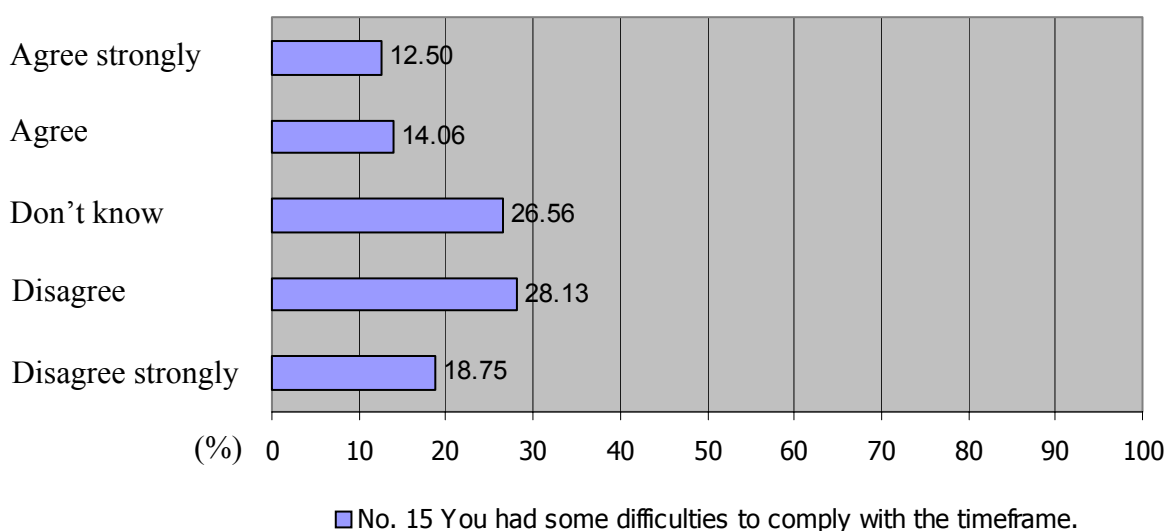
of the judges felt that the timeframes were somewhat unrealistic. Although one half agreed that the guidelines are realistic, more than 80% of judges experienced difficulties in complying with the timeframes. It can be said that the timeframes of the administrative case process are flexible; however, there are some unrealistic timeframes which cause difficulties.



Graph 4.3: Timeframes from a non-executive case officials' standpoint

Similar to the non-executive judges' point of view, almost 90% of non-executive case officials felt that the timeframes of the Court were flexible and about half of them felt such guidelines were practicable. Thirty percent of case officials felt that the timeframes were unrealistic and the rest were not able to decide whether or not the timeframes were realistic. Case officials, with a similar percentage of judges, also experienced the impossibility of complying with the timeframe. It can be concluded that, in general, case officials and judges have similar feelings about the implementation of the timeframe, that is, although it is flexible, they experience some difficulties complying

with it. About half of both groups felt that the timeframes were realistic, but the other half of the judges and 30% of the case officials disagreed. The reasons of those who disagreed are examined later with the interview data.



Graph 4.4: Timeframes from a parties' standpoint

Parties' opinions about the timeframes were sought only with respect to the difficulties in complying with it. Only 25% of parties experienced some difficulties in complying with the timeframes that judges prescribed, and almost 50% of them felt there was no difficulty in reaching it. One quarter had no view on the matter. The parties' viewpoint coincides with the judges' and case officials' points of view that the timeframes are flexible, and that judges can adjust them appropriately to ensure parties comply. Nonetheless, small numbers of parties felt they had difficulties in complying with the timeframe ordered by the judge in charge of their case. This viewpoint endorsed the judges' and case officials' standpoints that some factors affected the possibility of complying with timeframes. This may have effects on the adjournment policy of each judge and occasionally cause delay.

Data from interviews with judges and executive court officials showed that, in general, they agreed that the timeframes are practicable and flexible. Each judge adjusts the timeframe of each event to make it fit the various cases. Justice P, a senior judge of a division, argued that the timeframes were just a measure to encourage judges to actively



and speedily perform their work, and while they acknowledged the responsibility, in some special cases it was impractical. He claimed that, in general, cases in his docket could be finalised in 120 days or four months, and an urgent case in 90 days or three months. However, some cases that are more complex in either issues of fact or law, or both, require additional time to be disposed.<sup>49</sup> Other judges who participated in the interviews agreed there were exceptional cases. For example, Justice S, a conclusive judge, remarked that different case types involve various degrees of complexity and therefore, different cases need different timeframes. The complexity of a case was the most important factor that affected the case life.<sup>50</sup> For these reasons the timeframe, from time to time, was impracticable. All participating judges also commented on the Directive that laid down not only the timeframes of a case but also the required quantities of judgments and orders of a case judge, and statements of a conclusive judge. They felt that quantity was not a proper measure to assess judicial work. The quality of judgments and statements should be more crucial than quantity for assessment of performance.

In conclusion, the Directive that provides the timeframes for the administrative cases directly affects the practical management of the judges and their case officials. Judges employ their own strategies in supervising and processing cases as the standard provides. Besides this, assessment of the efficiency of judicial work by reference to the quantities of disposed cases of a judge per month and per year was criticised as being a quantitative orientation which does not take account of the quality of judgments and orders. Nevertheless, the apparent quantitative orientation might be modified by the flexibility of the timeframes and the actual quantities of finalised cases required. For example, the Directive sets an approximate period of time for each event and expectations of disposal of cases per month, but if judges are not able to reach the goal there is no sanction. Judges might clarify the reasons or obstacles to the delay, such as the quality of judgments or case complexity. It is interesting to note that although the timeframes were introduced as guidelines for judges in the implementation of their work, the goal of the implementation of timeframes for the Courts is delay reduction.

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<sup>49</sup> Interview with Justice P1, Senior Judge of a Division, Central Administrative Court (Face to face interview, 17 February 2004).

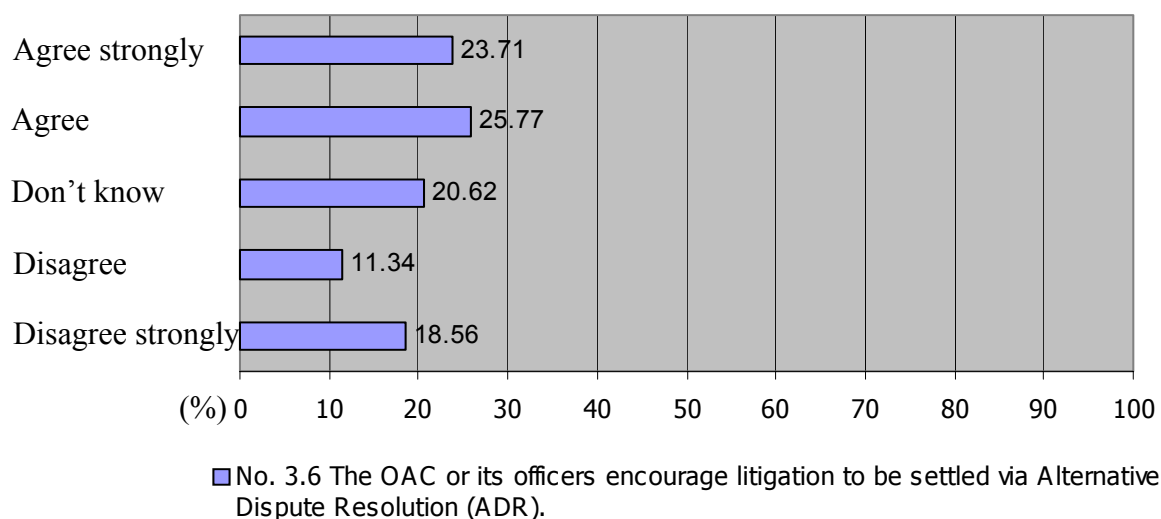
<sup>50</sup> Interview with Justice S, Conclusive Judge, Central Administrative Court (Face to face interview, 14 February 2004).

#### 4.5.2.3 Alternative Dispute Resolution

ADR is a mechanism aimed at reducing time and cost by encouraging cases to be settled early by mediation or other such means of resolving disputes. In Thailand, ADR has been well established since 1996. The President of the Supreme Court of the Court of Justice has issued a Practice Guideline (Direction) on court annexed conciliation and arbitration. However, this ADR programme is utilised only in the Court of Justice and widely used in the civil jurisdiction of Civil Courts, family law cases of the Juvenile and Family Court, labour matters of the Central Labour Court and intellectual property and international trade disputes of the Central Intellectual Property and International Trade Court.<sup>51</sup> ADR is not established in the Administrative Court. This is because it is seen not as suitable for administrative cases which involve conflicts between state officials or an administrative agency and the public, as compromise in such conflicts may affect the public interest. Consequently, by law the Thai Administrative Court does not allow ADR techniques to be used in its proceedings. Nonetheless case officials still employ these methods informally in the consultation room. This fact is demonstrated in the responses to the case officials' questionnaire, illustrated in Graph 4.5, and the judges' and case officials' interviews.

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<sup>51</sup> Vichai Ariyanontaka, 'Court-Annexed ADR in Thailand: A New Challenge' (Paper presented at LEADR's 7th International Alternative Dispute Resolution Conference, Sydney, 27 – 29 July 2000).



Graph 4.5: ADR from a non-executive case officials' standpoint

As illustrated in Graph 4.5, when case officials were questioned about the use of ADR techniques to settle cases, about one half of the respondents accepted that the OAC or its officers employed them. This result suggests that ADR is used in some administrative case types. Furthermore, Mr C, an executive court official, remarked that although ADR was not formally being implemented by either the Court or the OAC, the informal implementation of this technique through provision of legal advice was one of the fundamental services of the Office. He believes that if ADR can be formally instituted in the Administrative Court or in its Office, it will be useful in alleviating the caseload of the Court.<sup>52</sup> The Administrative Court provides legal advice in the consultation room as a measure to reduce the disputes that might be filed in the Court. Mr W, an executive court official, suggested that if ADR was formally implemented, it would assist in expeditiously finalising administrative cases and promote the CFM of the Court.<sup>53</sup> It suffices to say that ADR is informally executed in the OAC before disputes are filed in the Court. It is interesting to note that the provision of legal advice in itself does not necessarily constitute ADR. This also raises the question of the scope of legal advice provided by the court officers or case officials that is appropriate.

<sup>52</sup> Interview with Mr C, high-ranking and experienced Court Official, Office of the Administrative Courts (Face to face interview, 18 February 2004).

<sup>53</sup> Interview with Mr W, high-ranking and experienced Court Official, Office of the Administrative Courts (Face to face interview, 10 February 2004).

The implementation of ADR by the Administrative Court's judges is a controversial issue. The advocates of ADR propose that the technique should be adapted to some administrative case types where settlement does not affect the public interest. Justice P, a case judge, conceded that with an administrative contract, particularly a contract of scholarship, if the defendant agreed to pay according to the contract, compromise was acceptable. He also recommended that a Settlement Division should be established as one of the OAC's divisions. It would alleviate the Court's workload, including the time and cost of administrative cases.<sup>54</sup> The Chief Justice and the Deputy Chief Justice, opponents of the technique, argued that the Administrative Court resolves administrative disputes, which are conflicts between public and individual interest. Consequently, the implementation of ADR, if necessary at all, needs to be carefully carried out.<sup>55</sup> The same Deputy Chief Justice remarked that it would be possible to have a compromise unit to resolve a dispute before it is lodged in the Court, but as soon as a dispute is filed, such negotiations should cease. Nevertheless, no mention was made by the respondents of the inquiry process in which case judges may call parties to give an explanation of any issue related to the case. The main purpose of this process is to narrow issues of fact and law and, in some cases, an agreement between plaintiffs and defendants can be reached and cases can be settled more quickly.

Therefore if the concept of ADR is that it is a tool to assist the case to be settled more quickly or for the narrowing of its issues, then ADR is informally utilised in the Administrative Court. Although the Court does not have formalised forms of ADR such as mediation, conciliation and arbitration, it does have measures to assist swift resolution or to avoid the dispute being filed. The case officials who give legal advice in the consultation room are the first filter to separate the administrative cases from other civil or criminal cases. They give advice to the parties to enable them to provide a complete plaint and other related evidence which helps the Court in speedy consideration of the filed case. Moreover, the judges themselves conduct unofficial ADR, particularly in the Inquiry Room, by issuing summonses calling parties, witnesses and or other related persons to give a statement and explanation before them. In

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<sup>54</sup> Interview with Justice P, above n 47.

<sup>55</sup> Interview with Chief Justice of Central Administrative Court of Thailand, Central Administrative Court (Face to face interview, 21 February 2004) ; Interview with Deputy Chief Justice R of Central Administrative Court of Thailand, Central Administrative Court (Face to face interview, 21 February 2004).

comparison with the Federal Court's judges, although the Administrative Court's judges cannot conduct formal ADR through mediation, conciliation, arbitration, they may conduct effective ADR through their inquisitorial manner in the Inquiry Room. This is because such an additional inquiry process by the Administrative Court's judges aims to assist them to narrow the issues of the cases which seem too complicated to be understood through the normal inquiry process. Although the *Federal Court Act* provides the formal channel for its judges to conduct mediation, they are reluctant to use the power and choose to give the role of mediator to registrars. (See discussion on ADR of the Federal Court on Chapter 2, p. 58.) Thus, it is possible that judges of the Administrative Court who do not have a brief to engage in ADR may in effect engage in more ADR processes than the Federal Court's judges who do.

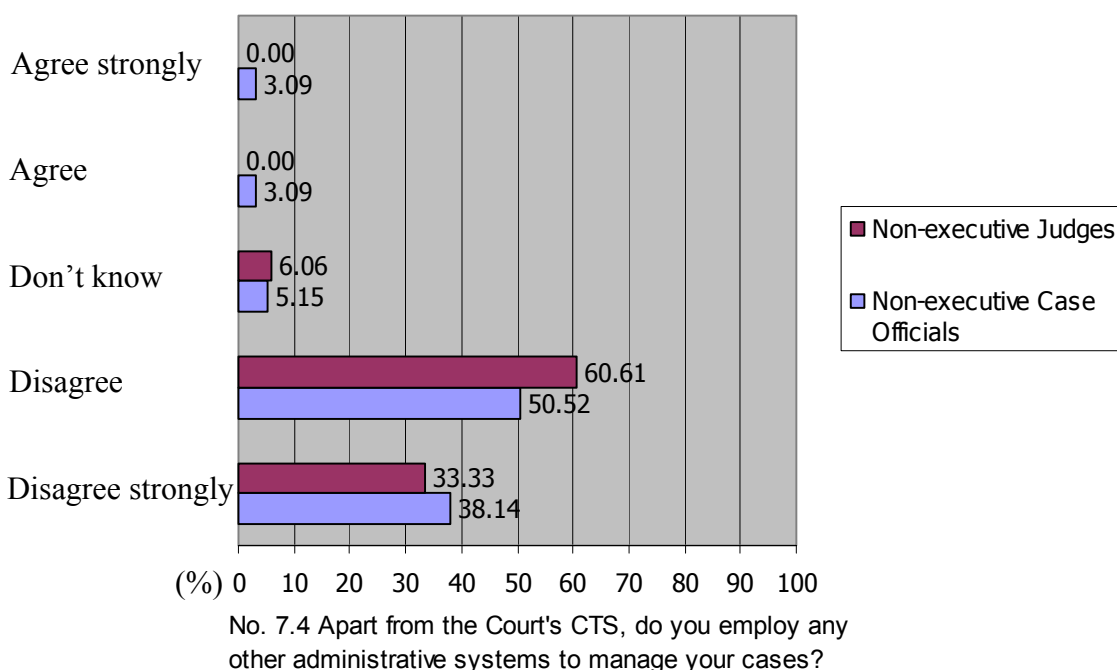
In the context of the issue of ADR in the Administrative Court, it is useful to discuss whether public interest makes administrative cases unsuitable for ADR. According to the results of my interview study, most of the judges feel that the public interest is of concern in utilising ADR in administrative cases. That is to say, in administrative cases while decision makers are obliged to administer the law and make the preferable decision, the other party may feel that such a decision is incorrect under the law or unlawful. This gives rise to a review process in which the notion of compromise is not relevant; that is, there is no room for ADR. However, as mentioned in Chapter 2, there are some public interest cases which have been settled using mediation in the Federal Court of Australia. This is because there is a new concept of appropriateness of cases for ADR. That is, all case types may be referred to ADR if they are considered likely to otherwise consume undue time and resources. Based on such a concept, formal ADR could be considered for incorporation into the Thai Administrative Court's case flow management. It would of course be important to do more research in this area, particularly on the balance between the benefits of reduction of cost and time by using ADR and the importance of the public interest. In addition, research should be done on the types of cases appropriate for ADR in the context of Thai administrative law.

### 4.5.3 Practical Implementation of a Monitoring and Information System

The Administrative Court essentially employs CTS to facilitate the Court's monitoring and tracking of cases. This section evaluates the CTS in terms of its success in this area.

#### 4.5.3.1 The Case Tracking System (CTS)

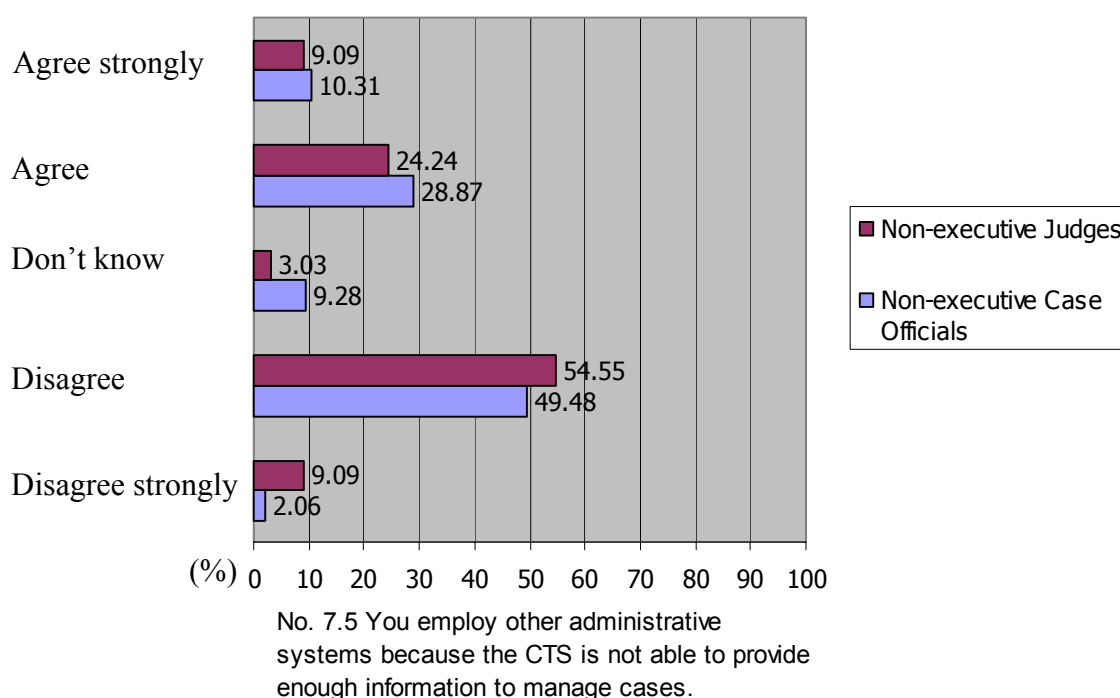
As elucidated in Chapter 2, deficiencies in the original system, the ACAS, was one of the main reasons for the introduction of the new CTS, the ACSP. In this section, I examine the actual performance of the original system from the judges' and case officials' viewpoints. Their answers to the open-ended questions were given during the interviews I conducted face to face in the Court in Bangkok.<sup>56</sup> A summary of their responses is presented in Graphs 4.6 and 4.7. The capabilities of the original system were also scrutinised from the standpoint of parties and the results are reproduced in Graph 4.8.



Graph 4.6: The use of other tracking and monitoring systems

<sup>56</sup> Example questions: 7.9 'Have you experienced any obstacle in employing the existing CTS? Please explain'; 7.10 'What improvement of the CTS do you need to see so as to help you to promote our work?' (See judges' and case officials' questionnaires in Appendix B).

The views on the operation of the original CTS illustrated in Graph 4.6 reveal that approximately 90% of both judges and their case officials use the Court's case tracking programme (ACAS) as a tool to monitor and manage a case. This suggests that the principle of a 'monitoring and information system' using a CTS has been carried out in practice in the Court's case flow management system.



Graph 4.7: Deficiency of CTS

Nevertheless, as can be seen in Graph 4.7, two-thirds of judges disclosed that they employ other administrative systems as additional tools for their managerial functions because they find some difficulties in gaining adequate information from the central CTS. This means that the original case tracking system was not efficient in providing information for judges to supervise their dockets. Half of the case officials agreed with their judges that there are some deficiencies in the CTS of the Court in terms of providing all important data to control and track the cases. However, an appreciable minority of both judges and case officials were satisfied with the functioning of the original system in giving information on a case.

Data from the open-ended questions in a judges' questionnaire provide details of their view on the deficiencies of the original CTS. For example, its programme was not complete and only some court officers could access the system. Besides this, the search function was unreliable so, in the end, correct, updated information needed to be sought from the original person who had performed the duties. The information put into the CTS was not updated, usually because the officers or judges responsible for a particular action had neglected to report it, rather than due to incapacity in the system itself. This caused an incomplete database system. Thus, some judges looked for operational systems to supplement the deficiencies in the CTS and they used that programme to double check their individual administrative systems. Case officials thought that the database of the CTS was inadequate to provide the diversity of information needed and was not able to serve all functions of the users. They paid more attention to the details of the CTS's operation, for example the case history module did not provide all chronological events of a case. There is a difference between judges' and case officials' results from the different use they make of the CTS system: the former employ the CTS to supervise the progress of their cases and are aware of the level of efficiency of the system to manage cases, while the latter, supporting judges by searching for accurate information on a case, consider the all-inclusive range of data available through the system.

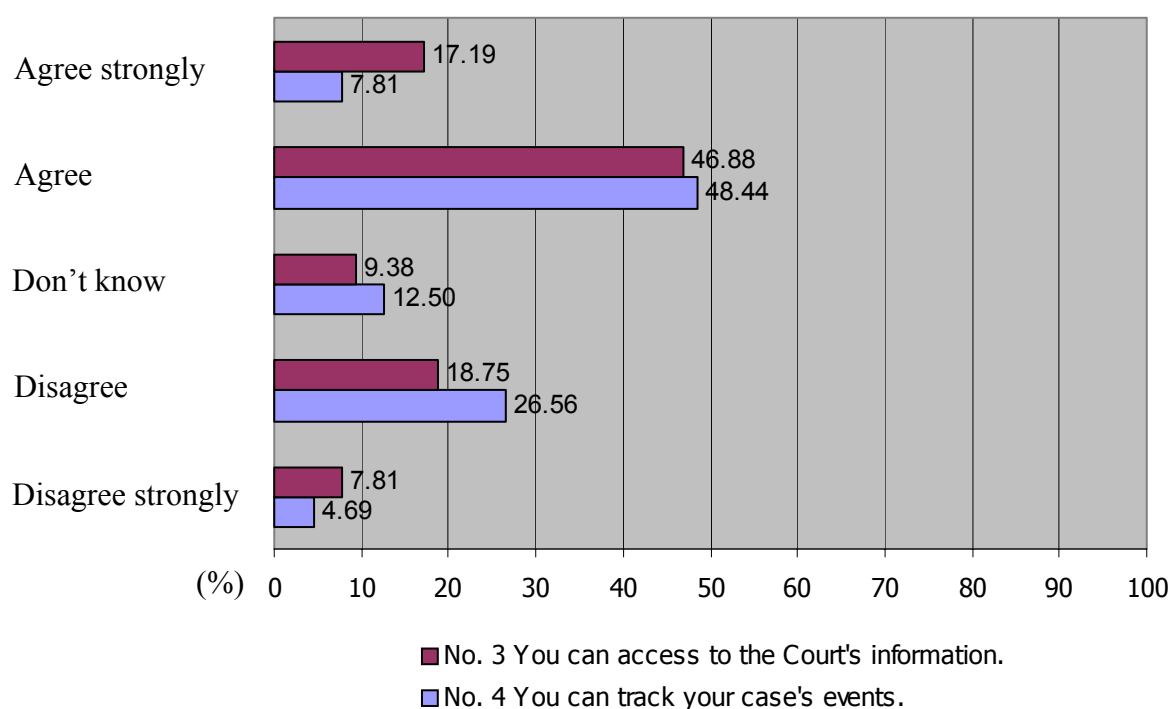
The inadequacy of the original CTS is underlined by Justice C, a conclusive judge. He asserted that he employed his own administrative system to collect and trace his cases. Principally, he controlled the progress of his cases, manually collecting each case's information in his calendar and keeping copies of his output. He also double checked the information collected with the list books of his case officials.<sup>57</sup> Judge P1, a senior judge of a division, had his own administrative system which was produced by the secretary working in the division. He also argued that his system was better than the CTS because it contains more details and is user friendly. If he needed in-depth information on any case, his case officials could provide more accurate and updated information on the cases. The monthly report provided by the Court CTS was used only

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<sup>57</sup> Interview with Justice C, Conclusive Judge, Central Administrative Court (Face to face interview, 18 February 2004).



to check against his system.<sup>58</sup> Data from interviews with many judges reflected the deficiencies in the CTS in similar ways to these examples. Nevertheless, some judges relied solely on a monthly report being produced by the Court CTS. Justice P2, a senior judge of a division, was one of the advocates of the original system. He said that it was a satisfactory operating system. The monthly report provided a current status for all cases in his docket; however, if he needed more information, he would ask his case officials to prepare and provide it.<sup>59</sup>



Graph 4.8: Performance of CTS from a parties' standpoint (reflexing 'keeping case progress accessible' objective)

The capacity of the Court CTS is also elucidated in the parties' questionnaire. As shown in Graph 4.8, two-thirds of parties were able to access the Court's information, generally by using the CTS. A similar percentage of parties were able to trace all events in their cases. In this sense the existing CTS can, in general, provide information on events to the parties. However, the 30% of parties who disagreed believe that improvements are necessary in the CTS.

<sup>58</sup> Interview with Justice P1, above n 49.

<sup>59</sup> Interview with Justice P2, Senior Judge of a Division, Central Administrative Court (Face to face interview, 17 February 2004).

In short, the CTS of the Court is the most important tool for monitoring and supervising cases. It is employed throughout the Court to encourage the achievement of the 'monitoring and information system' principle of the Court's CFM. In the views of the CTS's users, both internal (judges and case officials) and external (parties), the original CTS operated with limited capability. This verifies the importance of the decision made by the Court to develop the more sophisticated CTS. The ACSP was developed to resolve some deficiencies in the original system by providing a better historical collecting function, advanced report generation, and a tickler-reminder system although it has not replaced the original system entirely (see discussion of the deficiencies of the original system in Chapter 2, 2.2.3.2, p. 48).

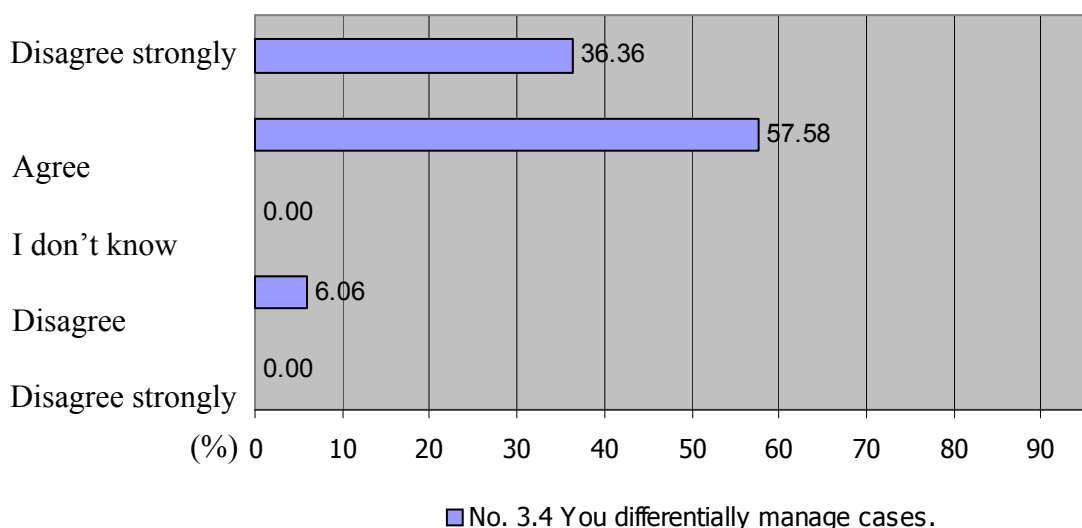
#### **4.5.4 Practical Implementation of Court Supervision of Case Progress**

As discussed earlier, the Administrative Court's judges, particularly case judges, actively supervise the progress of cases. In addition, the Chief Justice directly supervises the movement of a case through the Court's case tracking system in order to ensure that judges dispose of cases with appropriate speed. Unquestionably, this system is supported by the Chief Justice and has been adopted and implemented throughout the Court.

This principle generally needs the use of differentiated case management techniques (DCM) to identify the simple from the complex cases so that judges can manage each with appropriate speed. However, the DCM technique was not formally laid down as part of the Court's CFM. As analysed in the timeframe, a single standard was developed for all case types. However, it appears that some Administrative Court judges do selectively implement differential case management techniques. This section will elucidate the use of differential management of cases in the Court using data from the judges' questionnaire and interviews of judges and executive court officials.

#### 4.5.4.1 Differentiated Case Management (DCM)

The use of differentiated case management techniques is reported in Graph 4.9 below, drawing on data from the judges' questionnaires and interviews with judges.



Graph 4.9: DCM from a judges' standpoint

Nearly all judges claimed that they did differentiate cases in their dockets. A high percentage of judges indicated that this technique exists in the CFM of the Court even though it is not formally laid down.

Data from interviews show that, in general, both case and conclusive judges differentiate cases to be managed using a fair system for choosing cases to be finalised; that is, they consider the sequence of cases assigned to their docket. In the views of the judges interviewed, DCM is the method of classifying different case types in their dockets, rather than grouping by complexity so as to be considered slow, normal or fast track.<sup>60</sup> As

<sup>60</sup> Under section 9 of the *ACP Act*, Administrative cases of the Administrative Courts of First Instance divide into nine types: (1) the unlawful issuance of a by-law, (2) the unlawful issuance of order, (3) the unlawful act, (4) the negligence of official duties required by the law to be performed, (5) the performance of duties required by the law to be performed with unreasonable delay, (6) the wrongful act arising from the exercise of power under the law, (7) other liability arising from the exercise of power under the law, (8) the administrative contract, and (9) cases prescribed by law to be filed to the Administrative Court. Nevertheless, the specialised divisions and the specialisation of conclusive judges are assigned in relation to the characteristics of administrative cases consisting of: (1) cases relating to land, public property and natural resource, (2) cases relating to education, religion, culture, social and public health, (3) cases relating to expropriation of immovable property, wrongful act, and other liability, (4) cases relating to telecommunication, radio broadcast, trade, and industry, (5) cases relating to personnel management, discipline, pension and welfare, and career operation, (6) cases relating to governmental administration, (7) cases related to procurement, administrative contract, investment and public finance, (8) case relating to the supervision of buildings, condominium, land management, factory, environment, disturbance and city plan.

mentioned above, the Administrative Court has only a single average track for all administrative case types with all degrees of complexity. The results of the questionnaire indicate that differentiation occurs on the basis of case type more than case complexity. However, Judge P2, a senior judge of a division, said that his own managerial style is to group on the basis of case type with a similar level of complexity and to finalise each group together. He asserted that this technique aids his performance in disposing cases.<sup>61</sup> Thus, the interview results show that differentiation by complexity of a case is employed by some judges, but they also indicate that most judges differentiate by case type rather than by complexity.

In short, the Administrative Court's judges were aware of their responsibility for active supervision and finalisation of cases in their dockets. They differentiated cases into various case types and considered cases in each type in sequence because it was a fair approach to managing cases. However, some judges employed differential management techniques based on case complexity as an additional process to speedily finalise cases, while the sequence of listing was still a consideration. Thus, there is variation between judges in case management techniques which depends on individual managerial styles. It is important to note that this research did not examine differences in disposal rates between judges who employed DCM and judges who did not differentiate cases.

#### **4.5.5 Findings and Summary of Comments on the Principles of the CFM of the Administrative Court**

The principles of CFM of the Administrative Court were explored against its principles of judicial administration and policy: judicial control; standards and goals; monitoring and information system; and court supervision of case progress. These principles were elucidated in terms of their practical implementation from three viewpoints: judges, case officials and parties. A summary of the findings and comments is discussed in relation to each principle as follows.

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<sup>61</sup> Interview with Justice P2, above n 59.

#### 4.5.5.1 Judicial Control

##### **- A managerial style—active or passive**

##### *Findings*

Judges actively manage their cases with the assistance of their case officials. Judges control and monitor their cases; however, the extent of the role played by case officials in managing cases varies depending on the assignment policy of each judge.

##### *Comments*

The Administrative Court's judges should very actively control the pace of litigation. They should exercise leadership to encourage cases to be finalised in an expeditious and fair manner. Most judges concern themselves actively in their roles.

#### 4.5.5.2 Judicial Accountability

##### **- A managerial style—active or passive**

##### *Findings*

Judges felt they were accountable to the public in their managerial role by committing themselves to manage and control the entire case progress.

##### *Comments*

All judges should ensure they actively manage and monitor their cases under the standard provided by the Direction.

#### 4.5.5.3 Standards and Goals

The standards and goals principle was evaluated from three perspectives on four topics.

## **- Judicial independence**

### *Findings*

- 1) The majority of judges are satisfied with their independence in performing their managerial roles.
- 2) A minority of judges are dissatisfied because of the impact of the timeframe on the standard of a judge's work in producing judgment/ order/ memorandum or statement. An impractical timeframe and quantitative-based assessment caused the dissatisfaction.

### *Comments*

Judges should be independent in their managerial roles, with some restrictions. The Directive is flexible, so judges still have freedom to manage their dockets as long as their managerial role does not fall below the standard provided. Judicial independence is guaranteed under the Act and the Constitution; consequently, judges are independent in carrying out their judicial role.

## **- Timeframes**

### *Findings*

- 1) The Administrative Court did not create a timeframe providing for expected numbers or percentages of disposed cases, but created estimated timeframes for each event that could occur in general cases.
- 2) Timeframes were introduced to ensure active, speedy managerial role of judges.
- 3) In the views of judges and case officials, timeframes are mostly flexible but for some judges and case officials they are unrealistic because of the complexity of cases.

- 4) In the view of parties, they had no difficulties complying with the timeframes imposed by judges; however, sometimes it was hard to comply.

#### *Comments*

- 1) Quality of justice is more important than quick justice.
- 2) Timeframes for different case types and complexities should be provided.

#### **- Alternative dispute resolution (ADR)**

#### *Findings*

- 1) This technique is used only before disputes are filed in the Court. ADR techniques are used in practice in the Court by the Court's officials, not judges, particularly in the consultation room when providing legal advice.
- 2) Administrative disputes are conflicts between public and individual interest. Compromise might cause imbalance between these two different interests. ADR is useful in reducing the Court's caseload but it needs to be carefully implemented.

#### *Comments*

- 1) ADR should be implemented in some administrative case types in which the settlement does not affect the public interest.
- 2) A Settlement Division should be established as part of the OAC's divisions in order to resolve disputes before being lodged in the Court.

#### **4.5.5.4 Monitoring and Information System**

The monitoring and information system principle was evaluated in three perspectives via the examination of the original case tracking system, the Administrative Case Administration System (ACAS).

### **- Case tracking system**

The case tracking system was important to judges for monitoring and supervising cases. The original system had some limitations so it was important to create a new system, that is, the Administrative Case System Program (ACSP). It is expected to replace the original system but currently the Court operates both in tandem as a dual system. The findings from judges', case officials' and parties' perspectives are concluded as follows.

#### *Findings: Judges and case officials*

- 1) The principle of 'monitoring and information system' using the CTS has been carried out in the Court's CFM. However, judges employed other administrative systems as supplementary tools because there were some deficiencies in the CTS. On the other hand, a minority of judges and case officials were satisfied with the operation of the original system.
- 2) The original system had some deficiencies including an incomplete programme, an unreliable searching programme, irresponsible officials irregularly inputting data, and limits on producing diverse reports.

#### *Findings: Parties*

The parties were satisfied with the functioning of the original system; nevertheless the system needed to be improved for better operation.

#### *Comments*

- 1) The new CTS should be formally assessed by its users such as judges, case officials, other related court officers, plaintiffs, defendants and lawyers.
- 2) The new CTS should be formally studied and refined.



#### 4.5.5.5 Court Supervision of Case Progress

Court supervision of case progress in the Administrative Court is carried out by individual judges and by the Chief Justice. While the individual judges supervise the case movement, the Chief Justice supervises the progress as well as examining judicial performance via the Court CTS. Differentiated case management (DCM), generally used to promote judges' supervision of case progress, is not laid down in the Court's practice, but some kinds of differential case management are actually implemented in the Thai Court. This was elucidated from the judges' and case officials' responses to the questionnaire and interviews.

#### **Differentiated case management (DCM)**

##### *Findings*

Judges claimed that they differentiated cases to be managed by case type and that they would consider a case according to the sequence of cases allocated to them. Only some judges differentiate by complexity of case for tracking at different speeds. They asserted that this DCM technique increased their disposal rates.

##### *Comments*

- 1) The DCM technique should be formally implemented in the Court's CFM.
- 2) Cases should be differentiated according to both case types and complexity.
- 3) Each case type or each case level of complexity should be matched to a tracking level and a timeframe.

## **Chapter 5**

### **Objectives of the CFM and the CTS of the Administrative Court**

It is important to discuss the objectives of the Administrative Court's CFM because they guide the court officers (both judicial and non-judicial) to work in the same direction and to achieve the same objectives. Ultimately, the achievement of the CFM's objectives could be one of the most important factors in the achievement of the Administrative Courts' values. While the objectives of a court's CFM from the perspectives of the USA and the Federal Court have been investigated earlier in Chapter 2, the perspective of the Administrative Court's CFM including its CTS, not previously been studied in a research project, is analysed in detail in this chapter. .

This chapter consists of three sections. The first section is an examination of the objectives of the Court's CFM formulated from the elucidation of the Court's values obtained during interviews with executive judges and high-ranking court officials, and interviews and answers to questionnaires provided by non-executive judges and case officials (see details of methodology in Thailand in Appendix C). These investigations of the Administrative Court were undertaken in the CAC. The objectives of the Administrative Court's CFM elicited in this study are compared and contrasted with the objectives of the Federal Court using the USA theoretical material as a framework. Such a comparison gives a clearer understanding of the objectives of the Administrative Court's CFM. Some recommendations for change emerge from the comparisons and are a by-product of the study.

After setting down the objectives of the Court's CFM, this chapter goes on to evaluate achievement of the objectives from the standpoint of the Court's judges and case officials, both executive and non-executive, through the interviews and questionnaires. The questionnaires completed by the parties (plaintiffs, defendants and their representatives) also contain comments on the achievement of the Court's objectives. The last section of the chapter is an investigation of the objectives of the Court's case

tracking system. During the period this research was conducted, the Court employed the original CTS, the ACAS which has since been updated. Only the original system is discussed in this section. Interviews with executive court officials, both judicial and non-judicial, and questionnaires of non-executive judges, non-executive case officials and parties, are used. With these data and analysis, the objectives of the Court's CFM are comprehensively scrutinised.

## 5.1 Objectives of CFM Stemming from the Values of the Court

The first area in which to examine the objectives of the Court's CFM is in the Administrative Court's values. CFM was introduced to promote the efficiency of the Courts in managing and monitoring administrative cases, therefore the objectives of the CFM are subsidiary to the Courts' values. According to a study of the Court's internal documents, the values of the Administrative Courts can be summarised as follows.

The Court's values are:

- a) To be a leading institution and to resolve disputes with fairness, expedition, transparency, and efficiency;
- b) To lay down a standard for lawful action by administrative agencies or state officials and to protect the people's rights;
- c) To deliver public education to improve the understanding of administrative cases and laws, as well as providing judgments and other data.<sup>1</sup>

Because CFM denotes the supervised process of time and events in order to move cases from filing to disposition, the relevant objectives in the Court's values relate only to their practical implementation and the only match with the CFM system is the first value, 'resolving the dispute with justice, expedition, transparency, and efficiency.'

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<sup>1</sup> Office of the Administrative Courts, *Draft of the Strategic Plan of the Office of the Administrative Courts 2004-2008* (2004) [trans from: ร่างแผนยุทธศาสตร์สำนักงานศาลปกครอง พ.ศ. ๒๕๔๗-๒๕๕๒].

## **5.2 Objectives of CFM Stemming from Interviews**

The second source from which to examine the objectives of the Court's CFM is in the interviews of the executive judges and high-ranking court officials. These people are the heads of the institution and make the Court's policies. They also formulate the objectives of the Court's CFM. Four objectives were identified in the interviews. They are in accordance with the objectives of CFM which in turn derive from the Court's values. They are: a) resolving disputes with justice; b) resolving disputes expeditiously; c) resolving disputes with transparency; and d) resolving disputes efficiently. Each objective is elucidated as follows.

### **5.2.1 Resolving Disputes with Justice**

The executive judges who participated in the interviews agreed that one of the most important goals of the Court is to resolve all administrative cases with justice. They explained that judges have to resolve administrative cases with 'suitable' speed, neither too fast nor too slow and in an orderly manner. Case types with similar degrees of complexity should be finalised at a similar speed. However, the inquisitorial system employed by the Court obliges judges to acquire enough evidence (mostly documents) to make a decision. If a judge finalises a case too fast, the evidence might be inadequate to provide a just decision. On the other hand, if a judge settles a case too slowly, the injured party may not receive suitable redress in a timely manner. The executive judges also agreed that, when choosing which case to consider from their dockets, judges should treat all cases equally. Each case should be disposed of in chronological order, unless it is an urgent application. All in all, the delivery of justice in the dispute resolving process depends heavily on the individual judge's administration of case progress in their docket. In the view of the executive judges, this objective of the Court's CFM can be achieved with active management of all the Administrative Court's judges finalising cases with appropriate speed and orders.

### **5.2.2 Resolving Disputes Expeditiously**

Data from interviews of the all executive judges indicate that they CFM was introduced as a system to assist judges in managing their cases expeditiously. So, speedy management of cases by the Administrative Court's judges was seen to be one of the objectives of the CFM. All high-ranking case officials who participated in this research supported this objective. They claimed that speed was very important to the success of the CFM of the Court. The importance of the delay reduction objective was more contentious amongst the executive judges and executive court officials in their interviews. They all claimed that the reduction of delays or the expedition of cases was the most important objective of the CFM. However, they recognised that such expedition has to be balanced against the quality of justice, which is to say that finalising all cases with expedition should not occur so fast as to cause unjust decisions. In addition executive judges referred to the use of the CTS as a tool of the CFM used to monitor the pace of each case. The CTS is employed by the executive judges to track the events of cases in the non-executive judges' dockets. When inactive cases are reported, executive judges examine the obstacles leading to the inactive status with the judge in charge of each case. This tool was seen as a measure to promote the expedition of each judge's performance.

### **5.2.3 Resolving Disputes with Transparency**

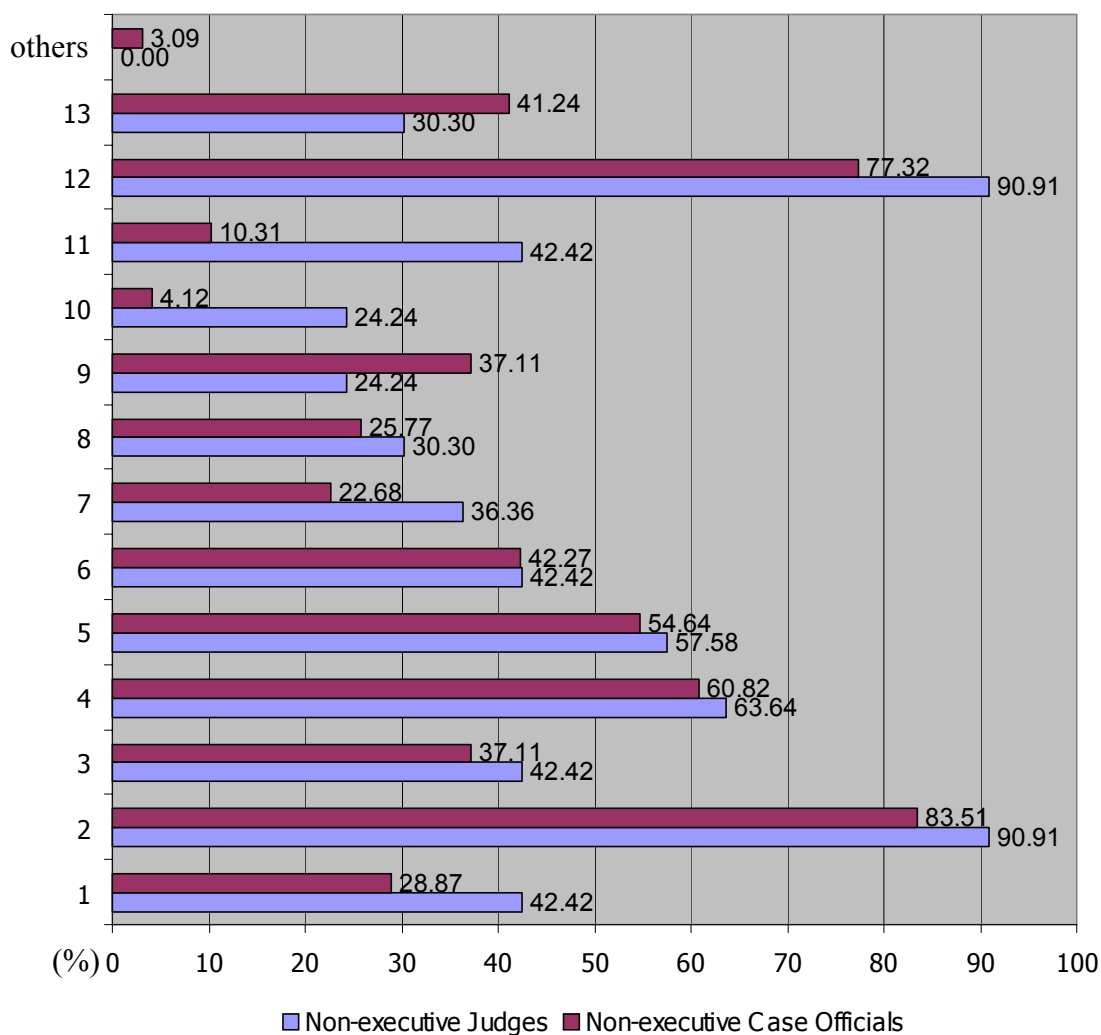
Data from interviews show that both executive judges and high-ranking court officials felt that transparency in administrative case proceedings is an objective of both the Court and the CFM. For instance, parties could examine their case files at any time. The Court has to serve all related documents and information on the administrative case to related parties. Some information such as judgments has to be publicised and is not immune from public criticism. The interviewees also argued that this objective is very important to promote accessibility to justice and public confidence.

### **5.2.4 Resolving Disputes Efficiently**

Data from interviews with the executive judges and high-ranking court officials showed that they believed efficiency in resolving disputes was a core objective of the introduction of the Court's CFM. The absence of a fee in administrative case proceedings was regarded as a strength of the Court's system. Implementation of the Court's CFM was thought to have enhanced the quality of the litigation process. In addition, three out of five of the executive court officials participating in the interviews had some concerns about the efficiency of clerical work in the Court. They believed the objective 'resolving disputes efficiently' needed a clerical unit that functioned efficiently.

## **5.3 Objectives of CFM Stemming from Questionnaires**

Apart from these broad objectives stemming from its values and interviews, the more specific objectives of the Court need to be identified. The last source examined for the objectives of the Court's CFM is questionnaires completed by both the non-executive judges and non-executive case officials. The results are presented in Graph 5.1 below. Fourteen objectives are listed and their priority is rated and analysed. These objectives could be classified into four groups in line with the objectives deriving from the Court's values and interviews. I identify each group of objectives and relate them to the objectives deriving from the questionnaires and the Court's values. Each objective of the groups in Graph 5.1 is then elucidated with comments on the objective taken from interviews.



Graph 5.1: Objectives of the CFM of the Administrative Court<sup>2</sup>

Note:

- No. 1 = Promoting equal treatment of all litigants
- No. 2 = Reducing delays in administrative case proceedings
- No. 3 = Reducing cost in administrative case proceedings
- No. 4 = Making the timing of events more predictable
- No. 5 = Making the timing of events more realistic
- No. 6 = Enhancing the quality of the litigation process
- No. 7 = Laying down a standard of a lawful act
- No. 8 = Protecting people's rights
- No. 9 = Promoting public confidence
- No. 10 = Encouraging earlier settlements
- No. 11 = Encouraging of solicitor / party accountability
- No. 12 = Encouraging the use of the case tracking system for court monitoring
- No. 13 = Keeping case progress accessible
- Others = a) Promoting efficiency of clerical work  
b) Standardising the implementation of CFM  
c) Creating transparency of the case progress.

<sup>2</sup> See Appendix B: Questionnaires.

In Graph 5.1 there are sixteen objectives of the Court's case flow management. However, when these objectives are grouped and matched to the objectives deriving from the interviews and the Court's values, only fourteen are considered to be the objectives of the case flow management system. These are elucidated in Table 5.1 below.

Table 5.1: Comparison of objectives of the CFM of the Administrative Court

<b>Objectives of CFM of the Administrative Court</b>		
<b>The Court's values</b>	<b>Interviews</b>	<b>Questionnaires</b>
- Being a leading institution to resolve a dispute with fairness, expedition, transparency, and efficiency	- Resolving disputes with justice (not too fast or too slow and in an orderly manner)	- Promoting equal treatment of all litigants - Standardising the implementation of CFM
	- Resolving disputes in an expeditious manner	- Reducing delays in administrative case proceedings - Making the timing of events more predictable - Making the timing of events more realistic - Encouraging earlier settlements - Encouraging solicitor / party accountability - Encouraging the use of a case tracking system for court monitoring
	- Resolving disputes with transparency (accessibility, open court, a judgment can be criticised)	- Promoting public confidence - Keeping case progress accessible - Creating transparency of the case progress
	- Resolving disputes efficiently (reducing cost of litigation, and using a clerical unit to facilitate the judges' work)	- Reducing costs in administrative case proceedings - Enhancing quality of litigation process - Promoting efficiency of clerical work



Table 5.1: Comparison of Objectives of the CFM of the Administrative Court (Cont')

<b>Objectives of CFM of the Administrative Court</b>		
<b>The Court's values</b>	<b>Interviews</b>	<b>Questionnaires</b>
- Laying down a standard of a lawful act by administrative agencies or state officials and protecting the people's rights	<i>(CFM is not relevant to these court objectives)</i>	- Laying down a standard of a lawful act by administrative agencies or state officials  - Protecting the people's rights  <i>(CFM is not relevant to these court objectives)</i>
- Being a disseminated centre, which creates the understanding in administrative case and administrative law, as well as providing the judgment and order databases	<i>(CFM is not relevant to these court objectives)</i>	<i>(CFM is not relevant to these court objectives)</i>

In Table 5.1 it appears that the value, 'being a leading institution to resolve a dispute with fairness, expedition, transparency and efficiency' is consistent with the objectives, 'resolving a dispute with justice', 'resolving a dispute expeditiously', 'resolving a dispute with transparency', and 'resolving a dispute efficiently' deriving from the interviews of executive judges and executive case officials. However, the objectives from the earlier sources are broader; the more specific objectives of the Court's CFM are elucidated from questionnaires. This is because the questionnaires, dispensed to non-executive

judges and non-executive case officials, provided a list of the case flow management's objectives. The questionnaires were simply completed by a process of the respondents ticking the assorted boxes of objectives that they thought matched those of the Court's CFM. The guidelines for the Court's objectives provided in the questionnaire were gathered from literature reviews of the stated objectives of the CFM system. The questionnaire also provided blank spaces for the respondents to add any objective not listed in the guidelines. Three objectives were added by respondents: standardising the implementation of CFM; creating transparency in case progress; and promotion of the efficiency of clerical work. Therefore, there are fourteen objectives under four core features. They are consistent with the value of the Court being a leading institution to resolve disputes in a fair, expeditious, transparent and efficient manner. 'Laying down a standard of a lawful act' (No. 7) and 'protection of the people's rights' (No. 8) were listed in the judges' and case officials' questionnaires as parts of the second value of the Court 'laying down a standard of a lawful act by administrative agencies or state officials and protecting the people's rights.' They are, therefore, not discussed in this research even though some respondents thought they were a part of the implementation of the Court's CFM.

## **5.4 Discussion**

In this discussion section, the objectives are classified into four groups: justice, expedition, transparency, and efficiency (see Table 5.1). Its importance and interesting characteristics are examined by reference to Graph 5.1.

### **5.4.1 Justice**

The justice group consists of 'promoting equal treatment of all litigation' and 'standardising the implementation of CFM' objectives. These objectives are subsets of 'resolving disputes with justice.' As can be seen in Graph 5.1, only 40% of participating judges and 30% of participating case officials felt that promoting equal treatment of all litigants (No. 1) was an objective of the CFM. This is because the objective sounded too general to be an objective as such. Actually, CFM assists in the promotion of equal treatment of all litigants in many ways. For example, standardisation of case

management ensures that all cases containing similar conditions are finalised within a similar period of time. For this reason, some case officials raised 'standardising the implementation of CFM' as one of the objectives of case flow management.

Equal treatment in this sense does not mean that a judge exercise the same speed in all cases but that he/she will monitor the pace of litigation of each case with different tracks according to the complexity and urgency of each case. Therefore, there was a high level of agreement amongst executive judges and executive court officials participating in the interviews that resolving disputes with justice is one of the objectives of the case flow management of the Court.

#### **5.4.2 Expedition**

The expeditious group is composed of 'reducing delays in administrative case proceedings', 'making the timing of events more predictable', 'making the timing of events more realistic', 'encouraging earlier settlements', 'encouraging solicitor/party accountability', and 'encouraging the use of the case tracking system for court monitoring' objectives.

Graph 5.1 shows a high level of agreement about the reduction of delays objective amongst the non-executive judges and case officials. About 90% of the non-executive judges and 80% of the non-executive case officials agreed that the reduction of delays was the core objective of the CFM of the Court. The CFM was introduced to the Court to assist judges to finalise cases more quickly. This objective is closely related to the 'court monitoring by using CTS' objective (No.12). This is because the use of CFM is to promote the monitoring role of judges. Delay reduction was seen as the most crucial objective and the monitoring role of judges in managing their cases was seen as highly beneficial to delay reduction. In order to perform such a monitoring role efficiently, basically the Court employed its tracking system. Apart from the delay reduction objective, court monitoring, therefore, was the most significant objective.

It was not surprising that the percentage of judges supporting both objectives was a little higher than that of court officials. A judge who is directly responsible for the progress

of cases in a docket may have a better understanding than their case officials that delay reduction and court monitoring are core objectives of the CFM system, and that his/her expedition will contribute greatly to a higher disposal rate of administrative cases.

Graph 5.1 shows that most respondents agreed that No. 4 and 5: making the timing of events more predictable and realistic should be objectives of the Court's CFM. The case officials recognised that predictability and credibility of timing of all events in a case were important to the success of the Court's CFM. This helps to prevent delays that may originate from parties asking for an adjournment and assists a judge in supervising the pace of litigation. The realistic timing of events objective includes the timely and appropriate timing of each case event. This objective was strongly supported by the Court officers, particularly the Directive concerned with matter issued by the President. As discussed earlier in Chapter 4, the timeframes of each event in administrative case proceedings have been set. Some respondents in this study felt that the timeframes set were not practicable, and that it was essential for them to be suitably adjusted.

Objectives No. 10 and No. 11, encouraging earlier settlement, and encouraging solicitor/party accountability, are very interesting because there is a considerable difference between the views of the judges and case officials. A much higher percentage of judges than case officials felt that these should be considered objectives of the Court. Although implementation of earlier settlement had not been prescribed in the Court's Laws and Regulations, some respondents, particularly judges, felt that this was one of the objectives of the Court. This means there is support for implementation of earlier settlement in the Court. The considerable difference between the judges and court officials could be explained because earlier settlement is really done by judges, not by court officials. These judges employed CFM to settle their cases more quickly.

A considerable minority of the respondents, particularly judges, felt that encouraging solicitor/party accountability (No. 11) was an objective of the CFM. Because the participation of the parties and their representatives contributes to the expedition of cases, encouragement of their accountability is definitively seen as an objective. As only the judges have a managerial role, the understanding of the objective encourage accountability by the case officials is poor.

In brief, reduction of delay and the Court's monitoring are some of the most important objectives of the Court's CFM. Officials of the Court, both judicial and non-judicial, should aim to reduce delays in the Court by speedily performing their case work with the use of CTS. The tracking system should provide better predictability and reliability. In addition to this, a considerable minority of judges encourage the Court to regard the parties as accountable in their case preparation and believe they should be encouraged to consider earlier settlements to achieve the goal of expedition.

### **5.4.3 Transparency**

Promoting public confidence, ensuring accessibility and creating transparency of case progress are in the transparency group. The last objective in this group was raised by some of the non-executive case officials who participated in this study.

As illustrated in Graph 5.1, both promoting public confidence (No. 9) and creating accessibility (No. 13) have parallel findings, that is, around 40% of case officials, that is, 10% more case officials than judges, felt that these are amongst the objectives of the Court's CFM. The explanation for less than 50% of case officials agreeing that these are objectives of the Court's CFM, is because of the broad meanings given to the terms. The reason that 10% more case officials than judges agreed to those objectives relates to the understanding of those who have responsibility to carry out the functions. Under the *ACP Act*, there are some provisions (such as sections 77 and 79) which require that the OAC, including the case officials, fulfil these objectives. For example, the OAC has to generate the judgments and perform many duties to promote the Court and the judges' work. These duties include the creation of the case flow management system, creation of accessibility and promoting public confidence. For these reasons, few judges saw these features as objectives while a considerable minority of case officials felt they were. Public examination of the Court's procedures directly promotes transparency of the Court. Hence, some of the case officials proposed 'creating court's transparency' as another objective of the systems to manage cases.

#### 5.4.4 Efficiency

The efficiency group includes 'reducing cost in Administrative Court's proceedings' (No. 3), 'enhancing the quality of the litigation process' (No. 6), and 'promoting efficiency of clerical work' objectives. According to Graph 5.1, reducing cost was not seen as an important objective of the Court. Only 40% of the non-executive judges and 35% of the non-executive case officials felt that this feature was an objective of the Court's CFM. This is because cases filed in the Court generally attract no court fee and the court ignored or did not consider other costs to the parties (such as legal costs).<sup>3</sup> A similar percentage, about 40% of non-executive judges and case officials felt that 'enhancing the quality of the litigation process' is a CFM objective. This was because of the broad definition of 'quality of the litigation process.' This objective of the Administrative Court could be promoted not only through efficient supervision by judges but also by efficient clerical work of court officers. Some non-executive case officials participating in this research raised 'promoting efficiency of clerical work' as one of the objectives of the CFM of the Court. This coincides with the opinion of some of the high-ranking court officials interviewed.

### 5.5 Findings of the Objectives of CFM

As shown in Table 5.1, the objectives of the Court's case flow management system can be divided in four groups with fourteen objectives. Some interesting characteristics of the Court's objectives appear in the discussion of objectives of the Court's CFM. They are:

- 1) 'Resolving disputes with expedition' is the most important objective feature of the Courts' CFM system.
- 2) 'Reducing delays in administrative case proceedings' and 'encouraging the use of a tracking system for court monitoring' are the first priority amongst objectives of the

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<sup>3</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 45.

Court's CFM that all court officers, both judicial and non-judicial, acknowledge and encourage.

3) The objectives of 'making the timing of events more predictable' and 'making the timing of events more realistic', which include the appropriateness of the timing of events to promote the achievement of delay reduction and to enhance overall court performance in the expeditious resolution of disputes, are regarded as crucial. The critical issue emerging from the realistic timing of events is the appropriateness of the Direction laying down timeframes for each Court event. The respondents suggest that the timeframes should be adjusted to make it them practicable and suitable to the actual management of cases.

4) Only 40% of the respondents agreed that 'reducing cost in administrative case proceedings' is one of the objectives of the Court's CFM. Actually, it is one of the most important objectives, but the respondents thought that it is a characteristic of administrative case proceedings which is endorsed in section 45 of the *ACP Act*. Cost reduction is not only for the benefit of the parties, it is an obligation to reduce the Court's expenditure. Case flow management in the Administrative Court aims to reduce costs in case management via efficiency and expedition of administrative case proceedings.

5) As an objective, 'encouraging earlier settlements' objective is performed by few judges in order to settle their cases more quickly. It is interesting to note that earlier settlements are different from the alternative dispute resolution (ADR). Issues of fact and law can be refined using this objective so the case can be finalised quicker.

6) 'Encouraging solicitor/party accountability', 'promoting public confidence', 'promoting equal treatment of all litigants' and 'enhancing the quality of the litigation process' are considered too broad to be objectives. This is because of the broad sense of their meanings. However, they are some of the most important objectives of the Court's CFM.

7) 'Creating transparency of case progress', 'standardising the implementation of CFM', and the 'promotion of the efficiency of clerical work' were proposed as additional objectives by some respondents.

## **5.6 Comparison of the Objectives of CFM**

The fourteen objectives of the Court's CFM system are compared and contrasted with objectives from the USA and the Federal Court perspectives in Table 5.2 below. The analysis in this table assists in understanding the Administrative Court's objectives and in making recommendations for other appropriate objectives for both the Administrative and the Federal Court.



Table 5.2: Comparison of Objectives of CFM from Different Perspectives

<b>USA Perspective</b>	<b>Administrative Court</b>	<b>Federal Court</b>
Promoting equal treatment of all litigants	Promoting equal treatment of all litigants  Standardising the implementation of CFM	Consistency of approach throughout case progress
Promoting public confidence	Promoting public confidence	
Reducing cost	Reducing cost in administrative case proceedings	Saving on costs
Enhancing the quality of the litigation process	Enhancing the quality of the litigation process  Promoting efficiency of clerical work	
Providing access to justice	Keeping case progress accessible  Creating transparency of case progress	Enhancing transparency of case progress
Reducing delays	Reducing delays in administrative case proceedings  Encouraging solicitor/party accountability  Encouraging earlier settlement  Encouraging the use of the case tracking system for court monitoring	Saving time  Reducing formal events requiring court sitting  Speedily resolving disputes  Promoting the use of DCM  Promoting the use of ADR (mediation)  Encouraging earlier case settlement  Narrowing issues
Making the timing of events more predictable	Making the timing of events more predictable	Early fixing of trial dates
Making the timing of events more realistic	Making the timing of events more realistic	Maintaining trial dates

The objectives of the case flow management systems of both the Administrative and the Federal Courts are to reduce cost and delay and to standardise the approach taken in its implementation. These objectives correspond to the theoretical framework. The reducing delay objective of the Administrative Court is similar to the saving time objective of the Federal Court. The Federal Court employs many measures (which are also objectives of the Federal Court's CFM) to achieve this objective, such as reducing formal events that consume court time for sitting, speedily resolving disputes, promoting the use of DCM, promoting the use of ADR by mediation, encouraging earlier case settlement and narrowing issues. In the Administrative Court, the reducing delays objective is supported by many other objectives, such as encouraging solicitor/party accountability, encouraging earlier settlement, and encouraging the use of the case tracking system for court monitoring. The tracking system of the Administrative Court is the main tool used to reduce delays while the Federal Court does use its CTS to reduce delays. This does not mean that the Federal Court does not employ such a tool in their case management. On the contrary, the Court developed CASTRACK to replace FEDCAMs. Consequently the Federal Court realises that the CTS is a very important tool for judges to monitor their cases and reduce delays but the Court does not regard the implementation of that system as an objective. Table 5.2 also indicates that reducing delays and saving time in the case proceedings are the most important objectives of both courts because there are many measures adopted as objectives to promote swift resolution by reducing delays.

Transparency of case progress is promoted in both courts. While the Federal Court enhances transparency, the Administrative Court creates transparency in case progress. This is because the Administrative Court was established recently and the Court's CFM aims to create a system to ensure the transparency of case progress, whereas the Federal Court, with its longer history, aims to enhance transparency. This objective can be promoted by encouraging public accessibility. The more accessible a court is, the more transparent it is and the more confident the public is. Not surprisingly, the Administrative Court and the USA perspectives have objectives of employing the CFM to provide access to justice and promoting public confidence. These objectives are also useful to the Federal Court and should be formally set as its CFM's objectives.

From the outset, the USA framework suggests that the CFM's objectives should be making the timing of events more predictable and timely. The Administrative Court used a Directive to set the objectives of its CFM and to make the timing of events more predictable. The Court also required the timing of events to be more realistic, that is, the case events are to occur in a timely and appropriate manner. The appropriateness of the execution of the Directive was commented on by judges and case officials. They thought the timing of administrative case events should occur not only in a timely and predictable, but also in an appropriate, manner. For the Federal Court, predictable and timely case events objectives are designed more specifically than in the Administrative Court. The early fixing of trial dates objective of the Federal Court is similar to the making of the timing of events more predictable objective of the Administrative Court and the theoretical framework. Maintaining trial dates is similar to making the timing of events more realistic objective of the Administrative Court and making the timing of events more timely of the theoretical framework. It is clear that the Federal Court sets its objectives more specifically than the Administrative Court. The setting of clear objectives assists beneficial to the Federal Court's officers, both judicial and non-judicial, in order for them to observe and execute the principles contained in them. Therefore the Administrative Court should set its objectives more specifically so as to make them more achievable.

## **5.7 Achievement of the Objectives of the Court's CFM**

This section presents an assessment of the overall achievements of the objectives of the Administrative Court's CFM system elicited from the questionnaires and interviews, and elucidated from three points of view: judges, case officials and parties. An explanation of the objectives that are not being achieved is explored and opinions expressed means of improvement. The parties' viewpoint of the achievement of the Court's objectives is also analysed but only in relation to some of the more important objectives. Some objectives are not discussed in this section, because they are considered either readily achievable or are not causing concern for the judges and their case officials participating in the research project. This section is directed chiefly at those objectives that were thought to be obstacles to the achievement of the Court's overall objectives. The comments of the respondents are analysed to determine their views on the best ways to overcome these obstacles to success.

It is not considered necessary to study those objectives that are already being achieved or any features that are not regarded as an objective.

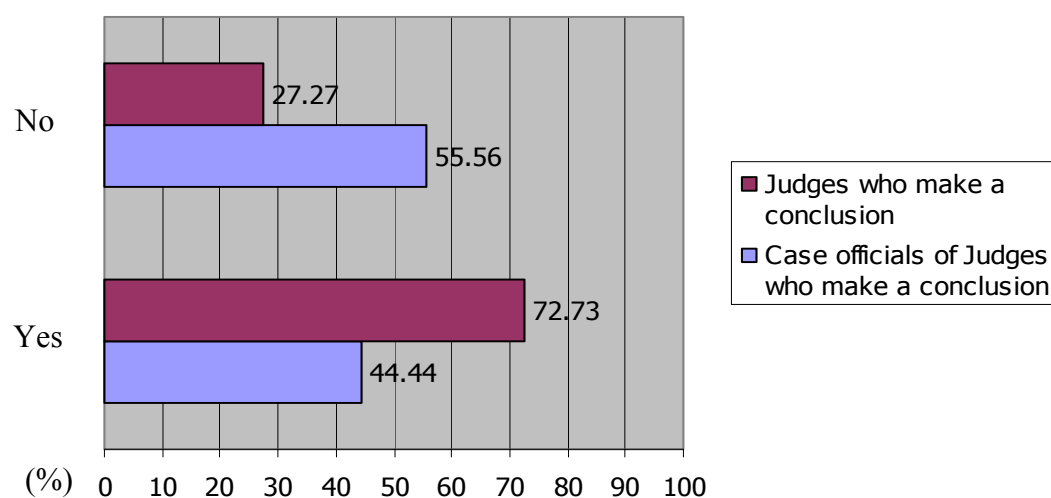
The following graphs contain analysis which is carefully plotted from the results of the questionnaires: Graph 5.2 (Achievement of the objectives of the Court's CFM from the perspectives of conclusive judges and conclusive judges' case officials) and Graph 5.3 (Achievement of the objectives of the Court's CFM from the perspectives of case judges and case judges' case officials). In both Graph 5.2 and Graph 5.3, if the respondents chose to answer No. 1, it meant that the objectives of the CFM were able to be achieved. If the answer of the respondents was No. 2, it meant the objectives were not being achieved. For the negative No. 2 answer, the respondents gave a brief explanation of which objectives of CFM were not being achieved and why. More explicit reasons for the 'yes' or 'no' answers in Graphs 5.2 and 5.3 are set out in a later section regarding the interviews.

Graphs 5.4 to 5.10 were drafted from the parties' questionnaires. The results in these graphs show the parties' standpoint with respect to the success of the case flow management system's objectives. The summaries of each viewpoint: judges, case officials and parties discovered through the various research methods, are compared, contrasted and attached in Appendix F.

### **5.7.1 Overall Achievement**

A summary of the opinions of the conclusive judges and case judges and their related case officials is set out in the following two graphs. The first graph illustrates the conclusive judges' and their case officials' views while the second graph presents the case judges' and their case officials' views.

### 5.7.1.1 Conclusive Judges' and Conclusive Judges' Case Officials' Perspectives

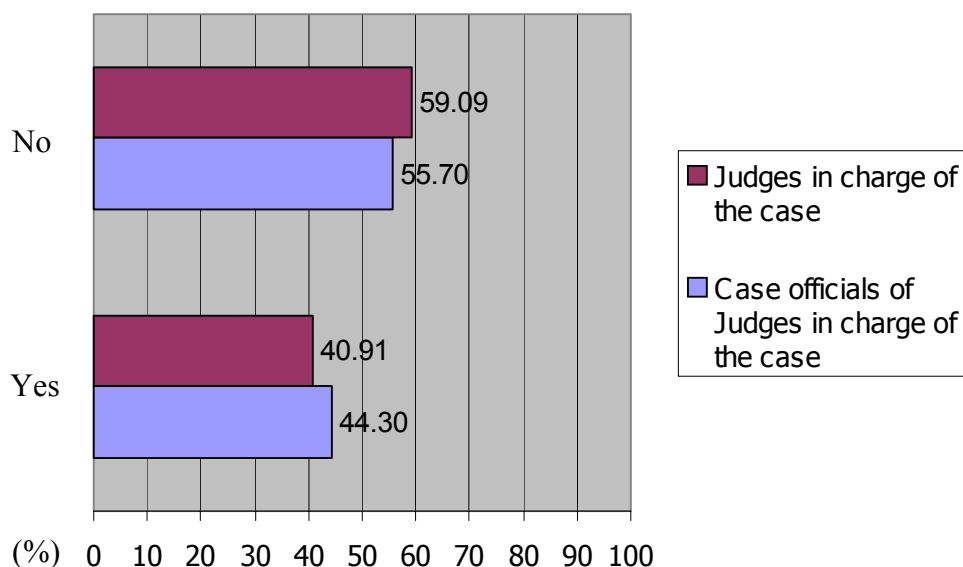


No. 2.2 Do you think the CFM is achieving all its objectives?

Graph 5.2: Achievement of the objectives of the Court's CFM from the perspectives of conclusive judges and conclusive judges' case officials

According to Graph 5.2, even though a great number of conclusive judges felt that, in general, the objectives of CFM were being achieved, most of their case officials felt the opposite. This difference illuminates the differing policies and practices of CFM by judges and case officials.

### 5.7.1.2 Case Judges and Case Judges' Case Officials' Perspective



No. 2.2 Do you think the CFM is achieving all its objectives?

Graph 5.3: Achievement of the objectives of the Court's CFM from the perspectives of case judges and case judges' case officials

According to Graph 5.3, a similar percentage majority of both case judges and their case officials felt that, in general, the objectives of the CFM were not being achieved. Analysis of objectives that were not being achieved and the reasoning behind the views of case judges and their case officials are examined in the next section.

### 5.7.2 Objectives that were not being Achieved

Relating to the earlier assessment of overall achievement of all objectives of the Court's CFM, this section scrutinises the four viewpoints and explains their understanding of why the objectives are not being achieved. These viewpoints can be broken down into three types: the conclusive judges'; conclusive judge's case officials; and case judges and the case officials. The views of the case judges and their case officials are analysed together because their points of view of the achievement of the objectives are very similar. However, the views of the conclusive judges and their case officials are examined separately because they have very different opinions.

### 5.7.2.1 Conclusive Judges' Perspective

In the view of the minority of conclusive judges, the objectives that were not being achieved were 'reducing delays in administrative case proceedings', 'making the timing of events more predictable' and 'encouraging the use of the case tracking system for court monitoring'. The 'reducing delays in administrative case proceedings' objective required the cooperation of government agencies and the parties' knowledge of administrative case proceedings. This leads to the need for additional time to gather evidence until there is enough reliable evidence adequate to make a decision on the facts of a case.

For the 'making the timing of events more predictable' objective, the parties' lack of understanding was again an obstacle. Besides this, the policy of the Chief Justice on expedition of outstanding cases did not allow judges to independently supervise all cases in their dockets. They had to finalise pending cases urgently and were not able to predict when they would have spare time to finalise new cases.

'Encouraging the use of the case tracking system for court monitoring' was the final objective that was not being achieved in the view of the conclusive judges. Due to the unreliability of the original CTS, and the unpredictable performance of the new CTS, the judges were barely confident that they could rely on the functioning of both tracking systems.

In conclusion, the results of the judges' questionnaire indicated that the conclusive judges felt that the objectives of CFM, in general, were being achieved. If some objectives were not being achieved it was because the parties were not cooperative enough and had little knowledge of the case proceedings, and because of ineffective tools for the monitoring of cases.

However, there were some comments made in the interviews by two conclusive judges about obstacles in reaching the objectives of the CFM. They both felt that the 'reducing delays in administrative case proceedings' objective was of the most concern. Justice S, a conclusive judge, pointed out that the CFM itself was inefficient. The allocation system was not precise enough to allocate a specific case type to a specialist judge. Furthermore, there was repetition in the system, known as the 'censor division', which caused delays by its use of

a process of double checking a case judge's draft judgment or conclusive judge's statement. This was because clause 63 of the Rule on Administrative Court Procedure prescribes that after the ending date of fact inquiry has been designated, the case file is referred to the Chief Justice.<sup>4</sup> At this stage, the Chief Justice of the CAC with the assistance of a censor division examines the case. This causes a bottleneck in the system, especially when sometimes the correction is only in the writing style or wording rather than issues of law or fact.<sup>5</sup>

Justice C, another conclusive judge, commented that the imbalance between the small number of conclusive judges and case judges and the large number of cases inevitably creates delays. In addition, a single conclusive judge may be assigned to give a statement in various case types from different specialist divisions. Some case types might not be matched to a conclusive judge's expertise. This results in additional time for the conclusive judge to investigate and analyse a case in order to give a statement on it. For this reason, some inevitable delays occurred in the new Administrative Court system. However, he said that the problem would be alleviated when the judges gain more experience. It therefore could be a short-term problem.<sup>6</sup> Justice C again argued that the most serious issue is judicial commitment to speedily finalise cases. He pointed out that there are some measures in place for the expedition of cases, such as the Directive on the performance and assessment of works of the judges of the Courts of First Instance and the policy on the expeditious settlement of outstanding cases.<sup>7</sup> The delays in this area stem from lack of judicial commitment in performing their work.

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<sup>4</sup> See also stage 15 at Appendix D: The Process of Administrative Cases in the Central Administrative Court of Thailand.

<sup>5</sup> Interview with Justice S, Conclusive Judge, Central Administrative Court (Face to face interview, 14 February 2004).

<sup>6</sup> Interview with Justice C, Conclusive Judge, Central Administrative Court (Face to face interview, 18 February 2004).

<sup>7</sup> Chief Justice of the Central Administrative Court, *Memorandum of 9 January 2004 'Checking and Speeding Up the Cases in Your Docket'* (2004) [trans from: บันทึกข้อความ ที่ ศป ๐๐๐๓.๒/ว ๔ ลงวันที่ ๙ มกราคม ๒๕๔๗ เรื่อง ขอให้ตรวจสอบและเร่งรัดคดีที่อยู่ในความรับผิดชอบ]; Chief Justice of the Central Administrative Court, *Memorandum of 14 January 2004 'Unfinalised Cases Filed in 2001'* (2004) [trans from: บันทึกข้อความ ที่ ศป ๐๐๐๓.๒/ว ๗ วันที่ ๑๔ มกราคม ๒๕๔๗ เรื่อง คดีปี ๒๕๔๔ ที่อยู่ระหว่างการพิจารณา]; Chief Justice of the Central Administrative Court, *Memorandum of 17 February 2004 'The Progress of the Proceedings in an Administrative Case'* (2004) [trans from: บันทึกข้อความ ที่ ศป ๐๐๐๓.๒/ว ๕๑ วันที่ ๑๗ กุมภาพันธ์ ๒๕๔๗ เรื่อง ความคืบหน้าของการดำเนินกระบวนการพิจารณาคดี]; Chief Justice of the Central Administrative Court, *Memorandum of 19 February 2004 'The Progress of the Proceedings in an Administrative Case'* (2004) [trans from: บันทึกข้อความ ที่ ศป ๐๐๐๓.๒/ว ๕๕ วันที่ ๑๙ กุมภาพันธ์ ๒๕๔๗ เรื่อง ความคืบหน้าของการดำเนินกระบวนการพิจารณาคดี].



#### 5.7.2.2 Conclusive Judges' Case Officials' Perspective

With regard to the views of case officials, the majority felt that generally the objectives of the CFM system were not being achieved. The objectives were discussed by case officials in their questionnaires as follows.

According to the case officials' perspective, the objective 'reducing delays in administrative case proceedings' was not being reached because of three factors: the policy on expedition of cases, the imbalance between numbers of cases and judges and case officials, and the complexity of each case. Once the policy on expedition to eliminate outstanding cases was issued, judges had to finalise all pending cases in their dockets before considering newer ones. Because of this, the numbers of pending cases accumulated quickly. However, the population of judges and case officials was limited and this disproportion caused delays. Finally, the complex cases, which might involve related people, issues of facts or issues of law, tended to need additional time for disposal and thus they became outstanding cases. This earned the Court a bad reputation for slow management.

The 'making the timing of events more realistic' objective was not being reached due to three factors. The first was the understanding and compliance of parties. If the parties had knowledge of administrative case proceedings, they could promptly prepare all related evidence; if the parties cooperated in the court proceedings, the cases were processed in a timely manner. The second factor was the commitment of judges to their work. The more judges complied with the Direction on performance, the more realistic events throughout the proceeding were able to occur. The last factor was the simplicity or complexity of cases. Simple cases could be finalised in a more accurate timeframe than the complex cases.

The 'encouraging the use of the case tracking system for court monitoring' objective was not being achieved due to its production of outdated data. The original CTS could not

be an efficient tool to monitor cases because sometimes the system was not able to produce the current status of a case. So, judges were not able to suitably monitor and expeditiously supervise cases.

The 'keeping case progress accessible' objective was not being achieved because of errors in providing a case status and limitations of access to the CTS. This meant that the Court was not able to provide correct data for a case when the parties made a request. Moreover, the Court's officers were not able to access some data related to their work because they did not have adequate knowledge of using the CTS. Simple accessibility was impossible for both parties and court officers.

The 'promotion of the efficiency of clerical work' objective was not being achieved because, sometimes, a document lodged in the Court was lost, in whole or in part.

The 'standardising the implementation of CFM' objective was not being achieved because of lack of uniformity in managerial practice. There was inconsistency in the implementation process between the different divisions. There was no research to guide the appropriate case flow management system of the Court.

In conclusion, in the views of conclusive judges' case officials, there were six objectives that were not being achieved. Not surprisingly, the majority of conclusive judges felt that, generally, the objectives of case flow management were being achieved. This was because the work of conclusive judges is related to very few stages in the Administrative Courts' proceedings. In contrast to case judges, conclusive judges rarely interact with the parties and their duties have little to do with the case management system. Within their limited experience of implementation of the system, then, they had more optimistic opinions of the system. However, their case officials had done more managerial work in the case flow management system. Some of them had worked as case officials of the case judges or case officials in the clerical and administrative function division before moving to assist the conclusive judges. For these reasons, the case officials had an understanding of the inefficiencies of the case management system from their own experience.

### 5.7.2.3 Case Judges' and Case Judges' Case Officials' Perspectives

With the objectives 'reducing delays in administrative case proceedings', 'making the timing of events more predictable', 'making the timing of events more realistic', 'encouraging of solicitor / party accountability', 'encouraging the use of the case tracking system for court monitoring', 'keeping case progress accessible', 'making the timing of events more realistic', 'promotion of the efficiency of clerical work' and 'standardising the implementation of CFM', it was agreed between case judges and their case officials that they were not being achieved. However, the reasons for the lack of achievement of these objectives differ somewhat between the views of judges and their case officials. I discuss the similarities and differences of views in respect of each objective. However, the objective 'encouraging earlier settlement' was seen as an unachievable objective only by case officials, not judges. So I start with an examination of this objective.

According to the answers given in the case official's questionnaire, the 'encouraging earlier settlement' objective was not being achieved because the laws and regulations about implementation had not been provided. This meant that, formally, ADR could not be carried out in the Court. However, as elucidated in Chapter 4, ADR was informally implemented by case officials who gave recommendations in the consultation rooms, although such recommendations have been limited to questions of law.

In the view of the judges, the reduction of delays objective was not being achieved for several reasons, including the nature of a case, the parties, the case management system or a case official. Their case officials felt that these flaws were the result of the following factors: the nature of a case, the judge, the CFM system and/or policy. In the judges' view, the reduction of delays was because of lack of knowledge of the parties in administrative case proceedings and the poor degree of cooperation by government agencies. The judges also felt that their case officials' lack of particular knowledge of some relevant laws caused delays. On the other hand, the case officials felt that sometimes judges caused undue delay. The style used by judges in writing judgments or memoranda was, from time to time, seen as awkward and verbose. However, both groups agreed that the more complex cases created more work and caused delays. For example, a complex case requiring more judicial time to inquire into the facts from both plaintiff and defendant affects the productivity of judges'

memorandum and judgment writing, in general. This was the reason why the standard has been prescribed in the Directive on Performance and Assessment.

The judges and their case officials felt that in the CFM system there was an imbalance between a judge and his/her caseload, that is, a pile of pending cases was distributed to a small number of case judges. Only the judges claimed that the failing in the system came from the administrative proceedings, which involved communication by mail. Particularly when judges issued an order using registered mail, it was hard to know whether or not the party received the order. This is because of the slowness of the post mail process in returning the answering notice that the order has or has not been received by the parties. Only the case officials remarked that no allocation system was able to allocate cases equally to all judges in the different divisions, because the system of case allocation is not concerned with either complexity or quantity of cases.

The last obstacle in the system that both judges and their case officials agreed on was the unrealistic policy of finalisation of administrative cases. The policy of disposition of the outstanding cases filed in 2001 created a backlog of new cases. The policy laid down a standard under which case judges should deliver ten judgments, memoranda and orders rejecting the plaint and striking the case out of the Case List per month.<sup>8</sup> This was questioned in terms of its practicability. Besides this, such a policy affected the managerial style of each judge who might 'shop for' only uncomplicated cases to be finalised and this created a backlog of complex cases.

The importance of the delay reduction objective was reiterated in the interviews of selected case judges. Every judge felt that reduction of delays was the most crucial objective and needed to be encouraged. They identified that 50% of the problem in reaching this objective was the complexity of cases, which created the length of process, particularly at the stage of a judge's memorandum. Another impediment to attaining this objective was the impracticability of the Court's policy on finalising cases initiated in 2001, and the policy laying down standards of quantity for a judge's output.

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<sup>8</sup> President of the Supreme Administrative Court, *Directive on the Performance and Assessment of Works of the Judges of the Courts of First Instance (12 June 2003)* (2003) [trans from: แนวทางการปฏิบัติงานและการประเมินผลงานของตุลาการศาลปกครองชั้นต้น ลงวันที่ ๑๒ มิถุนายน ๒๕๔๖].

In the views of both case judges and their case officials, the 'making the timing of events more predictable' objective was not being reached because each case differed in its complexity. The timing of the disposition of a simple case can be more predictable than the timing of a complex case. Furthermore, the judges felt that an increase in parties' knowledge of administrative proceedings and their participation in the proceedings might encourage the achievement of this objective.

The 'making the timing of events more realistic' objective, from both judges' and case officials' standpoints, was not being reached because of lack of knowledge and cooperation of the parties and the complexity of a case. In addition, the case officials felt that the judges and case officials were part of the problem, while the judges felt that the CFM system itself was one part of the problem. These issues are discussed further below.

Similar to other objectives, the reasons why parties are seen as an impediment to the success of timing has to do with the understanding and cooperation of the parties in administrative proceedings. The complexity of administrative cases, too, created difficulty in reaching the expected time goal in each event. If judges force every event in any complex case to occur at a set time there might be inadequate evidence in the case and an unjust decision could result. In addition, as both simple and complex cases have the same standard for every stage of the proceedings, it could be said that CFM was not able to provide appropriate timing of events in all cases. In their interviews, three out of five judges commented on this obstacle, giving the same reason as the case officials.

Only the judges felt that the system allowing the submission of all documents by post resulted in incomplete evidence. Even simple information required to make a decision to issue an order accepting or refusing to accept the case/plaint for trial was not being accessed on time. In the instance of case officials, they felt that from time to time the judges and case officials created the obstacles, because there was no enforcement of prescribed performance standards for judges. Thus, judges and their case officials might neglect to execute such standards.

The 'encouraging solicitor/party accountability' objective was agreed between case judges and their case officials as not being achieved because of the lack of cooperation of the

government agencies and lack of knowledge of plaintiffs. The most important reason for the lack of cooperation was fear of being accused of wrongdoing as an officer or government agency. In the case of plaintiffs, who were mostly ordinary people, they had no knowledge of administrative case proceedings. This caused insufficient data to be issued to the Court.

The 'encouraging the use of the case tracking system for court monitoring' objective, from both judges and case officials' points of view, was not being reached due to imbalance between a judge and his/her caseload in the CFM system of the Court. They pointed out that each judge has too heavy a caseload so they do not have time to supervise their cases. Besides, the original CTS was not able to correctly and promptly provide the current status of each case. It also was not able to generate the case's data sufficiently to meet the needs of the judges and their case officials. Judges felt that although the new system had developed to satisfy all needs of users and to overcome all the deficiencies of the original system, the capacity of the new system was still unpredictable and requires more time for it to be refined. In the views of case officials, they claimed that the original CTS was not able to be employed efficiently because it could not identify who had caused delays in the CFM system.

The 'keeping case progress accessible' objective was not being reached, in the judges' view, because the CTS was not user-friendly. Judges and case officials themselves were not able to access the system. Only a few officers who had direct responsibility for the CTS were able to access it. Moreover, case officials felt that the system was not able to be accessed by parties. If the parties wanted to know their case status, they had to ask the officers in charge of the CTS system. Because the CTS was not able to provide the current status of a case, court officers were not able to provide a correct, updated answer. For this reason, some case officials felt that the CTS did not assist their managerial work but created an additional job. Another problem that was an obstacle to the success of the 'keeping case progress accessible' objective was a lack of confidence amongst the officers with responsibility to provide case data to the parties. They were not clear about the depth of information they might give to the parties. The parties, too, did not understand that they have the right to know about or track their cases.

The 'promotion of the efficiency of clerical work' objective, from both judges and case officials' standpoints, was not being reached because of shortcomings in the clerical system. Judges felt that an unorganised system was not able to help them work efficiently. They asserted that laws and regulations collected on the court website were insufficient. In addition, the lack of typists producing summonses protracted administrative proceedings. Case officials felt the clerical system was inefficient in the maintenance of case files. Some of them had experience of lost or damaged documents being submitted to the Court.

However, opinions on the 'promotion of the efficiency of clerical work' objective given in interviews by executive court officials were completely opposite in their results from those received in the judges' and case officials' questionnaires. Mr W, an executive court official, argued that the system of maintenance and updating of case files was working well. The other supporting systems servicing judges, case officials and parties also functioned efficiently.<sup>9</sup> In general, this objective was achievable. However there were some impediments to the support systems, such as judges and case officials keeping the case files and not returning them to the supporting unit.

In case of the system supporting administrative case proceedings, the OAC created an effective system for submitting documents or case files to the court. It included procedures for drafting, typing and posting summonses, as well as those enabling checking of the parties' addresses to ensure that the summonses were sent properly.<sup>10</sup> The effectiveness of the support system, particularly the drafting system, was considered a strength of the clerical system as it relieves the judges from less important tasks and provides additional time for them to perform their judicial work.<sup>11</sup> The opinion of the executive court officers, that the OAC could provide good support to the Court within the limitations of budgets and personnel, was endorsed by the Chief Justice.<sup>12</sup>

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<sup>9</sup> Interview with Mr W, high-ranking and experienced Court Official, Office of the Administrative Courts (Face to face interview, 10 February 2004).

<sup>10</sup> Interview with Mr C, high-ranking and experienced Court Official, Office of the Administrative Court of Thailand (Face to face interview, 18 February 2004).

<sup>11</sup> Interview with Mr A, high-ranking Court Official: Bureau of Information Technology, Office of the Administrative Courts (Face to face interview, 20 February 2004).

<sup>12</sup> Interview with Chief Justice of the Central Administrative Court of Thailand, Central Administrative Court (Face to face interview, 21 February 2004).

The 'standardising the implementation of CFM' objective, in the views of both judges and case officials, was not being achieved because of the lack of experts with experience in administrative court procedures. This was because the Administrative Court is a new court system in Thailand. When the Court was established, there were no experienced people in this area. Furthermore, no research was carried out for the drafting of suitable practice in administrative cases. Thus, there were no guidelines for administrative court procedure in practice and this caused different patterns of practice in different divisions.

In brief, most of the case judges and their case officials were in agreement that in general the objectives of CFM were not being achieved. The reasons for each objective not being achieved were slightly different between the two groups. The main factors identified were related to party, case, judge, the CFM system, policy and case officials. However, specific explanations of the causes of any problems depended on the experience in CFM of each respondent.

### **5.7.3 Achievement of the Objectives from the Parties' Perspective**

The interesting and crucial objectives that can be assessed in the parties' questionnaire are examined in Graphs 5.4-5.9. They are listed as follows.

1. 'Reducing delays in administrative case proceedings': via question 14 'The judge in charge of your case expedited your case to be finalised' (Graph 5.4);
2. 'Reducing cost in administrative case proceedings': via question 2 'The cost in the Administrative Courts' proceedings is cheap' (Graph 5.5);
3. 'Making the timing of events more predictable': via question 5 'You were informed what was happening at each stage of your case', question 6 'You knew when the next step in your case would occur and question 7 'You were told how long the case would/should take' (Graph 5.6);
4. 'Encouraging of solicitor/party accountability': via question 10 'You think your cooperation affected delay or expedition of the case' (Graph 5.7);



5. 'Keeping case progress accessible': via question 3 'You can have access to the Court's information' and question 4 'You can track your case's events' (Graph 4.8 in Chapter 4);
6. 'Making the timing of events more realistic': via question 15 'You had some difficulties to comply with the timeframes set by the judge in charge of your case' (Graph 5.8); and
7. 'Standardising the implementation of CFM': via question 11 'The Court has uniformity in case management practice across divisions and different judges', question 12 'You experienced differences in monitoring compliance and/or progress between different judges', and question 13 'You think judges differ in relation to their attitudes towards disposition' (Graph 5.9).

The answers 1 to 5 are the degrees of agreement to each question.

Answer 1 = disagree strongly

Answer 2 = disagree

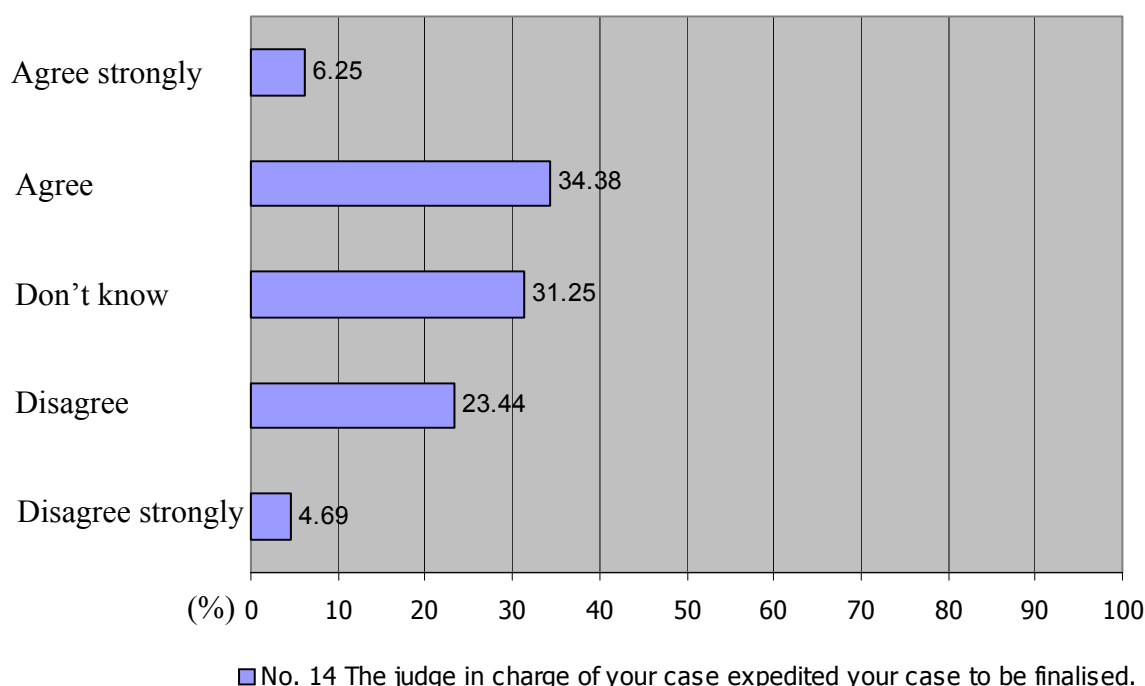
Answer 3 = don't know

Answer 4 = agree

Answer 5 = agree strongly

I analyse all seven objectives in the seven Graphs 5.4-5.9 as follows.

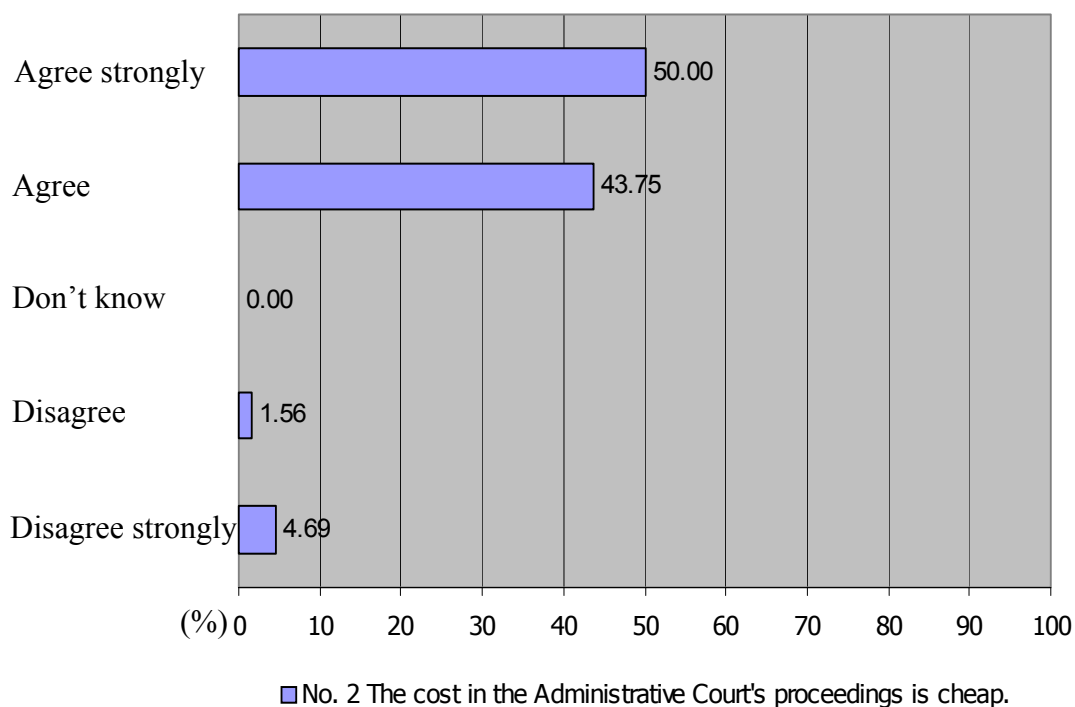
### 5.7.3.1 'Reducing delays in administrative case proceedings' Objective



Graph 5.4: Objective 'reducing delays in administrative case proceedings'

As depicted in Graph 5.4, only 40% of respondents felt that the case judges expedited the case to be finalised. Furthermore, Graph 5.4 illustrates that about one-third of the respondents had no idea whether or not judges performed in an expeditious manner in the finalisation of the case. In addition, about one-third of the respondents felt that the judges did not exercise enough authority in insisting on expeditious disposal of their case. Thus, the eagerness of judges to reduce delays was not be seen clearly by the parties. It may be implied that in the views of parties, the reduction of delays objective was not being reached. Nevertheless, ideally judges should ideally expedite matters without the parties feeling 'expedited.' Perhaps the best CFM is the system in which the parties do not notice expedition.

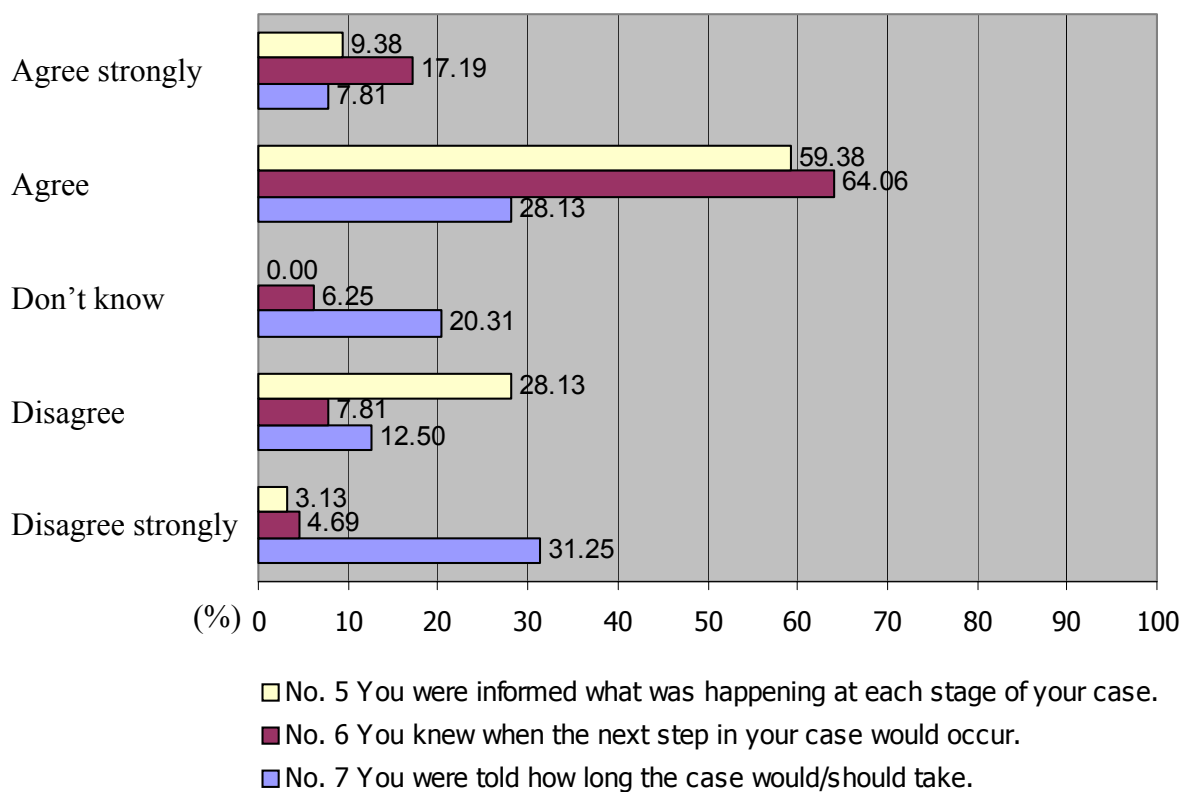
### 5.7.3.2 'Reducing cost in administrative case proceedings' Objective



Graph 5.5: Objective 'reducing cost in administrative case proceedings'

As can be seen in Graph 5.5, it was clear that administrative case proceedings are inexpensive. Because almost every respondent felt that the proceedings in the administrative court were cheap, it could be said that, in the view of parties, the objective of reducing cost to parties was being achieved.

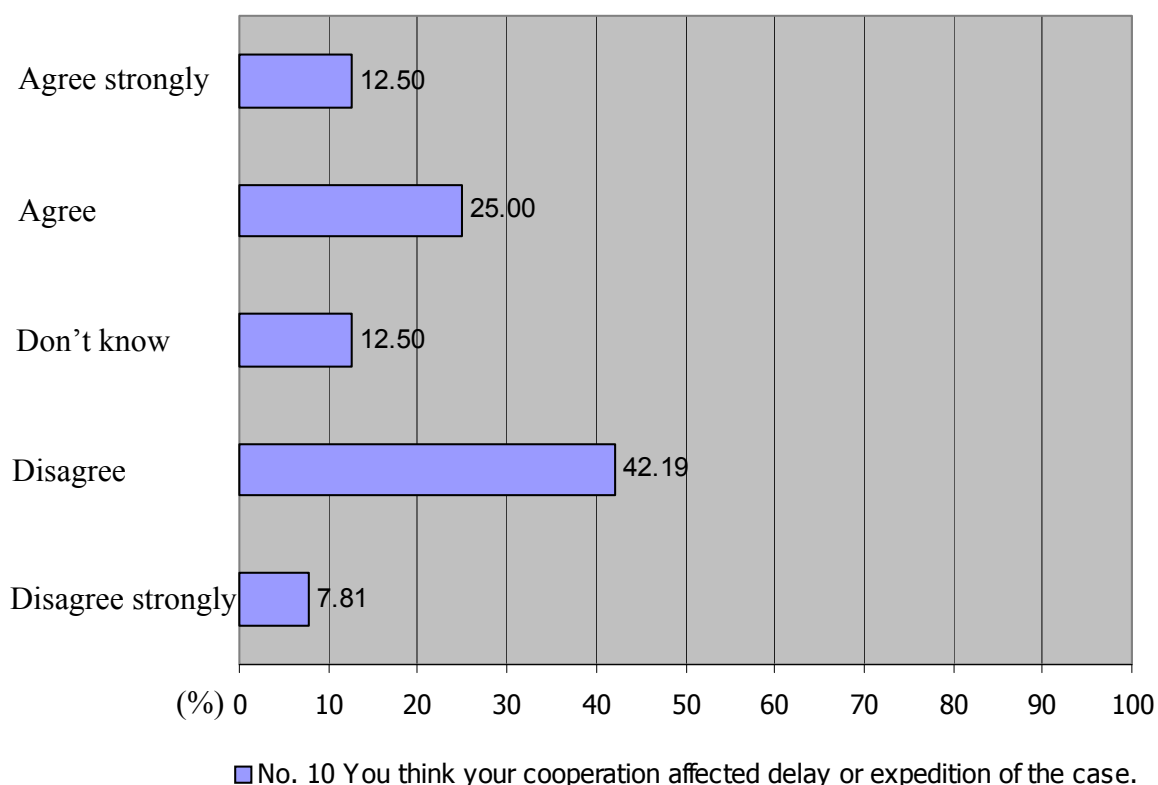
### 5.7.3.3 'Making the timing of events more predictable' Objective



Graph 5.6: Objective 'making the timing of events more predictable'

Graph 5.6 shows that 70% of parties felt that they were informed of the current status of their cases and of when the next step would occur. Hence, the parties could predict the timing of events. However, the overall timeframe for a case was not usually notified. It could be concluded that, in the view of parties, the timing of events was predictable and that this objective could be reached. It is to be noted that such an opinion of the parties reflects the actual practice of the judges and the Court. In addition, the Directive which sets the timeframes for the administrative cases, provides an average lapse of time at every stage, but has no overall maximum timeframes prescribed for a case.

#### 5.7.3.4 'Encouraging solicitor/party accountability' Objective



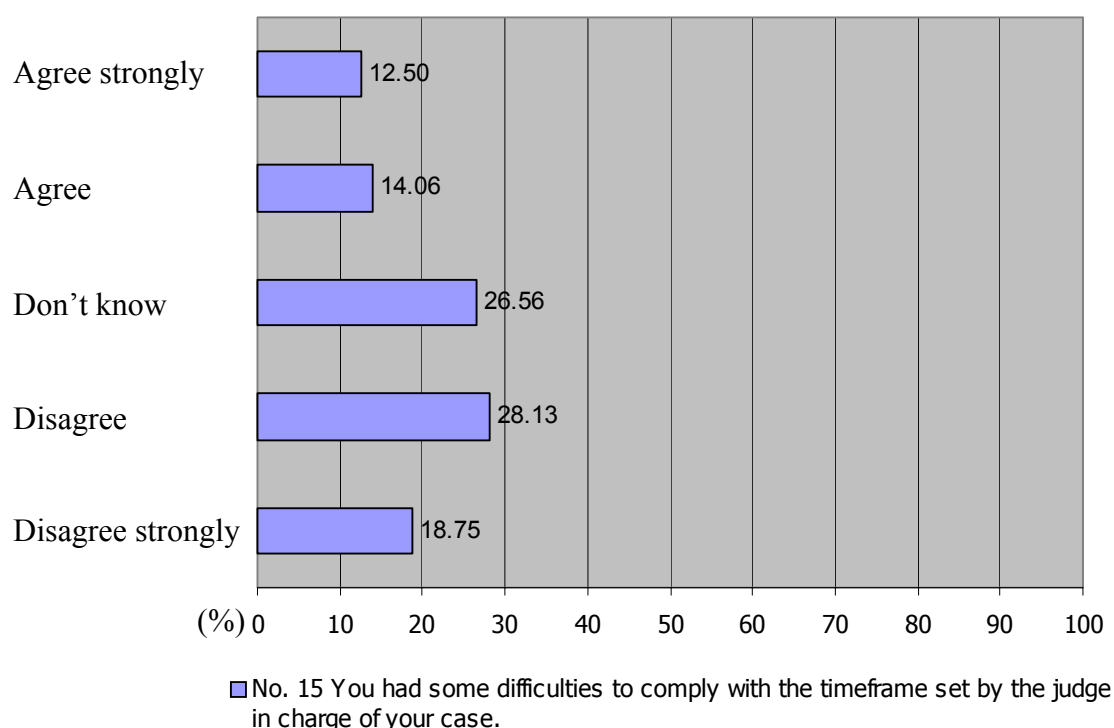
Graph 5.7: Objective 'encouraging solicitor/party accountability'

Graph 5.7 shows that just over half of the parties felt they did not have any influence over the pace of a case. They felt that judges played a more important role than the party in expediting or causing delays. This meant that the objective of encouraging parties to be accountable for their cases was not being met. However, the view was taken that if judges continue to encourage parties to be accountable for their cases, the percentage of cooperation of the parties should increase.

#### 5.7.3.5 'Keeping case progress accessible' Objective

According to Graph 4.8 in Chapter 4 (p. 153), the views of parties on the accessibility of court information and case status might suggest that the original CTS had an acceptable capacity. These results were achieved because most of the parties felt they could access general court information and track their cases. Although some felt they had experienced difficulties, overall, the 'keeping case progress accessible' objective was being achieved.

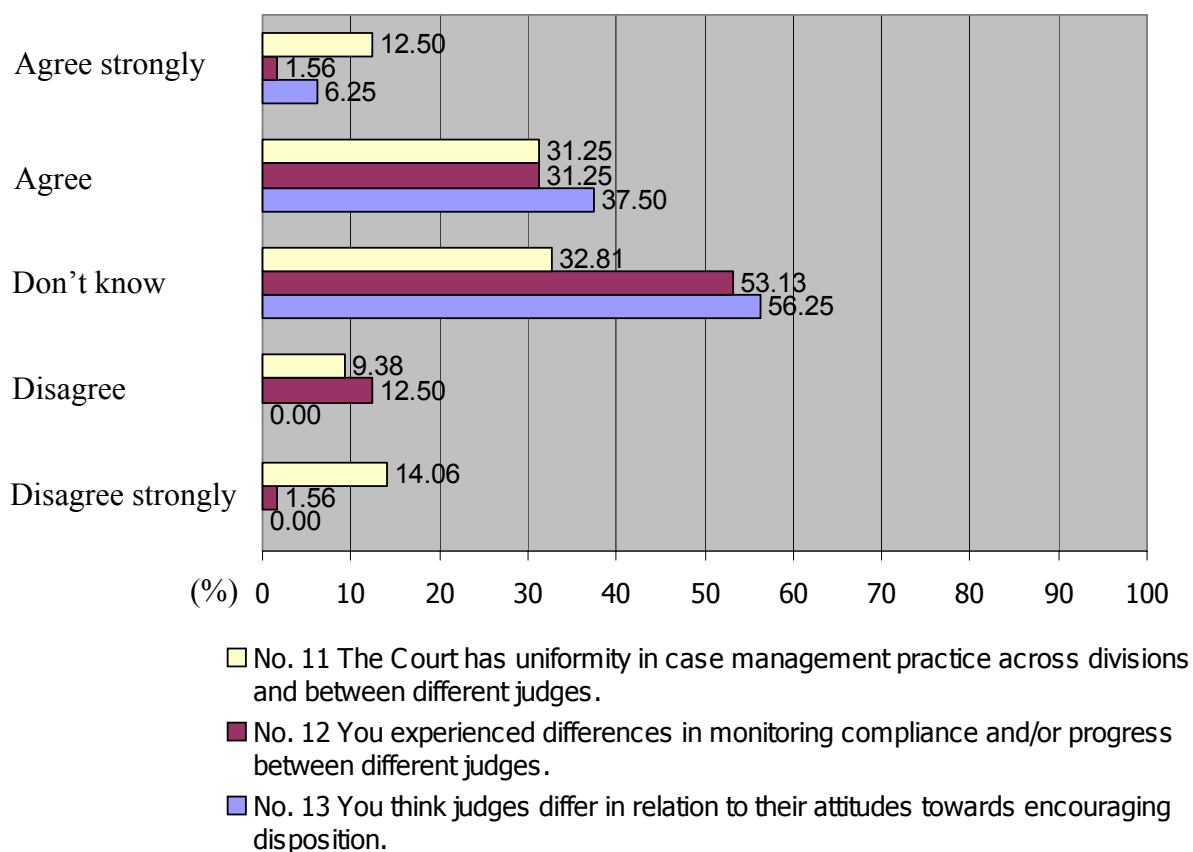
### 5.7.3.6 'Making the timing of events more realistic' Objective



Graph 5.8: Objective 'making the timing of events more realistic'

According to Graph 5.8, a minority of parties found difficulty in complying with the timeframes judges imposed. The majority did not experience such difficulties or they did not realise that the timeframes were enforced. However, a significant minority of parties did not express concern with whether or not the timeframes set were practicable. Indeed the parties were not aware of the appropriateness of the timeframes for their cases. From a study of question 15, it may be that there is not enough information to assess whether this objective was being reached.

### 5.7.3.7 'Standardisation in implementing the CFM' Objective



Graph 5.9: Objective 'standardisation in implementing CFM'

According to Graph 5.9, question 11, although some of the parties felt there was a lack of consistency in case flow management practices in the Court generally, they did not appreciate the differences. Since most of the respondents participate in administrative case proceedings only once in their lifetime, they are unable to comment on the differences. Besides this, question 12 shows that most respondents had no experience of the different divisions and judges, and did not realise that there may be different styles to encourage settlement. Nevertheless, if the study was limited to the opinions of experienced parties, most of them could perceive the lack of uniformity in case management between different judges and different divisions (see questions 11 and 12). The experienced parties could point out that there were some differences across the Court. As a result, it could be said that from the parties' point of view, this objective was not reached.

To conclude, the study of the achievement of objectives in the views of parties was limited to the related questions in seven sub-objectives discussed above. From the viewpoint of the parties, the objectives not being achieved were 'reducing delays in administrative case proceedings', 'encouraging solicitor/party accountability' and 'standardising the implementation of CFM.' On the other hand, the achievable objectives in the parties' viewpoint were 'reducing cost in administrative case proceedings', 'making the timing of events more predictable' and 'keeping case progress accessible.' Statistics for the objective 'making the timing of events more realistic' were not sufficient to say whether or not this objective was being achieved.

## **5.8 Findings and Summary of Comments on the Objectives of CFM**

According to the examination of the achievement of the objectives of the Court's CFM, nine objectives were pointed out as not being achieved while four were not mentioned. Only one objective, 'reducing cost in administrative case proceedings', was discussed by the parties as an achievable objective. Judges and case officials did not mention this cost reduction objective. Among the nine objectives, some groups of respondents raised issues that caused difficulties for achievements while other groups were not aware of the reasons. The findings and comments of those respondents on the achievement of the objectives are summarised as follows.

1. Four objectives that were not mentioned are 'promoting equal treatment of all litigants', 'enhancing the quality of the litigation process', 'promoting public confidence', and 'creating transparency of the case progress.' These objectives are either achievable or not recognised as objectives of the Court's CFM system. As previously discussed, a minority of respondents, both judges and case officials, considered these characteristics were objectives, because they were broad objectives. Consequently, the broad definition of the four objectives could be the reason why these objectives were not discussed.
2. The 'reducing delays in administrative case proceedings' and 'encouraging the use of the case tracking system for court monitoring' objectives are recognised as not being achieved by both case judges and their case officials, and by the conclusive judges and their case officials. The reasons why the two objectives are not being achieved were given as follows.



2a 'Reduction delays in administrative case proceedings' objective:

Parties: Lack of knowledge and cooperation

Nature of Case: A complex case caused additional time in the inquiry into facts

Judges: Lack of skill due to the assignment of varied case types  
Lack of judicial commitment in the expeditious finalisation of a case  
Awkward styles of judges in writing judgments or memoranda

CFM system: Caseload – many cases for a small number of judges  
Allocation system – a special case type was not allocated to a specialist judge  
Censor division – it did not work properly (being a proof reading unit)  
Case proceedings – allowing the use of mail (creating delay)

Policy: The policy in the finalisation of cases had been initiated in 2001  
Standard numbers of disposed cases per judge policy (approx. 10 cases a month)

Case officials: Lack of expertise in some specific laws or regulations applied in the case.

Results from the parties' questionnaire indicate that lack of commitment of judges in the finalisation of a case in an expeditious manner caused undue delay.

2b 'Encouraging the use of the case tracking system for court monitoring' objective:

CFM system: Caseload – many cases for a small number of judges. Therefore, a judge has no time to monitor or track cases him/herself

The original CTS was unreliable, slow and created outdated case data. The original case tracking system could not indicate that the cause of the inactivity in the case lack of action by the judges or case official and the new system had unpredictable performance.

No data from the parties' questionnaire. Parties were not asked questions about this objective because it related only to the role of the judges and case officials in monitoring case progress.

3. The case judges and their case officials, and conclusive judges' case officials recognised that the 'making the timing of events more realistic', 'keeping case progress accessible' and 'promoting of the efficiency of clerical work' objectives were not being achieved. The conclusive judges did not mention these objectives because their managerial functions relate less to case proceedings than do the functions of the case judges and case officials. The reasons the three objectives were not being achieved are presented as follows

3a 'Making the timing of events more realistic' objective (this includes making the timing of events more timely and predictable):

Parties: Lack of knowledge and cooperation

Nature of Case: A complex case caused difficulties in making events timely

Using a single model of timeframes for all different case types was a problem?

CFM system: Case proceedings – allowing the use of mail caused incomplete evidence

Policy: No enforcement of any policy on the performance of judges and case officials.

Results from the parties' questionnaire did not indicate whether or not this objective was being achieved.

3b 'Keeping case progress accessible' objective:

CFM system: The original CTS created outdated case status, was not user-friendly and was unreliable

Parties did not know their rights of access to their case information and officers were not confident of how much information they might disclose to the parties.

Two-thirds of the parties thought that this objective was achievable because they were able to track and access their case information.

3c 'Promoting the efficiency of clerical work' objective:

CFM system: The collection and maintenance of case files was inefficient

Aspects of the clerical system were inefficient, including the lack of a typist or an incomplete legal database

No data from a parties' questionnaire. Parties were not asked questions about this objective.

4. 'Making the timing of events more predictable' is recognised by both the case and the conclusive judges and the case judges' case officials as an objective that was not being achieved. The conclusive judges' case officials did not mention these objectives because only judges are required to perform managerial functions to finalise a case speedily. Sometimes case judges may assign some managerial functions to case officials because they have to perform much more time management in a case than conclusive judges. The case judges' case officials are more concerned with the predictability of timing of events than the conclusive judge's case officials. The reasons for this objective being unachievable are presented as follows.

Parties: Lack of knowledge and cooperation

Nature of Case: A complex case caused difficulties in the prediction of the timing of events

Policy: The policy on finalisation of cases was initiated in 2001.

Although overall timeframes for case proceedings were not provided, 70% of parties thought this objective was achievable because they were informed when an event is next going to happen and when it has occurred.

5. Both case judges and their case officials recognised that the objectives 'encouraging solicitor/party accountability' and 'standardising the implementation of CFM' were not being achieved. The conclusive judges and their case officials did not mention these objectives because their managerial functions relate less to case proceedings than those of the case judges and their case officials. The reasons why the three objectives were not being achieved are presented as follows.

5a 'Encouraging solicitor/party accountability' objective:

Parties: Lack of knowledge and cooperation

The majority of parties felt that this objective was not being achieved because they did not recognise that their cooperation was important to quick resolution.

5b 'Standardising the implementation of CFM' objective:

CFM system: As no expert has laid down directions for CFM implementation since its initiation, different practices have resulted in diverse divisions.

Parties who experienced the implementation of CFM in different divisions experienced the differences in practices between different judges and divisions. Thus, this objective was not being achieved.

6. Only the case judges' case officials recognised that the 'encouraging earlier settlement' objective was not being achieved. The reason for this was that no laws and/or regulations were issued to provide for earlier settlement in administrative case proceedings. However, earlier settlement is very useful to secure expedition in the finalisation of cases in the Court.

No data from the parties' questionnaire. Parties were not asked questions about this objective.

7. The parties regarded the 'reducing cost in administrative case proceedings' objective as an achievable objective. Almost all parties felt that the price of administrative case proceedings was cheap. This is because section 45 of the *ACP Act* prescribes 'the filing of a case is not subject to Court fee'.<sup>13</sup> This is also the reason why the Court's officers (judicial and non-judicial) did not discuss this objective as an objective that was not being achieved.

## 5.9 Objectives of CTS

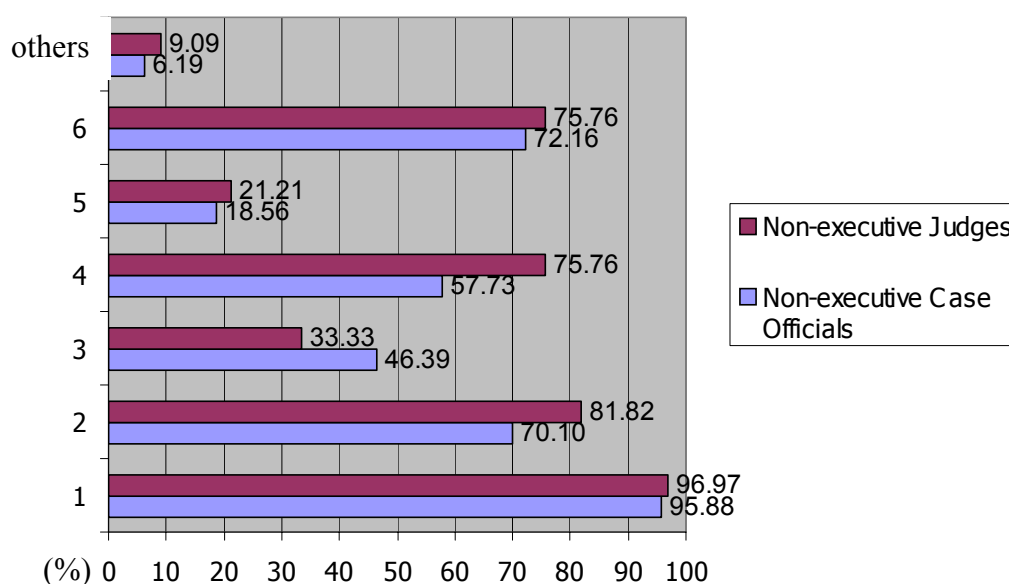
The fundamental objective of the court's CTS is to facilitate its CFM system in monitoring and tracking cases. Literature reviews show that such an objective can be clarified in six functions: tracking the events, time, parties, cases, fees and enhancing the efficiency of CFM. This section scrutinises the objectives of the Court's CTS from judges' and case officials' viewpoints expressed in the questionnaires and interviews. The reasons why some objectives were not being achieved are discussed. The case tracking systems of the Court, both the original system, ACAS, and the new system, ACSP, were developed to operate as automated case management information systems. This means that both tracking systems of the Court were built to carry four basic modules: case, time, person, and budget and disbursements. In addition, ACSP was programmed to be multifunctional. It improves the capacities of ACAS so as to answer the increased demands of its users and to respond to the Court's Policy. As examined in Chapter 2, these days the case tracking systems of the Court are ACAS and ACSP. These two programmes have operated not only to track case events but also to track time, person and financial receipts and disbursements (court fees). This means that the automated case tracking systems of the Court aim mainly to track case events and other related information about the case. Although the Administrative Court has other systems dealing with the management of the Court's personnel and its budget and disbursements, the ACAS and ACSP provide the person and monetary modules related to the case. Therefore, the general objective of the Court's CTS is a system that provides all information related to the case and provides it users (both external and internal, and judicial and non-judicial) with the ability to monitor and track their cases.

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<sup>13</sup> *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)*, s 45.

### 5.9.1 Objectives of the CTS Stemming from the Study of Actual Operation

The objectives of the Court's CTS deriving from an examination of the non-executive judges' and case officials' perspectives, elucidated in Graphs 5.10, 5.11 and 5.12 are as follows.



No. 7.6 In your opinion, what are the objectives of the CTS of the Court?

Graph 5.10: CTS objectives of the Court

Note:

- No. 1 = Tracking events of cases
- No. 2 = Tracking time of cases
- No. 3 = Tracking parties of cases
- No. 4 = Expediting cases to be finalised
- No. 5 = Tracking a court fee
- No. 6 = Enhancing the efficiency of CFM
- Others = (a) Tracking court officers responsible for cases' events  
(b) Producing multifaceted statistical reports  
(c) Assessing efficiency of judicial officers

As illustrated in Graph 5.10, the Court's case tracking system has nine objectives. They are categorised in four modules: case, time, person and financial receipts and disbursement. These are illustrated in Table 5.3 below.

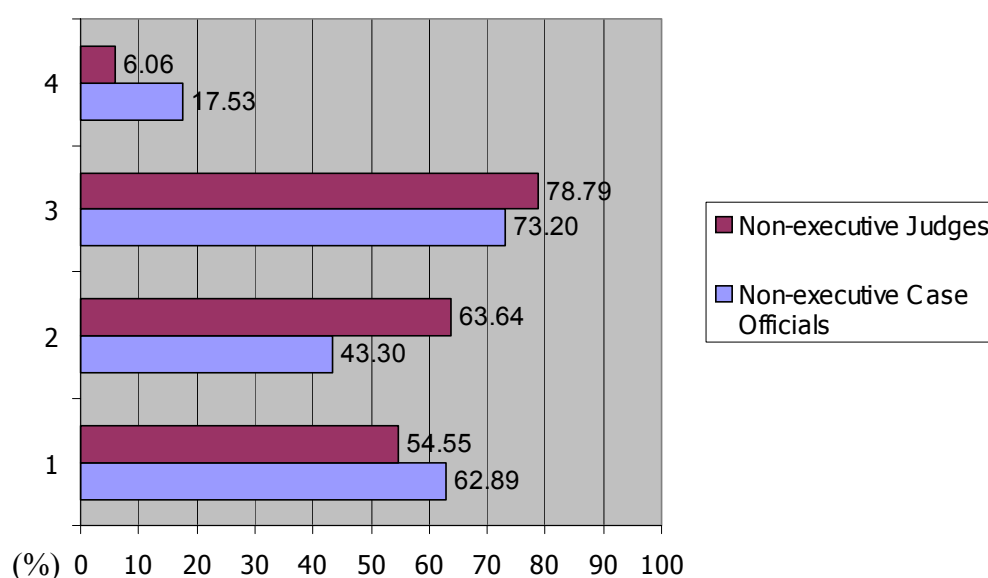
Table 5.3: Objectives of the Court's Case Tracking System

Modules	Objectives
Case	No. 1 'Tracking events of cases' No.(b) 'Producing multifaceted statistical reports'
Time	No. 2 'Tracking time of cases'
Person	No. 3 'Tracking parties of cases' No.(a) 'Tracking court officers responsible for case events'
Financial Receipts and Disbursement	No. 5 'Tracking a court fee'
	No. 4 'Expediting cases to be finalised' No. 6 'Enhancing the efficiency of CFM' No.(c) 'Assessing efficiency of judicial officers'

As demonstrated in Table 5.3, each module of the CTS of the Court encourages the success of each objective. The objective 'expediting cases to be finalised' is being achieved through the functioning of the case and time modules. It is the objective that promotes the success of the CTS programme itself. The objective 'enhancing the efficiency of CFM' is being achieved through the functioning of all modules of the CTS. In other words, it is an objective of the CTS to be a tool to promote the success of the Court's CFM. The 'assessing efficiency of judicial officers' objective is a by-product of the development of case, time and person modules of the original system. So ACSP was expected to perform an additional function in assessing judges' work. Such an objective is a unique characteristic of the Court's CTS. The CTS is employed as a tool not only for judges to manage and monitor their cases but also for executive judges, in particular the Chief Justices and the President, to examine and assess the judges' work. Ultimately, the implementation of the CTS acts to reduce delays and backlogs and provide speedy justice to the public.

## 5.9.2 Perspectives on the Implementation of the Objectives

Graph 5.10 analysed the judges' and case officials' perceptions of each objective. Graph 5.11, below, exhibits the types of data employed in the Court's case tracking system. The graph is used to support the perceptions deriving from the study of the objectives in Graph 5.10.



No. 7.8 What types of data do you employ via the CTS

Graph 5.11: Important Modules of CTS

Note:

- No. 1 = Person-related data (defendants, parties, authorised person)
- No. 2 = Time-related data (court calendars and reminders)
- No. 3 = Case data (history and records)
- No. 4 = Financial data (fee and fines)

### 5.9.2.1 'Tracking events of cases' Objective

Graph 5.10 shows that almost all judges and case officials agreed that 'tracking events of cases' was the core objective of the CTS. It can also be seen as the main function of the Court's CTS. The case tracking system is a means to track events, including data on the issue of court orders or the date that the court held a hearing or a trial. This result corresponds to 'case data' as shown in Graph 5.11. Around 75% of the judges and case



officials agreed that the case module was used often. Therefore, the case information provided by the CTS is a main function employed throughout the Court.

#### 5.9.2.2 'Tracking time of cases' Objective

This is the next most important objective in the views of judges and their case officials. As the earlier discussion of court policies shows, speedy performance of judges is widely encouraged in the Court. The time tracking function is essential to assist judges to manage their time more efficiently. The operation of a new reminder-triggering system in the ACSP is one part of this time module. For these reasons, as illustrated in Graph 5.10, 80% of judges and 70% of case officials realised the importance of this objective. This tracking time objective corresponds to the objective of case flow management in encouraging the use of the case tracking system for court monitoring. This is beneficial to individual judges in controlling and monitoring their case progress and to Chief Justices and the President to examine the performance of judges performing their tasks.

Graph 5.11 shows that while 60% of judges employed the time module in the CTS, only 40% of case officials did. This is because the active role of administrative judges demands that they monitor the pace of litigation, meaning they rely heavily on the time module of the CTS. The case officials performing assistant duties from time to time employ this function to support the judges' work. Thus, more judges than case officials felt that this time tracking objective is the principal objective of the CTS and more judges than case officials employed this module in their managerial role.

#### 5.9.2.3 'Tracking parties of cases' Objective

This objective is a part of the person-related module of the CTS. Actually, the person module includes any individual or legal body such as judges, court officers, plaintiffs, defendants, and lawyers or the representatives of plaintiffs and defendants. As has been shown in Graph 5.10, only one-third of judges and less than 50% of case officials recognise the tracking of parties function as an objective of the CTS. This is because the

ACAS, which has limited functioning, is usually used only to find out an address and contact number of the parties (plaintiffs, defendants and their representatives and other related persons). However, the ACSP has been developed to trace not only parties' information but also information on judges and case officials including other court officers involved in the case proceedings. Thus, the new development of the ACAS in this person module is not only the tracking of the parties to the case (as occurred in the ACAS) but also the tracking of the judges and other court officials related to the progress of the case. As the questionnaire was distributed while the original system was operating alone, this person module was not generally acknowledged as a vital goal by either group. The reason 10% more case officials than judges agreed with the importance of this objective is that the case official is a practical person who assists a judge in performing miscellaneous tasks, for example, seeking the party's address in case orders or when summons have to be sent out to them. Consequently, they are more aware than judges of the support offered by this objective. Graph 5.11 shows that about 10% more case officials than judges employed person-related data to manage cases.

#### 5.9.2.4 'Tracking a court fee' Objective

This objective is part of the financial data module of the Court's CTS. Unlike the Justice Court, the Administrative Court has an uncomplicated monetary module. Sentences to gaol, probation and work service cannot be replaced by a fine in administrative cases. In addition, in administrative case proceedings there is, generally, no court fee. For these reasons, this is not a complex module and thus the tracking of the Court's fee is a less important objective in the views of both judges and case officials. As can be seen in Graph 5.10, only 20% of each group agreed that this is an objective. Graph 5.11 shows that very small numbers of judges and case officials employed this financial module in their managerial roles. This does not mean it is not an important goal of the CTS, rather it reflects the uncomplicated nature of the financial module (fee and fine) of the Court, which can be easily achieved.

#### 5.9.2.5 'Expediting cases to be finalised' and 'Enhancing the efficiency of CFM' Objectives

These objectives are significant to the Court's CTS in the views of both judges and case officials. Three-quarters of the judges agreed with these two objectives. A similar

percentage of case officials agreed with the 'enhancing the efficiency of CFM' objective. I believe this is because these two objectives are also general goals and policies of the Court and this causes them to be of concern. However, about 20% less case officials than judges agreed with the expeditious finalisation objective because the judges, not the case officials, are directly responsible for speedily finalising the cases. Case officials are only assistants facilitating the judge's managerial role.

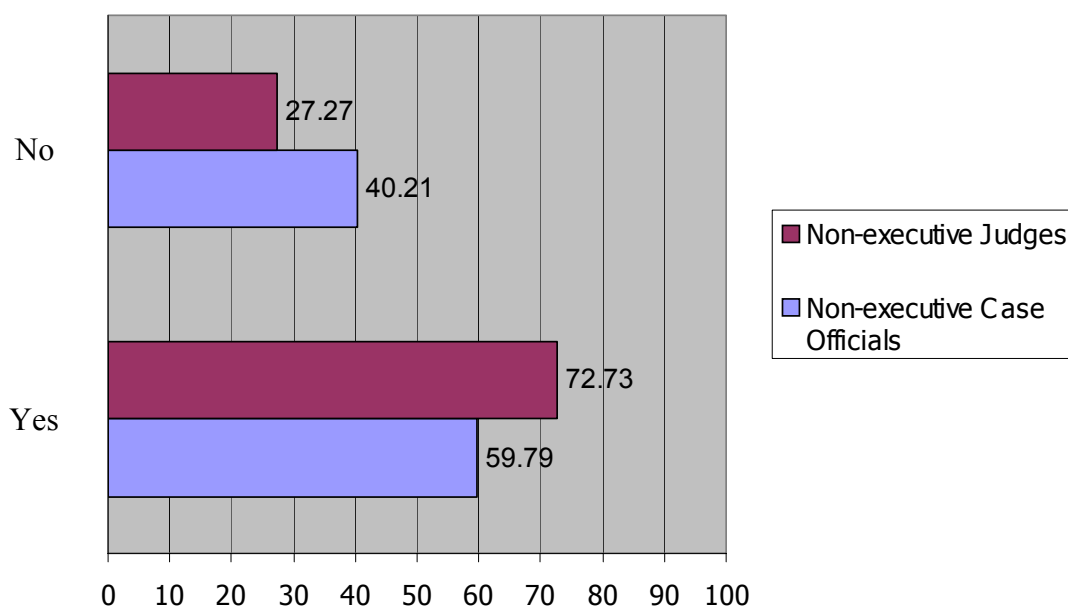
#### 5.9.2.6 'Tracking court officers responsible for cases' events', 'Producing multifaceted of statistical report' and 'Assessing efficiency of judicial officers' Objectives

Three additional objectives of the Court's CTS were introduced from this study. The first can be added to the person module while the second one can be categorised in the case module. The final additional objective can be described as another objective of the Court's CFM. More understanding of the importance of these objectives, both original and additional, is elucidated later from data in selected judges' and high-ranking court officials' interviews.

### **5.9.3 Achievement of the Objectives of the Administrative Court's CTS**

The overall achievement of the Court's objectives and the achievement of each particular objective of the case tracking system of the Court are elucidated in the judges' and case officials' perspectives. Graph 5.12 below demonstrates the general opinion of the non-executive judges and case officials of the overall achievement of the objectives of the Court. The achievement of particular objectives is then examined from interviews with selected judges and high-ranking court officials.

### 5.9.3.1 Overall Achievement



No. 7.7 According to the answer in question (7.6) do you think the system is achieving all objectives?

Graph 5.12: Achievement of the CTS objectives

As can be seen in Graph 5.12, approximately 70% of judges and 60% of case officials thought that all objectives of the CTS were being achieved. This data was collected when the original CTS was operating alone; thus, the original CTS was functioning satisfactorily. However, a minority in each group doubted its efficiency. The minority opinions are clarified later from the interview data.

### 5.9.3.2 Particular Achievement

The significance and achievements of the CTS's objectives can be analysed from the interview results as follows. All judges insisted that the tracking events and time of cases were crucial objectives of the implementation of the CTS. The Chief Justice<sup>14</sup> asserted that a credible inputting data process was critical to accuracy of the recording of a case's events. Inaccuracies in this feature created unreliable information on the original system (ACAS).

<sup>14</sup> Interview with Chief Justice of the Central Administrative Court of Thailand, above n 12.

In the new programme (ACSP), the name of the court officers (both judicial and non-judicial) are required in every case event so the information inputting to the programme is more accurate, reliable and comprehensive. He said that these 'tracking events of cases', 'tracking time of cases' and 'tracking court officers responsible for cases' events' objectives helped the judges to manage and monitor their cases and the public, particularly related parties, to trace their cases. The complete functioning of these three objectives would promote judicial accountability and public confidence of the Court. It can be concluded that the objectives of the Court's CTS in tracking events, time and court officials can be achieved using the new case tracking programme that has enhanced its people module to track both parties and court officials related to the case progress.

The interviews of high-ranking court officials provided similar reasons to the Chief Justice; for instance, Mr C and Mr A revealed that the efficiency of the case and time modules would help not only administrative judges and parties to trace their cases but also the Chief Justice and other executive judges to monitor all cases overall. The implementation of these three objectives should promote the 'expediting cases to be finalised' objective in general. Consequently, the expeditious finalisation of cases objective can be achieved.<sup>15</sup>

The three objectives discussed above are related to the 'assessing efficiency of judicial officers' objective because the Chief Justice traces the progress of cases and if any judge is slow in finalising cases he/she will be identified and the information will be in his/her performance assessment. The Secretary-General supported these objectives, that the executive judges would expedite the judicial performance and monitor the progress of cases via the functioning of the CTS.<sup>16</sup> From such comments, the assessment of judicial performance should be one of the important objectives of the CTS and it should be achieved through the functioning of the ACSP.

The Deputy Chief Justice disclosed that the CTS was implemented not only to speed up the 'slow judge' but also to provide fair case allocation. He remarked that the reports provided by the programmes (both ACSP and ACAS), showed statistics of each judge's

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<sup>15</sup> Interview with Mr C, above n 10; Interview with Mr A, above n 11.

<sup>16</sup> Interview with Charnchai Sawangsagdi, who is now a judge of the Supreme Administrative Court, (Face to face interview, 18 February 2004).

caseload. Such information was used by him in allocating a new case to a division.<sup>17</sup> Additionally, Mr A said the reports in 'event statistics' of cases were variously produced for the executive judges to consider and issue orders for case and court management.<sup>18</sup> As a result, the 'producing multifaceted statistical reports' objective is important to the court and its case management and it is an achievable objective. Furthermore, this system tool would increase the efficiency of judicial work and decrease backlogs and delays, again encouraging the objective of 'expediting cases to be finalised.'

The 'tracking parties of cases' and 'tracking a court fee' objectives were mentioned by some executive court officials. For example, Mr C asserted that the court fee module was working well in the original system and should function better in the new CTS. This was because the new system provided an automated relational database linking the financial module to the person module; meaning, the examination of the payment of a court fee, if necessary, would be done automatically.<sup>19</sup> This means that the objective of tracking a court fee is being achieved and the tracking of parties in cases is achievable using the ACSP. From the execution of all other objectives, the 'enhancing the efficiency of CFM' objective is encouraged and becomes achievable. It is evident that in the view of the judges and case officials all the objectives of the Court's CTS can be achieved, whether they are objectives of general application or those dealing with specific activities.

## **5.10 Findings and Summary of Comments of CTS**

The objectives of the Administrative Court's CTS are to promote the monitoring and supervising role of judges in controlling and tracking their cases. According to the elucidation of the objectives of the Court's CFM system, there are nine objectives. A general assessment of these objectives and some comments on the inefficiency of the original system are presented as follows.

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<sup>17</sup> Interview with Deputy Chief Justice R of Central Administrative Court of Thailand, Central Administrative Court (Face to face interview, 21 February 2004).

<sup>18</sup> Interview with Mr A, above n 11.

<sup>19</sup> Interview with Mr C, above n 10.

1. There are nine objectives of the Court's CTS: (1) tracking events of cases, (2) tracking time of cases, (3) tracking parties of cases, (4) expediting cases to be finalised, (5) tracking a court fee, (6) enhancing the efficiency of CFM, (a) tracking court officers responsible for cases' events, (b) producing multifaceted statistical reports, (c) assessing efficiency of judicial officers. The first six objectives are collected from the examination of literature and used in preparing the questionnaires, while the last three objectives were suggested by the respondents.

2. The 'tracking events of cases' is the core objective of the Court's CTS because it is the main function of any CTS, including that of the Administrative Court.

3. The 'tracking time of cases' is the next most important objective of the Court's CTS because it provides judges with the tool to manage their time and control their case life. A reminder-triggering system is one part of the time module that is used to good effect to support the judges' managerial role.

4. The person-related module of the new CTS (ACSP) includes not only parties' details (plaintiffs, defendants, their representatives and other related persons) but also judges, case officials and other court officers pertaining to the case proceedings details. This development facilitates the executive judges' ability to control and trace the person who has responsibility for each event of the case progress.

5. The 'tracking a court fee' is not recognised as an essential objective of the Court's CTS because the Administrative Court has an uncomplicated financial module. However, this objective is still important.

6. Both the 'expediting cases to be finalised' and the 'enhancing the efficiency of CFM' are general goals and reflect the Court's policies for its CTS.

7. Data from both questionnaires and interviews indicate that in the views of both judges and case officials, the overall functioning of the Court's CTS was being achieved. The operation of the original CTS was satisfactory.

8. The CTS of the Court has four critical modules: case, time, person, financial receipts and disbursements. The functioning of each module encourages the achievement of the objectives of the Court's CTS.

9. 'Assessing efficiency of judicial officers' is an objective of the implementation of the CTS. This is because the Chief Justices and the President will use the CTS to trace and examine the progress of administrative cases and the performance of the Administrative Court's judges.

10. Issues about the inefficiency of the original CTS of the Court relate not only to an incomplete system but also to a lack of commitment amongst the officials who had responsibility to track the events of a case. The introduction of ACSP improves many functions of the previous system. It also provides a better person module capable of tracing the court official who is responsible for each event of each case. This helps to make the data inputting process more credible and thus to enhance the accuracy of the reporting of the case's events.

11. In general, the objectives of the Court's CTS are to promote its Court and case management. The CTS is employed as a tool not only for judges to manage and monitor their cases but also for executive judges, particularly the Chief Justices and the President, to examine and assess the judges' performance. At the heart of the objectives of the CTS are the reduction of delay and backlog to provide speedy justice to the public.



## **Chapter 6**

### **Conclusions and Recommendations**

This chapter summarises and analyses research outcomes in the thesis and makes recommendations arising from this research. Proposals are made for the development of the CFM and CTS in both courts, together with suggestions for a future plan for the CFM and CTS in the Thai Administrative Court.

The chapter begins with summaries of the review of literature on the Federal Court of Australia gathered from books, online resources and some interviews. The Thai perspective was more difficult to obtain, and data had to be gathered from a range of sources: interviews, questionnaires and literature reviews of the law, regulations, the Constitution and internal court documents. This research study is the first to summarise and analyse such materials.

The main focus of this research is an examination of significant aspects of the CFM and CTS of the Administrative Court of Thailand. The background to the study, methodologies used and the limitations of the research are in Chapter 1, together with an outline of the thesis.

Chapter 2 is a comparative study of the characteristics of CFM and CTS from the Australian adversarial perspective (represented by the Federal Court) and from the Thai inquisitorial perspective (represented by the Administrative Court). The general features of CFM and CTS from the USA perspective are also studied and compared with the two national systems. Five core features of the courts' CFM and CTS are examined, including their historical development, definition, underlying principles and objectives and the relationship between the two systems. The literature review in Chapter 2 concentrates on the features of CFM and CTS from the USA perspective and the Australian adversarial perspective. Interviews and questionnaires were employed to explore the Thai inquisitorial perspective.

In Chapter 3 key features of each system are identified and a comparative study is undertaken between the Thai Administrative Court and the Federal Court of Australia, in terms of historical development and the jurisdiction of each court. The study examines the needs of both courts as institutions resolving administrative disputes.

The constitutional principles lying behind the establishment of the Thai Administrative Court, and those developed by the Court are discussed in Chapter 4, together with the perspectives of judicial and non-judicial court officers and parties to cases. The chapter also compares the principles of CFM and CTS derived from the USA sources to those of the Thai Administrative Court.

Later, in Chapter 5, the views of judges, case officials and parties about the achievement of the objectives of the Thai Court's CFM and CTS are examined.

## **6.1 Summaries**

Results of this comparative research study are presented below in eleven areas: the similarities and differences in the historical development between the Administrative Court and the Federal Court; the definition of CFM; the historical development of CFM; principles of CFM; objectives of CFM; special characteristics of the current CFM of both the Federal Court and the Administrative Court; the practical implementation of the principles of the Thai Administrative Court's CFM; the historical development of the CTS and its relationships to CFM; special characteristics of the CTS of both the Federal Court and the Administrative Court; the objectives of the Administrative Court's CTS and its implementation; and the practical implementation of the objectives of the Thai Administrative Court's CFM.

### **6.1.1 Similarities and Differences in the Historical Development between the Administrative Court and the Federal Court**

Thai Administrative Court:	The Thai Administrative Court has a long history stemming from the Council of State established in 1874 in the period of absolute monarchy. Foundations
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for the creation of the modern court were laid in the reformed Constitution of 1994, but it was not formally approved until the passing of the *Administrative Court and Administrative Court Procedure (ACP) Act* in 1999 and was not set up until 2001. The programme for the full development of the Court structure has been implemented gradually over a period of years, with increasing numbers of Regional Courts being successively added to the originally established Central and Supreme Administrative Courts. The relationship between the establishment of the Administrative Court and the present Thai Constitution extends beyond the fact that some provisions of the Constitution prescribe the establishment of the Court. Importantly, it is reflective of popular pressure for both the Constitution and the Court to live up to social expectations. For this reason, the Administrative Court is known as the 'People's Court' and reflects the picture of the 'People's Constitution.'

There are two court levels: the Administrative Courts of First Instance and the Supreme Administrative Court (SAC). The Court's jurisdiction covers administrative cases as prescribed under the Constitution, particularly section 276, and under the *ACP Act*, sections 9 and 11. In other words, the Administrative Court of First Instance has jurisdiction in seven main areas: (1) unlawful issuance of administrative orders such as permission orders, approval orders and appointment orders; (2) an unlawful act, unlawful issuance of rules such as Ministerial Regulation and Notification of a Ministry; (3) unlawful issuance of a by-law; (4) an act of neglect

of official duties; (5) undue delay in performing official duties; (6) a wrongful act or other liability; and (7) administrative contracts. The Supreme Administrative Court's jurisdiction covers disputes in four main areas: (1) a decision of a quasi-judicial council, (2) the legality of a Royal Decree or by-law issued by the Council of Ministers for its approval, (3) a case prescribed by the law to be within the jurisdiction of the SAC, and (4) appeal against a judgment or order of an Administrative Court of First Instance.

Australian Federal Court:

The Federal Court was established under the *Federal Court of Australia Act 1976* and began operation in 1977. Its jurisdiction has gradually expanded until now the Court has broad jurisdiction including administrative law matters. The Federal Court was not established as a superior court with full jurisdiction, like the State Supreme Courts. Its jurisdiction is defined by statute. This includes the administrative law jurisdiction of the Court which was chiefly invested by the *Judiciary Act 1903* and the *Administrative Decision (Judicial Review) Act 1977* (Cth) (*ADJR Act*). Legislative reform in Australia in the 1970s directly affected the creation of the *ADJR Act* and amendments to the *Judiciary Act* (e.g. section 39B). The judicial review of administrative decisions power vested in the Federal Court is employed to examine the actions of Commonwealth Public Service and its decisions.

Conclusion:

Administrative review bodies such as the Administrative Court and the Federal Court are

important to contemporary societies because of the increased interaction between government and public, and the public request for better protection of their rights. The historical developments described have enabled the Courts to function in ways that reflect the needs of the public. It should be noted that both the Federal Court and the Administrative Court employ judicial review in all administrative cases. Accordingly, both courts have power only to examine or review the legality of an administrator's decision, not its merits.

### **6.1.2 The Definition of CFM**

- USA Perspective: CFM is a supervised process of time and events in courts, moving cases from initiation to disposition, regardless of the type of disposition. That is, a court has to supervise the progress of cases, monitor events and deadlines, schedule appropriate events in each case, and ensure timely disposition.
- Thai Inquisitorial Perspective: In Thailand, CFM is focussed on the managerial and monitoring role of a judge, particularly a case judge, with the assistance of case officials. Cooperation between a judge and his/her officials is crucial to supervising the entire case progress in an expeditious manner.
- Australian Adversarial Perspective: The Individual Docket System (IDS) was introduced into the Federal Court to reduce and eliminate case backlogs and delays between the initiation and hearing of cases. It is a listing and case flow management approach requiring judicial control as soon as a case is

filed. Cases are randomly distributed to an individual judge to supervise.

**Conclusion:**

CFM is a case supervision system of monitoring time and events from case initiation. Judges, with the assistance of court staff, play an important role in monitoring to expedite case disposition and reduce backlogs and delays. The CFM definitions of both the Thai Administrative Court and the Federal Court indicate early and continuous monitoring by judges of their cases' progress. However, in the Administrative Court, while a single judge controls the entire progress of a case, he/she might assign some of the managerial role to case officials. Additionally, each judge's performance in the progress of a case is examined by executive judges, particularly the Chief Justice of each Administrative Court of First Instance and the President.

### **6.1.3 Historical Development of CFM**

**USA Perspective:**

Backlogs and delays are the core issues of a court's CFM across all systems studied. The CFM is the heart of court management. An important development of the CFM lies in the change of the person who is in control of the case: previously the lawyer, it is now the judge who sets supervisory time, and other operational standards used by the Court with the assistance of a court manager.

**Thai Inquisitorial Perspective:**

An ad hoc panel designed the CFM of the Thai Court in line with the Act and tailored it via the Court's rules to accommodate the system to the judges'

management. By law, Administrative Court judges themselves supervise the progress of cases with the assistance of their case officials. A new Directive subsequently laid down the timeframes for judges to actively manage their docket, and for judges to supervise case progress, in turn under the supervision of the Chief Justice.

**Australian Adversarial Perspective:** The Federal Court adopted the recommendations of Maureen M. Solomon, an American scholar, that a judge be allocated a case from the beginning. The Individual Docket System (IDS) is the resulting case flow management system for the Court, replacing a master calendar system. Under the IDS, a case is randomly distributed to an individual judge who supervises it from initiation to finalisation.

**Conclusion:** This study of the historical development indicates that at present it is believed that the best kind of case flow management lies in having an individual judge supervise a case's progress from initiation, with the assistance of court officers. This new management system has been introduced in all perspectives to reduce the problems of backlogs and delay. It is likely that these systems will continue to evolve.

#### **6.1.4 The Principles of CFM**

**USA Perspective:** The USA principles of CFM are judicial leadership; standards and goals such as timestandard, the size of a court's pending list and backlog reduction, restrictive continuance policy, automated case information policy, maintaining equality, fairness and integrity

policy; monitoring and information system via the case tracking system; judicial accountability; court supervision of case progress by individual judges; credible trial dates. (See also Table 4.1.)

**Thai Inquisitorial Perspective:** Thai Inquisitorial perspectives are to be ascertained from the principles of the Court as well as from the Court's measures and policies; see Chapter 4. These include judicial control; standards and goals such as timeframes, backlog reduction and speeding up policy, securing judicial independence, enforcing transparency and enforcing equal treatment, CTS policy, enforcing judicial accessibility, enforcing judicial accountability; a monitoring and information system via the Administrative Case System Program (ACSP), court supervision of case progress by individual judges and the Chief Justice (see also Table 4.1).

**Australian Adversarial Perspective:** The principles of CFM in the Australian adversarial perspective consist of: judicial control; standards and goals via Timestandard, backlog reduction and speeding up policy, maintaining equality and fairness policy, ADR policy, enforcing transparency, CTS policy, enforcing judicial accessibility; enforcing judicial accountability; monitoring and information system via the CASETRACK; court supervision of case progress by individual judges and credible trial dates (see also Table 4.1).

**Conclusion:** All these perspectives recognise that CTS policy is vital to the courts' CFM because it is a tool for judges and other system users to collect and provide information to monitor and trace case progress. In



general, the principles from these three different perspectives are similar; however, there are some differences as each court's specific goals or policies fit their own CFM.

### **6.1.5 The Objectives of CFM**

#### **USA Perspective:**

The study of the USA experience shows that the objectives of case flow management include promoting equal treatment of all litigants, promoting public confidence, providing access to justice, reducing cost, enhancing the quality of the litigation process, reducing delay, making the timing of events more predictable, and making the timing of events more timely. (See also Table 5.2.)

#### **Thai Inquisitorial Perspective:**

According to this study of the CFM of the Thai Administrative Court, including results of interviews and questionnaires as well as a review of literature, the CFM's objectives are: resolving disputes with justice (promoting equal treatment of all litigation, standardising the implementation of CFM, promoting public confidence); resolving disputes efficiently (reducing cost in administrative case proceedings, enhancing the quality of the litigation process, accessibility, promoting efficiency of clerical work); resolving disputes with transparency (keeping case progress accessible, creating transparency of case progress); and resolving disputes expeditiously (reducing delays in administrative case proceedings, making the timing of events more predictable, making the timing of events more realistic and more appropriate, encouraging solicitor/party

accountability, encouraging the use of the case tracking system for court monitoring, and encouraging earlier settlement). (See also Table 5.2.)

**Australian Adversarial Perspective:** The review of the Federal Court's literature indicates that the objectives of the Court's CFM are: consistency of approach throughout the case's progress, cost saving, enhancing transparency of case progress, saving time, reducing formal events requiring court sittings, deterring interlocutory disputes, speedily resolving disputes, promoting the use of DCM, promoting the use of mediation (ADR), encouraging earlier case settlement, narrowing issues, early fixing of trial dates, and maintaining trial dates. (See also Table 5.2.)

**Conclusion:** The objectives of the CFM of courts are generally similar in terms of promoting equal treatment by providing standardisation of case progress and cost and time effectiveness. The differences are that whilst the Administrative Court aims to promote equal treatment, enhance public confidence, reduce costs, and provide more accessibility and timeliness (that is, to promote the overall efficiency of court and case management), the Federal Court aims to encourage the just, orderly, transparent and especially the expeditious resolution of disputes.

#### **6.1.6 Special Characteristics of the Current CFM of both the Federal Court and the Administrative Court**

**Thai Inquisitorial Perspective:** Thai judges actively supervise the entire case progress under examination by the Chief Justice. The case

allocation system of the Court is a system of random allocation to specialist divisions for particular case types. A senior judge of a division appoints a single judge to supervise a particular case from its initiation. Timeframes have been implemented to guide the lapse of time in each case's events throughout the case life. Delay and backlog reduction are goals of the implementation of the timeframes. (See also Table 2.4.)

**Australian Adversarial Perspective:** Judicial roles in the Federal Court have shifted from a passive to a more active style. Individual judges supervise their cases from beginning to finalisation. The random allocation system in which a case is distributed to the next judge in rotation, or to a specialist panel, is employed to ensure fairness in the Court. Timestandards have been set for the entire case progress and for four key case events. ADR techniques are used in the Court to provide early settlement for suitable cases. (See also Table 2.4.)

**Conclusion:** Timestandards are crucial in case flow management. The Federal Court employs an overall standard (18 months) as well as standards for intermediate case events. The Administrative Court, however, enforces timeframes to manage the performance of its judges and its cases. The case allocation system of both courts is similar in terms of random allocation. However, in the Federal Court, cases may be allocated to the next judge in rotation or a specialist panel, while in the Administrative Court the random allocation then occurs within the division. ADR is employed in the Federal Court only for suitable cases.

Administrative cases (in general) are not settled using ADR because the compromises made may affect public interest. For this reason, the Thai Administrative Court has not employed ADR as a part of its case flow system.

#### **6.1.7 The Practical Implementation of the Principles of the Thai Administrative Court's CFM**

From the results of my research with participants in the Court system I believe all the principles of the Court CFM system are promoted and exercised in general court practice, to a greater or lesser extent.

##### *Judicial Control:*

This principle is implemented in the Court by the judge actively controlling case progress and closely supervising the pace of disposition with the assistance of their case officials. Parties who are aware of the managerial role of judges agreed that their judge actively manages the progress of the case by making an order at every stage and setting up a timetable of events. It is to be noted that actual control of case progress is implemented either by a judge or a case official depending on each judge's policy on assignment of managerial functions to their case officials. In general, judges and case officials both felt that judges do in fact actively control case progress with the assistance of their case officials. Judges also independently decide on the overall timeframes and timetable for each event rather than parties or case officials.

##### *Standards and Goals:*

##### *Judicial Independence*

Judges, in general, believe they are independent in managing and monitoring their cases, although some

of them do feel restricted by the Direction that provides a standard for judicial tasks. For the judicial role, judges have full freedom to make decisions in cases. In short, judges are satisfied with their freedom in managing their own cases. This principle is maintained in the Court in both the judicial and managerial roles of the judges. It is to be noted that there is some concern about judicial independence because the supervision of case progress is not only under the control of individual judges but is also closely monitored by the Chief Justices.

### *Timeframes*

Judges and case officials agreed that the timeframes of all events of a case are flexible so they are able to make adjustments to fit their individual management style. However, there are some unrealistic time estimates for some events, creating some difficulties in compliance with the timeframes. Parties, in general, also reported no difficulty in complying with the timeframes decided by the judge. Timeframes are themselves concerned with the judges' managerial function and are enforced in the Court CFM. It is an acceptable standard for administrative case progress but needs to be refined.

### *Alternative Dispute Resolution (ADR)*

ADR is not employed in the Court by judges because an administrative dispute is a conflict between public and individual interests. Compromise may cause imbalance between the two interests and affect public

interest. However, ADR methods are used in the consultation room by the Court's officials before a dispute is filed in Court. The implementation of ADR in the Administrative Court is a controversial issue that needs to be reconsidered to find an appropriate way of using it in practice.

*Monitoring and Information System:* The CTS is employed in the Court to facilitate the judge's monitoring and supervisory roles. Currently the Court employs both the Administrative Case Administration system (ACAS), the original system, and the Administrative Case System Programme (ACSP), the new system. While the research for this project was being done, the ACSP was not yet operating, so the efficiency of the CTS has only been examined for the ACAS. Judges and case officials employ this ACSP as a tool to monitor and manage their cases. Although it is not good in practice, it can provide crucial information to judges and case officials. However most of them employed additional administrative techniques because the ACAS has some deficiencies; for instance, its search engine is incomplete and provides unreliable information. Nonetheless, parties felt that they could access their case's information without problems.

To conclude, the ACAS is operated by the Court as a tool for judges and case officials to be able to trace and supervise their cases. Parties can also access their information via this tracking system. This principle, therefore, is established and exercised in the Court's CFM.

*Court Supervision of Case Progress:* As discussed in the judicial control principle, the Administrative Court judges actively supervise the progress of cases from the beginning to disposition. The Chief Justice also supervises case progress via the Court CTS to ensure expeditious disposition of cases. Differentiated case management (DCM) is not formally used in the Court to distinguish between simple and complex cases. However, in practice judges do differentiate the cases they manage. They tend to classify cases on the basis of type rather than complexity.

In short, Court supervision of the case progress principle is promoted and executed to ensure speedy case disposition. DCM is an important technique for efficient supervision of cases by judges. This technique is not officially established in the Court's CFM but judges agree that they employ it in their managerial practices.

#### **6.1.8 The Historical Development of the CTS and its Relationships to CFM**

USA Perspective:	Technology has been applied to improve the efficiency of CFM, particularly computerised case management information systems. CTS is the most important mechanism necessary to support the new active role in managing and tracking events of cases.
Thai Inquisitorial Perspective:	The CTS of the Thai Court was created and developed in line with the Court's CFM. The ACSP was developed to handle deficiencies in the original ACAS and to respond to the increased demands of the CTS's users, both internal and external, to monitor and trace

their cases. Unlike the original ACAS, the new system has been developed by a private contractor.

**Australian Adversarial Perspective:** The CTS of the Federal Court of Australia was created in parallel with its CFM. When the Individual Docket System, the Court's new CFM, was being introduced, the previous case tracking programme, FEDCAMS, was found to be deficient for the purpose and a new system, CASETRACK, is now employed to support the IDS. As in the Thai court, the new system has been developed by a private contractor.

**Conclusion:** The development of the CTS has occurred to provide necessary information to its users, both internal and external, to allow them to monitor and track their cases. As tools to promote the efficiency of case flow management, case tracking systems have developed to provide the best support to the case management system. For the moment, the Thai Administrative Court employs both the new and the original systems because a process of transition between them has been needed to ensure that the data are completely transferred to the new system. On the other hand, the Federal Court uses its new system as a replacement for its original one. Both court's systems need to be refined periodically to make the best fit for their users.

#### **6.1.9 Special Characteristics of the CTS of both the Federal Court and the Administrative Court**

**Thai Inquisitorial Perspective:** As previously indicated, the Administrative Court uses its two case tracking systems in tandem. The new ACSP improves the capacity of the former system,



ACAS, in four main areas: case history, case movement record sheet, reports, and tracking events. The ACSP also introduces new functions: a security system, barcode system, central database, relational database, and a tickler-reminder system. (See Table 2.5.)

**Australian Adversarial Perspective:** The Federal Court's new CASETRACK replaces the older FEDCAMS and advances the efficiency of case tracking in two main areas: it provides full case histories and case movement record sheets. In addition it provides an electronic diary and free text capacity, and is user-friendly. (See Table 2.5.)

**Conclusion:** The ACSP of the Administrative Court and CASETRACK of the Federal Court have been instituted to obtain better information for each Court's CFM. The more sophisticated tracking systems of both courts are employed to eliminate or reduce loss of files, and to identify and cope with bottlenecks in more manageable ways.

#### **6.1.10 The Objectives of the Administrative Court's CTS and its Implementation**

The objectives of the Court's CTS are to facilitate its CFM in monitoring and tracking case events and overall court management. The CTS is a crucial tool for the Administrative Court's judges in controlling their case progress and for the executive judges, particularly the Chief Justices and the President, in examining the judges' work. The core objective of the implementation of the CTS is to reduce delays and backlogs and encourage expeditious judge or judicial performance. In general, the users (judges and case officials) feel that the original CTS was satisfactory and its objectives are being achieved. Without the introduction of the new CTS, the users can do their daily work using the original system which serves their basic needs in monitoring and

tracking their cases. However, the introduction of the new CTS aims to promote better functioning of the original one and will facilitate the work of the users.

The study of the CTS of the Court shows that there are nine objectives that can be grouped into four modules. The nine objectives are tracking events of cases; tracking time of cases; tracking parties of cases; expediting cases to be finalised; tracking a court fee; enhancing the efficiency of CFM; tracking court officers responsible for cases' events; producing multifaceted statistical reports; and assessing efficiency of judicial officers. The four modules are case, time, person and financial receipts and disbursement.

#### **6.1.11 Practical Implementation of the Objectives of the Administrative Court's CFM**

This research study investigated the overall achievement of the objectives of the Court's CFM from four perspectives: case judges, conclusive judges, case judges' case officials and conclusive judges' case officials. In summary, while conclusive judges felt that the objectives are achievable overall, the other groups felt that they are not being achieved. This is because the conclusive judges have the least participation in monitoring and controlling of the case progress.

Explanations of and comments on the objectives that were not being achieved, plus some interesting objectives from all perspectives (judges and case officials including parties) are concluded as follows. It is important to note that these explanations and comments on the objectives that were not being achieved were provided either by all groups of respondents (case and conclusive judges, case officials of case and conclusive judges, and parties) or by some, depending on who actually answered the questions. Some of the respondents did not reply, apparently because they do not have issues with the achievement of particular objectives.<sup>1</sup> Discussion of this topic, including the following, can be found in Chapter 5, 5.7, p. 178.

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<sup>1</sup> In the questionnaires for both judges and case officials, the respondents were asked to point out the objectives that were not being achieved in their view and the reasons why. Therefore, if they do not have issues with the achievement of particular objectives, they do not raise any objectives in their comments. See Appendix B: Questionnaires, question 2.2.

*Reducing delays in  
administrative case proceedings*

This is the most important objective of the Court's CFM. Judges, case officials and parties felt that this objective was not being achieved for various reasons. Lack of knowledge and cooperation of parties, lack of skill of judges in some special cases, lack of expertise of case officials in some laws or regulations, all serve to create obstacles to the achievement of this objective. It is felt that problems also arise from the level of commitment of judges, their styles of writing judgments, memoranda or statements, the nature of complex cases which require more time to reach finalisation, judges' case overload, the allocation system improperly giving a specific case type to a judge who is not a specialist in that case, inappropriate functioning of the censor division, the mailing system in case proceedings and impracticalities in the policy on speedy finalisation of cases.

*Encouraging the use of  
the case tracking system  
for court monitoring*

This is the next most important objective of the Court CFM. Both judges and case officials felt that this objective is not being achieved because of case overload. Judges are allocated a number of cases but they are not given sufficient time to monitor or track their cases. The unreliable original CTS provides outdated data and also cannot indicate the bottlenecks in case progress. Unpredictability of the new CTS is also of concern in respect to whether the objectives for the functioning of the Court's CFM can be achieved.

*Making the timing of events  
more realistic*

Realistic timing of events includes making the timing of events more prompt and predictable. Case judges and their case officials, and conclusive judges' case officials, felt that this objective was not being achieved. The reasons given include: lack of parties'

knowledge and cooperation, the use of a single timeframe for all case types and complexities, the use of a postal system for communication in case proceedings, and lack of enforcement of the policies applied to judges and case officials. These are impediments to the achievement of this objective.

*Keeping case progress accessible* In general, case judges and their case officials, and conclusive judges' case officials felt that this objective was not being achieved because the CFM system is not functioning efficiently. The main reason for this is the shortcomings of the original CTS providing outdated case information that is not user-friendly and is unreliable. In addition, the parties are not aware of their right to access their case information and court officers are not confident about how much information they might disclose to parties or the public.

The parties think that this objective was achievable because they feel that they can access and trace their case information.

*Promoting of the efficiency of clerical work* Case judges and their case officials, and conclusive judges' case officials felt that this objective was not being achieved due to inefficiencies in the clerical system such as the shortage of typists, an incomplete legal database and the inefficiency of case file collection and maintenance systems.

*Making the timing of events more predictable* Case and conclusive judges and case judges' case officials felt that this objective was not being achieved due to lack of knowledge and cooperation of the

parties, complexity of cases and the policy on finalisation of cases filed since 2001.

However, the parties think that this objective is achievable because they are informed about the next event and when it is to occur.

*Encouraging solicitor/party accountability*

Case judges and their case officials felt that this objective was not being achieved due to lack of knowledge and cooperation by the parties and the misunderstanding of parties that they have no influence on the speed of case progress.

*Standardising the implementation of CFM*

Case judges and their case officials felt that this objective was not being achieved because no direction has been provided in the implementation of the CFM system since its initiation, causing different practices in the various divisions. Although the Administrative Court has the *ACP Act* laying down the overall programme for managing administrative case progress, each judge exercises their managerial practice differently so there is no uniformity amongst the different divisions.

*Encouraging earlier settlement*

Case judges' case officials felt that this objective was not being achieved because no law or regulation was issued to endorse early settlement in the administrative case proceedings. Nevertheless, this objective encourages expedition by the judges in managing and monitoring their cases.

*Reducing cost in administrative case proceedings* Parties felt that this objective is achievable and was being achieved. The judges and case officials did not comment on this objective because, according to the *ACP Act*, the filing of a case in the Administrative Court, in general, exempts it from a court fee. The Court uses the exemption to encourage the public to file in the Administrative Court.

## **6.2 Conclusions and Recommendations**

There are some interesting issues emerging from the investigation of the case flow management and case tracking systems of the Administrative Court. My conclusions and recommendations on these issues in terms of principles and objectives are set out below.

For the objectives of the case flow management, I discuss the general shortcomings. The Court's case tracking system is discussed by reference to the ways in which the improvements to of the new system have affected its objectives.

### **6.2.1 Issues about the Implementation of the Principles of the Administrative Court's CFM**

Issues in the implementation of the Court's principles of case flow management are discussed in relation to the following areas: timeframe, backlog reduction and speeding up policy, securing judicial independence, enforcing judicial accountability, a monitoring and information system via the Administrative Case System Programme (ACSP) and court supervision of case progress

#### **6.2.1.1 Timeframes**

There are issues about whether the timeframes are realistic and enforceable and whether they contain sufficient flexibility to enable the goals to be achieved.

The timeframes of the Administrative Court originated from the *ACP Act*, the Rule on Administrative Court Procedure, and the Directive on Performance and Assessment. The Act and the Rule set down guidelines for judges to control and monitor cases and parties, while the Directive was a measure to control the judges' performance; it is a timeline to guide judges in performing their duties (such as making orders) in each event of a case. The goals set in the timeframes in the Directive are designed to control individual judges and to ensure that delays, if any, are not coming from the judges' performance. Even though the Directive provides a certain timeframe for each event, judges need not comply with such a frame if there are special considerations. It is flexible for judges to apply in each case as they see fit. However, the study shows that flexibility of timeframes is important because sometimes they are unrealistic and their enforcement is impossible. Although the flexibility of timeframes countermands their impractical characteristic, it also has adverse effects on the achievement of the goals of control by individual judges and the reduction of delays.

The Administrative Court's timeframes differ from those of the Federal Court, and from the theoretical framework, in not laying down how many cases should be finalised in a certain period of time, and in not setting overall or intermediate timeframes. The system does set an approximate timeframe for each event. These approximate timeframes may relate to either key or insignificant events. Nonetheless, the goals of the Administrative Court's and the Federal Court's timestandards are the same, that is, to ensure that cases will be finalised in a timely and speedy manner.

In order to improve the Administrative Court's timeframes, to make them more realistic and enforceable while flexible, the following proposals are made for the standards and for how they should be applied.

### *1. Setting Appropriate Timeframes for all Events*

This first stage is related to the timeframes that were laid down under the Directive on Performance and Assessment. This means that the suggested timeframes are based on the Directive. However, the Court should create a working group to re-assess the timeframes which includes both executive and non-executive judges, and both case and conclusive judges, and represents all specialised divisions. This working group should

work out the time taken for each event by adjusting the timeframes in the Directive so as to gain the most practicable and suitable timeframes for each event.

## *2. Creating Timestandards*

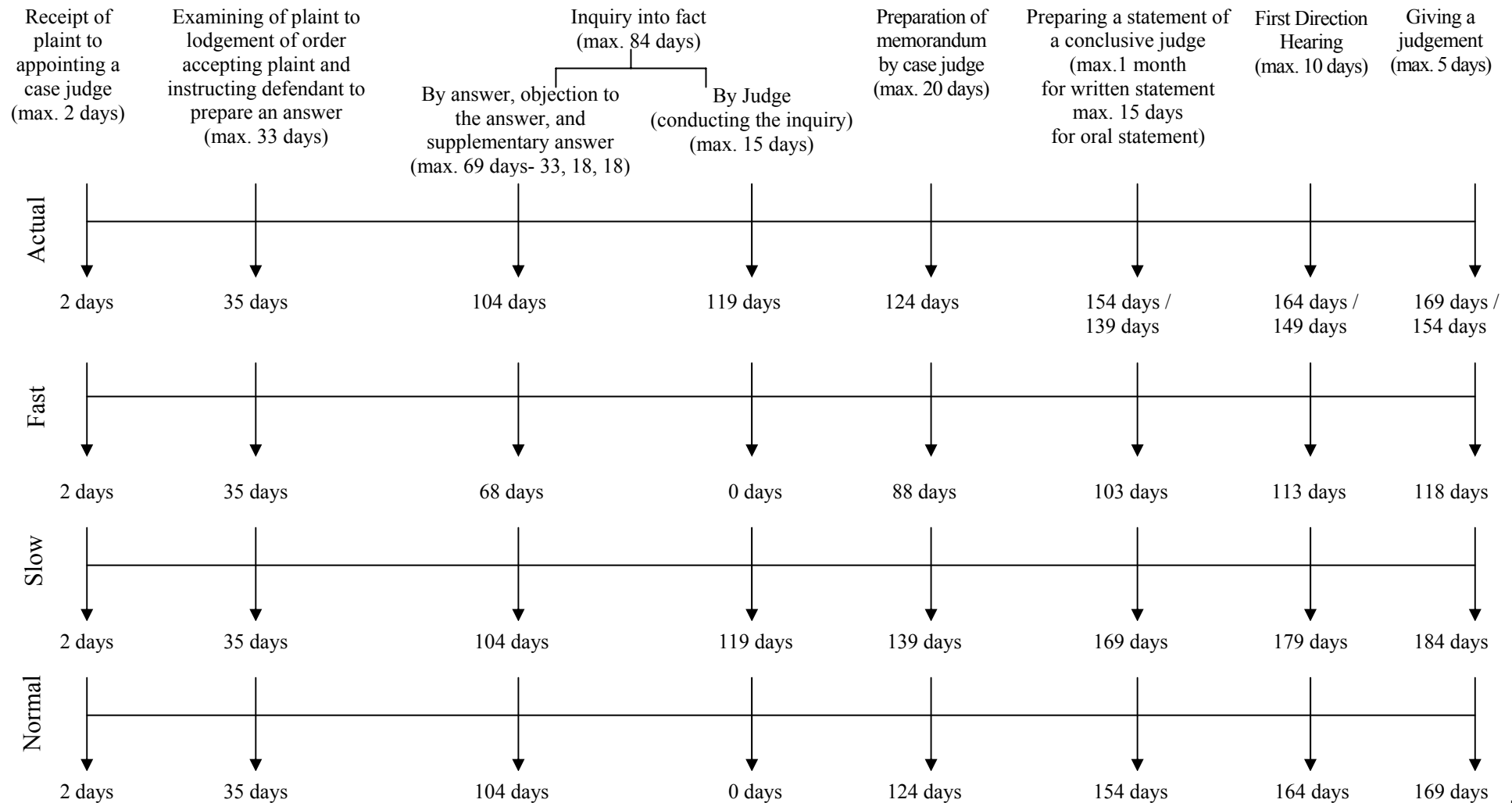
The Court should create timestandards on case flow management: intermediate and overall. General for case flow management of the Administrative Court are suggested in Diagram 6.1 below. A general timestandard for the Court's case flow management is a maximum of 169 days. For uncomplicated cases, the timestandard is shorter (max. 118 days), and for complex cases it is longer (max. 184 days). The standards of key middle stages of administrative case proceedings are recognised in seven stages: receipt of plaint to appoint a case judge; examining plaint to lodgement of order accepting the plaint and instructing the defendant to prepare an answer; inquiry into fact; preparing a memorandum of a case judge; preparing a statement of a conclusive judge; First Direction Hearing; and giving a judgment.<sup>2</sup>

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<sup>2</sup> The suggestion of maximum days in each timestandard and the seven key middle stages is based on the study of the timeframes under the Directive on Performance and Assessment and the *ACP Act*.



**Diagram 6.1: Time Standards for Case Flow Management**



In addition, the Court should nominate the numbers of cases to be finalised within a certain time. Suggested case finalisation percentages are provided in Table 6.1.<sup>3</sup>

Table 6.1: Suggested Administrative Court's Timestandards on Case Finalisation

In this model, 90% of general cases should be finalised in 169 days (approx 5.5 months). Ninety nine percent of such cases should be finalised in 254 days (approx 8.5 months) and 100% finalisation should occur within 338 days (approx 11 months). However, suitable timestandards for both the timelines and percentages for finalisation of cases should be established by the working group on the re-assessment of the timeframes as suggested above. Diagram 6.1 and Table 6.1 are proposed as guidelines to set such standards and, if the working group think it is appropriate, this suggested timestandard could be adopted for implementation in the Court's CFM. In addition, as these standards provide the maximum time for disposition, the actual processing of cases of different complexities should generally occur in less time than the maximum allowed.

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<sup>3</sup> The suggestion of maximum days within which each case should be finalised is based on a study of the timeframes under the Directive on Performance and Assessment and the *ACP Act*, the time standards of the Federal Court and timeframes of the American Bar Association.

### *3. Enforcing Timestandards*

The improvement of the timeframes of the Administrative Court, by setting appropriate timeframes (the first stage) and creating timelines (the second stage), can enable practicable and flexible timeframes and timestandards to be laid down for all case complexities in any administrative cases. Consequently, enforceability of timestandards can be achieved. Executive judges, particularly the Chief Justice of each Administrative Court of First Instance and the President of the Supreme Administrative Court, can monitor and assess the judges' performance with confidence that such just standards are agreed and adopted by judges in their everyday practices. The three stages of the improvement of the Court's timestandards will encourage timely and speedy practice by Administrative Court judges and avoid delays emerging from their performance. This will also promote the principles of judicial commitment and accountability in the judges' managerial roles which are crucial to the Court's performance in general.

#### 6.2.1.2 Backlog Reduction and Speeding Up Policy

This policy was established in the memoranda issued by the Chief Justice of the Central Administrative Court. The executive judges expected this policy to clear the pending cases, starting with the oldest case filed in the year 2001, the opening year of the Court. However, the question arises whether, in its execution, this policy promotes or hinders the speedy performance of judges, and whether it benefits the backlog reduction policy. For example, these research results show that some judges commented that this policy creates obstacles to the achievement of the Court's goals in reducing delays, particularly for new cases.

There are two questions that need to be answered for this policy to be successful. Firstly, what are the backlogs in the Administrative Court and secondly, how can they be reduced?

The backlogs involve those cases that have clearly been pending for so long that it would be an injustice if the Court does not finalise them shortly. For this reason, the policy on expedition of administrative cases filed in the year 2001 is recognised as the

policy to clear the backlogs. To reduce the backlogs, the Chief Justice of the Central Administrative Court employed memoranda to accelerate the work of judges who had outstanding cases in their dockets. The confusion expressed by some non-executive judges is that if they stick to this policy, it may create a backlog of new cases.

How can the enforcement of such a policy avoid creating adverse effects on new cases? The suggested way of encouraging the implementation of this policy and avoiding adverse effects on new backlogs is to re-define backlog and differentiate those cases to be finalised in proper tracks.

David C. Steelman mentions in his book that backlog is 'a case that has been pending longer than the time that the court has adopted as its standard.'<sup>4</sup> Thus, the pending case lists should be defined by (1) classifying all cases (both old and new) into three different complexities and (2) examining cases which are outstanding (from the standards). As a result, there are three pending lists: that of a normal standard, a fast standard and a slow standard. Then, the backlog reduction and speeding up policy should be combined so that the oldest case should be finalised before other cases in each track. When all cases are differentiated for management, judges know which cases should be finalised urgently and at what speed. For this reason, judges can balance the execution of both the pending and the new cases at the same time. This technique also benefits the Chief Justice in expediting the pending cases while he supervises and traces the new cases. Under this measure, all cases (old and new) are treated in a fair and expeditious manner.

#### 6.2.1.3 Securing Judicial Independence

The judicial independence principle is safeguarded by the Constitution and the ACP Act. There is no question about the independence of the judicial roles of the Administrative Court's judges. However, some judges complain about the degree of independence in their managerial role. The *ACP Act* and the Rule on Administrative Court Procedure provide that when cases are assigned to a case judge they are empowered to collect and examine all issues and decide whether there is sufficient

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<sup>4</sup> David C. Steelman, John A. Goerdts and James E. McMillan, *Case Flow Management: The Heart of Court Management in the New Millennium* (2004), 79.

clarity in the facts to make a decision, but it is the Directive on Performance and Assessment that lays down the standard of the number of cases each judge should complete per month (ten cases) and this affects the judges' performance. This means that if a judge cannot finish in accordance with the standard, irrespective of case complexity, that judge might not be considered efficient. Hence judges felt that they have no independence in managing their own caseloads.

This study shows that although some judges argue that the Directive has adverse effects on judicial independence, particularly in their managerial roles, many judges see it only as a guideline or goal for judges in the execution of their work and believe that there is no sanction applied if such goals cannot be achieved. In addition, such a standard is flexible in practice because a judge may be excused from finalising ten cases per month by giving the reasons why such a standard is not being achieved. Examples of reasons given by judges include being assigned to do other work for the Court or that a particular case is very complicated. Therefore, I conclude that this Directive does not undermine the judicial independence principle in either judicial or managerial roles.

The more important issue is not judicial independence but the practicability of the policy. This is because, as this project shows, in practice no judge can finalise 10 cases per month.<sup>5</sup> Besides this, the standard may cause some judges to select only uncomplicated cases. Thus there is room for improvement in the present policy in terms of its practicability.

Proposals for improving the practicability of current policy on judicial performance standards:

1. The policy could be made more practical by setting new standards for judicial output. The same working group that reassesses the timeframe should develop this area as well. The original standard provides that each month the case judges should issue 3 judgments, 3 memoranda, and 4 orders rejecting the plaint and striking such cases out of the Case List, and the conclusive judges should issue 10 statements. These goals need to be re-defined by considering the factor of case complexity. If the Court classifies cases in terms

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<sup>5</sup> See the discussion on judicial independence in Chapter 4, 4.5.2.1, p. 141.

of degrees of complexity to be managed and traced (as shown in Diagram 6.1), the consideration of complexity of a judge's tasks becomes possible. This could also help to avoid the problem of a backlog of complex cases which currently arises when some judges select easy cases to dispose of in order to meet the monthly figure for disposition. The suggestions for the new standard of judicial tasks are clarified in Table 6.2 below.<sup>6</sup>

Table 6.2: Suggested Standards for Judicial Outputs per Month

	Case Judge			Conclusive Judge
	Order Rejecting the Complaint and Striking a Case out of the Case List	Memorandum	Judgment	Statement (Written/Oral)
Normal Track Case / General Case	1	1	1	3
Slow Track Case / Complex Case	1	1	1	2
Fast Track Case / Uncomplicated Case	2	1	1	5

The model suggested in Table 6.2 shows the number of tasks for cases in each track that judges should complete per month. While the need for change in this area has been identified by the current research, the actual numbers suggested do not derive from research. These numbers are recommended simply for the purposes of discussion. The details would need to be worked out by the working group.

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<sup>6</sup> As discussed in Chapter 4, 4.5.2.1, p. 141, the actual numbers of cases that are finalised vary from four to six cases per month. The appropriate standard numbers of cases that should be completed should be analysed by the working group on the timestandards. This list is based on the policy in finalisation of 10 administrative cases per month under the Directive on Performance and Assessment.

2. The new standard should set the minimum number of tasks judges should be able to complete in each track.
3. The Chief Justice should take the implementation of such a policy seriously in the assessment of judicial work, with only very special considerations leading to exemption from meeting the standard at a particular time. This is because it is a minimum standard, so if judges cannot achieve it, a convincing case needs to be made to explain why.

The productive performance of judges can also be identified from this new standard. As can be seen in Table 6.2, if a judge can complete additional complex cases, that judge should be seen as more effective than a judge who can produce only as the standard provides. This new standard is useful for the Chief Justice to easily assess the judges' performance by considering numbers of finalised cases without the criticism of it being a purely quantitative orientation without awareness of the quality of the work. In addition, the indicators of complexity to be set by the working group will ensure that the levels of complexity are standardised. Such indicators are also adopted by the 'Classification Team' also to classify the complexity of cases before they are allocated to each division. Details of the Classification Team are be discussed later in 6.2.1.5 Alternative Dispute Resolution.

#### 6.2.1.4 Enforcing Judicial Accessibility

One of the strengths of the Administrative Court is that a case can be filed without court fees. Another is that it allows parties to be self-represented. In addition, it is Court policy to establish more Regional Administrative Courts in remote areas. Although these reduce parties' costs and increase accessibility, they increase expenditure in the Court by the need to employ more case officials and judges and the building or renting of court premises. An obvious example of increased cost to the Court is that self-represented parties may save themselves lawyers' fees but the Court has to employ more case officials to assist judges in dealing with unorganised evidence. In addition, these cases require more judicial time to supervise and monitor progress to ensure that all the evidence is related and adequate to clarify the facts.

In this example, not only is the Court's expenditure increased, delays may also occur. The self-represented party, again, may provide unorganised evidence that takes excessive time to collect and understand. As mentioned earlier, the active role of judges together with the effective functioning of case officials are important in reducing delays. In order to promote both accessibility and avoid delays, the judges and case officials have to perform their duties efficiently. The assessment of judicial and case official performance is necessary to ensure their efficient performance.

The crucial issue emerging from the assessment of judges' and case officials' performance is to identify proper indicators or standards for such assessment. In the case of judges, such a standard is proposed in the previous section, but the standard for the case officials is not being studied in this research. It would be useful to examine the standard of case officials' performance in the future.

#### 6.2.1.5 Alternative Dispute Resolution

Alternative (or assisted) dispute resolution (ADR) mechanisms are considered a means of resolving disputes outside the courtroom. ADR promotes earlier settlement of cases and reduces time and costs for both parties and the court. However the use of ADR in administrative disputes is not appropriate because the negotiation may affect public interests. New approaches are being developed to ADR which may change attitudes to questions of the appropriateness of its use in different cases. In future a view may be taken that case type is not such an important factor in identifying whether a case is suitable for ADR. Time and resources consumed may become more appropriate indicators to determine whether a case should be settled by ADR. This issue is not developed here because it is thought to be beyond the scope of the present research. It may be, however, that ADR will be regarded as suitable for use in administrative cases in the future.

Formally, the Thai Administrative Court does not provide any earlier settlement means to solve administrative cases. Nevertheless, this research project shows that informal means of dispute resolution, or the attempt to narrow or settle disputes, can be found at different stages in the court process. The most obvious practice of this kind occurs in the consultation room and is carried out by the case officials who are assigned to give



legal advice. Case officials talk to the parties and engage in some forms of unofficial ADR by reducing the conflicts that may be filed in the Court. The essential issue arising from this practice is how much legal advice can be provided to the parties?<sup>7</sup>

Another informal means that benefits early resolution of disputes is the process of inquiry into the facts in an inquiry room conducted by a case judge. This inquiry process is not mentioned in the interviews and questionnaires conducted in the Central Administrative Court as a technique in dispute resolution; however, it is formally prescribed in the *ACP Act* that judges may call the parties to give a statement about the related issues of their case. This process assists the judges in narrowing the issues. Sometimes it creates better understanding between the parties and they can resolve the case by agreement. As a case official, my experience is that some judges always conduct this process to gain suitable evidence and narrow the issues, but some judges avoid going too far in ADR because they may be seen as overstepping their judicial role. It should be noted that the Administrative Court's judges who do not have any statute to provide the power to conduct ADR might utilise it through the inquiry into fact in the Inquiry Room, while the Federal Court's judges who have power under the statute to conduct mediation are hesitant to use the power to conduct ADR.

There are some significant questions emerging from this discussion: to what extent should alternative dispute resolution techniques be used by judges, and why; and if such techniques are employed in the Court, what kind of ADR should be used and how should it be conducted? It should be noted that the following answers to these questions are simply suggestions arising from the interviews. Alternative dispute resolution in the Administrative Court is a controversial issue; therefore, policy on employing such methods needs to be critically considered by the executive judges.<sup>8</sup>

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<sup>7</sup> See details of legal advice of the Administrative Court in Chapter 4, 4.5.2.3 Alternative Dispute Resolution, p. 148.

<sup>8</sup> See the discussion of ADR of the Administrative Court in Chapter 4, 4.5.2.3 Alternative Dispute Resolution, p. 148.

## 1. The scope of ADR methods employed by case officials

Principally, case officials should not conduct ADR. However, they can provide legal advice in the Consultation room. They can, in practice, give such advice in relation to the Court's jurisdiction, the filing conditions, the proper styles and detail requirements of the plaint, and other legal issues related to the procedural laws of the Court. However, there is no formal direction providing how much information or advice the case officials can provide to the parties.

Nevertheless, the data from the questionnaires and interviews show that the case officials believe they do provide informal ADR. This is because they give legal advice to the parties and sometimes help to reduce the Court's caseload by resolving issues within the disputes that may not be administrative matters or that need to go through the process for the redress of grievance before filing to the Court. In addition, they sometimes give advice about the proper channel to resolve such a dispute. For example, a dispute is not one that can be filed in the Court, it may be suitable for resolution by the Ombudsmen, or other specialist courts and committees.

Although case officials now have appropriate performance levels, I suggest that a standardised guideline for case officials in the giving of advice should be formally issued to avoid confusion in their general practice.

## 2. The scope of ADR methods employed by judges

ADR cannot be conducted by the judges but they should not hesitate to inquire into the facts by issuing an order summoning the party or the person concerned to give statements if they think that issues in the case can be narrowed or some agreements or settlements might be reached in such a manner. While official ADR methods are not approved by the Court, if there is any technique that provides early settlement of cases without overstepping the judicial role, the Court should encourage judges to use it. I suggest that the Court develop a policy to settle early or to narrow the issues in complex cases by inquiring into the facts in the inquiry room. In this situation the Court should provide guidelines for standardised conduct to avoid criticism of its impartiality.

### 3. The possible type and operation of ADR methods in the Court

There is an interesting comment deriving from this study that the Court may establish a 'Settlement Division' under the service of the Office of the Administrative Court (OAC).<sup>9</sup> This institution would provide for resolution of disputes before lodging in the Court. I propose that such an institution should be established to resolve disputes before they are assigned to the Divisions. It could resolve matters before or after lodging in the Court. However if such matters are filed in Court, appropriate cases should be identified early by the 'Classification Team' (see detail in the next section), before the Chief Justice (or the Deputy Chief Justice who is responsible for case allocation) allocates them to the Divisions, and sent back to the OAC. The Office would have to ask for the consent of the opposing party to refer their cases to the Settlement Division. If the agreement can be reached there, it should bind the parties. However, failure to reach agreement in the Settlement Division should not affect the right to file the matter in Court again, and the processing of that administrative case should be suspended from the day the plaintiff agrees to transfer the case to the Settlement Division.

#### 6.2.1.6 Court Supervision of Case Progress

The Administrative Court's judges supervise case progress whereas the Chief Justice supervises the judges in the active control of case movement. Differentiated case management (DCM) techniques are commonly used to support the supervision of case progress in relation to the degree of attention required from judges. The results of this study show that in general judges differentiate cases in terms of type not complexity, and the comment is that different complexities of each case type should be matched to the different tracking levels of timestandards.

Proposals for the better supervision of case progress are:

1. Judges should use the DCM technique to differentially manage different complexities of cases.

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<sup>9</sup> Interview with Justice P, Case Judge, the Central Administrative Court (Face to face interview, 19 February 2004).

2. Judges should differentiate the complexities of each case type to be managed on three tracks (slow, normal and fast) with suitable timeframes.

### 2.1 Case Differentiation by 'the Classification Team'

The Court should set up a Classification Team to be responsible for identifying the complexities of the administrative cases. After initiation, and before cases are allocated to the specialised divisions, the Classification Team should classify them into three levels of complexity according to the three different timestandards and propose them to the Chief Justice for allocating to the divisions. The indicators of case complexity should include size, amount in dispute, issues of fact and law and case participants. The details such as defining case size, degrees of complexity of fact and law, and number of case participants, need to be considered later by the executive judges and the working group. The Classification Team would also identify appropriate cases for consideration in the 'Settlement Division'.

### 2.2 Classification of tracks

The administrative cases are classified into eight different case types in 17 specialised divisions (see Chapter 4, footnote 60). Each case type is then further categorised into one of the three levels of complexity. As illustrated in Diagram 6.1, the normal track should be employed for the typical cases that need a normal timestandard. The fast track should be employed for uncomplicated cases that require the simplest judicial control and the slow track should be employed for complex matters that need comprehensive judicial intervention.

#### 6.2.1.7 Monitoring and Information System via the Use of CTS (ACSP)

To monitor and measure performance of all standards and goals, an automated case management information system, particularly a case tracking system (CTS), was introduced and is employed as a tool in performing court management. The Administrative Court now employs both the original Administrative Case Administration System (ACAS) and the new Administrative Case System Programme (ACSP). The original functions of the ACAS were to trace critical events, produce

reports and collect case histories. This means that it mainly operates as a case tracking tool for the Administrative Court's judges to monitor and trace their cases. However, the ACSP is expected to function better, not only as a case tracking system, but also as an automated case management information system with four tracking modules: case, person, time, and fee/fine.

The crucial issue emerging from the performance of the new ACSP is the need for a person module that can track not only parties but judges, case officials and other court staff who have participated in all events of the case progress. The ACSP answers the needs of the Chief Justice and the President to examine the performance of judges and it identifies bottlenecks in case progress.

Although the ACSP is a sophisticated system improving on the deficiencies of the original system, it is a novel, complicated programme. If the proposed new timestandards are adopted in the Court, it would be even more necessary to modify the ACSP. The Administrative Court launched the new system only in March 2004 so it may yet need to be refined.

The proposal for an 'ACSP Improvement Plan' that follows includes the process and crucial matters of assessment of the programme. It seeks to refine the functioning of the ACSP after a period of operation and to make it suitable to the new timestandards of the Court.

Step 1: Appoint a Working Group on the Project on the Assessment of the ACSP.

Step 2: Assess the current problems and obstacles in the operation of the ACSP:

- a) conduct an ACSP review with the system's users: judges, case officials and other related officers
- b) analyse the results from the ACSP review.

Step 3: Define the issues for improvement:

- a) list the issues from the analysis of the results in Step 2

- b) adjust the system to match the timestandards (as proposed in Diagram 6.1)

Step 4: Give the report on improvement of the ACSP to PPC & Smart Office Ltd., the private contractor developing the ACSP, for adjustment of the programme.

Step 5: Examine the improved programme from PPC & Smart Office Ltd. and implement the improved programme.

Step 6: Prepare the next project to refine the programme.

Following this research project, I propose some functions that should be evaluated to determine the efficiency of the new system. They are: (1) a security system, (2) a barcode system, (3) a central database, (4) a relational database, (5) a tickler-reminder system, (6) a case movement record sheet, (7) a data inputting function, and (8) others (functioning in tracking event history, producing multi-faceted reports and collecting and retrieving case history). Apart from the issues deriving from Stage 3, these advanced functions of the new system should be assessed in the Project on the Assessment of the ACSP.

## **6.2.2 Issues on the Implementation of the Objectives of the Administrative Court's CFM**

Conclusions on the general shortcomings in the achievement of the objectives of Court's case flow management and case tracking systems are made and recommendations are as follows.

### **6.2.2.1 Case Flow Management**

The shortcomings of the six key factors undermine the achievement of the case flow management's objectives of the Court. There are parties, nature of case, judges, CFM system, policy and case officials. The results of this research project indicate some causes of such shortcomings. Accordingly, I suggest some measures and techniques to deal with the problems and improve the overall case flow management system.

## *1. Parties*

### *Lack of Knowledge*

Because the Administrative Court is a new court system and the public are not familiar with its procedures, there are problems of knowledge for parties in participating in administrative case proceedings. For example, the plaintiffs may not provide enough information in the plaint or the opposed parties may not deliver suitable evidence clarifying the facts of their cases. These omissions can cause undue waste of judicial time in inquiring into the facts and delays may occur in administrative case proceedings. In addition, such omissions make it difficult for the court to ensure the timing of events is timely, appropriate and predictable, because the judges do not know what evidence parties will furnish and how many orders they may have to issue to attain enough facts to clarify the cases. The parties' lack of knowledge also undermines the objective of keeping case progress accessible, because they do not realise their right to examine their cases.

### *Lack of Cooperation*

Parties may not cooperate with the Court for two main reasons. Firstly, they do not realise their cooperation is important to speedy and fair resolution. Secondly, defendants (mostly government officials or agencies) are afraid of having their decisions examined by the Court. These concerns originate from a lack of understanding or knowledge of the Court's procedures.

### *Recommendations*

#### *a) Providing Education*

The Court should provide education to the public and to all Court officers. Actually, the Administrative Court develops and carries out a policy on dissemination of the understanding of the Court to the public. The principal contents in the education programme are: What is the Administrative Court, how does it operate, the types of

disputes that can be filed, how government officials should perform their duties to avoid being reprimanded by the Court, and how they should prepare themselves to respond. The Court these days uses pamphlets, seminars, media releases (newspaper, radio and television) and internet displays to disseminate knowledge about the Court and its functioning. I believe these measures are very beneficial to give a better understanding of the Court. However, all these activities need to be continuous. In addition, an informal education programme should be encouraged. The cheapest, most informal and most effective way to educate the public would be carried out by the Court's officers (both judicial and non-judicial). The Court should pay attention to developing officers' basic knowledge and the policy should be embedded in their everyday work. The cooperation of these officers is very important to the success of the policy.

*b) Encouraging Parties' Accountability*

Judges should ensure the parties' accountability by supervising and monitoring case progress. In doing so, judges should inform the parties at an early stage how cooperation helps provide swift and fair justice and what may result from lack of cooperation.

*2. Nature of the Case (case complexity)*

Unlike normal and uncomplicated cases, a complex case always requires additional time and attention by judges and case officials to reach solution. Because the Court has a single model of timeframes applying to all case complexities, a complex case is seen as a cause of delay in the Administrative Court's proceedings and is regarded as obstructing the achievement of objectives in making the timing of events more timely, appropriate and predictable.



## *Recommendation*

### *To Employ Different Timestandards for Different Case Complexities*

Cases differing in complexity need different degrees of judicial involvement and different . If the judges differentiate how cases are to be managed<sup>10</sup> and employ suitable<sup>11</sup> the complexity of a case will not be seen as causing delay. However, if the a complex case is not finalised by the maximum day of the slow track (184 days), the judge in charge of that case must be able give a reasonable explanation of the difficulties causing the undue delay. The use of DCM and the suggested timestandards can overcome this obstacle to the achievement of the Court's objectives.

### *3. Judges*

#### *Judges' Skill*

One of the shortcomings in the achievement of the objectives originates from lack of judges' skills in some specialised cases. This is not because the judges of the Administrative Court lack knowledge but because the administrative cases are of many types with many different laws and regulations applying. If judges are assigned to unfamiliar case types or to a type of case not related to their expertise, they may need additional time to understand the special characteristics of fact and law of the case. The actual problem with this issue is the incomplete case allocation system. The Administrative Court's case judges are classified by their expertise into eight specialised areas and seventeen specialised divisions. The judges do not nominate themselves for their expertise; the executive judges assess their specialisation according to their experience before appointing a judge. Furthermore, there are case overloads in some case types more than others and this requires more judges to deal with high volumes of those types. Thus, some judges are assigned to divisions in which they have

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<sup>10</sup> As suggested with the use of DCM earlier in the Proposals for the better supervision of case progress, p. 250.

<sup>11</sup> Timestandards for Case Flow Management are proposed earlier in Diagram 6.1, p. 240.

no (or less) expertise. This situation also occurs in the appointment of the conclusive judges. They are appointed into different specialisations, and sometimes they have to give statements to cases in which they have no experience.

## Recommendations

### a) Refining the Case Allocation System

In general, the existing allocation system functions acceptably and the process of allocating cases is fair and systematic in terms of caseload. However, there are some concerns about the fairness of the allocation of different case complexities. Such criticism can be overcome using differentiated case management.<sup>12</sup> The adoption of this technique will promote better case allocation providing fairness not only in caseloads but also in the allocation of case complexity.

### b) Nominating System

The Court should allow judges to nominate themselves according to their expertise. The nomination form should allow judges to request allocation to core types within their expertise or special interest. This will ensure up-to-date information of judges' specialisations to provide the best fit to each division. The forms should be used before allocating judges to a division. The executive judges should use information in the nomination forms to appoint specialist judges to specialist divisions.

### c) Peer Group Education System

The nominated form should also ask the questions about what case types the judges have no experience or skill in but are interested in for training before the next reallocation. The Administrative Court reallocates judges into different or new divisions periodically, mostly when new judges are appointed to the Court or when a new Regional Court is established. I propose that the Court reallocates judges more regularly

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<sup>12</sup> See the suggestion for the use of DCM in the Proposals for the better supervision of case progress, p. 253.

and not only for these two specific purposes but also for the purpose of more general judicial education. The regularity of judge allocation to different specialised divisions, based on their interests expressed in the nomination form, would have the benefit of expanding judges' knowledge into new areas of expertise. The practical education provided by allocating judges to a new division, in which there are experienced judges to provide support, should be established in the Court. Such a peer group educating system will increase judges' skills in diverse areas. Consequently the problem of judges' skills can be alleviated. This measure also provides more challenge in the judicial work environment and is advantageous to overall court performance.

### *Judicial Commitment*

Lack of judicial commitment in speedy finalisation of cases is another issue raised in this study. There is doubt about the commitment and devotion of some judges in the active supervising and monitoring of their cases. Not surprisingly, the Court enforces its clearance of backlogs and delay reduction policy and develops new tracking systems to identify bottlenecks of case progress.

### *Recommendations*

#### a) Enforcing the Suggested Timestandards

The suggested timestandards set the appropriate timelines and timeframes for all case complexities. The maximum time for all critical events is clearly pointed out and judges must comply with the deadlines. These standards ensure commitment of judges to speedily settle their cases.

#### b) Increasing Public Accountability

Exposing the Court and judges' performance to public assessment is another technique to encourage judicial commitment. Currently, the Court provides many channels for public examination, for instance, the Court publicises its judgments and orders in both hard copy and on the internet, in all cases of interest to the public, and the Court always conducts hearings in open court. Nevertheless, if the public are not interested in the

Court's functioning, the open court strategy and the dissemination of judgments and orders cannot encourage judicial commitment. For this reason, the Court should promote public accountability through public education. Informing the public about how much the Court's decisions affect the public interest and government performance, and about how significantly administrative disputes relate to ordinary people's lives as well as more public participation may be encouraged.<sup>13</sup>

### *Standardisation in the Implementation of Judges' Managerial Role*

Judges have different styles in their managerial roles in different divisions. Although the Administrative Court's procedure is laid down in the *ACP Act* and the Rule on Administrative Court Procedure, actual methods of the procedures are not provided.

### *Recommendations*

All divisions should have a standard speed for the same case complexities based on the timestandards proposed in Diagram 6.1. This uniformity will promote achievement of the objective of standardising the implementation of case flow management in the Court.

### *Writing Style*

Judges have different styles in writing judgments, memoranda, orders and statements. Although the *ACP Act* and the Rule on Administrative Court Procedure list some requirements for the information that must be included in each judicial document, judges may present that information as they think fit. As a result, some judges have an awkward style in their presentations and take excessive time to complete them.

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<sup>13</sup> See the technique in educating the public in 'Providing Education', p. 257.

### *Recommendations*

The Office of the Administrative Court should form a research group to examine the written styles of judgments, memoranda, orders, and statements in all case types and propose a neat and inclusive style for each case type or a general style to the executive judges. This guideline or model should be encouraged for standardisation of judges' writing style and to avoid excessive writing time.

#### *4. Case Flow Management System*

##### *Large Individual Caseloads for Each Judge*

A lack of balance between the numbers of cases and judges in the Administrative Court is an obstacle to the achievement of many objectives. This creates backlog and delays because judges cannot consider all their cases at the same time. It also deprives judges of time to monitor and trace their own cases.

### *Recommendations*

#### *a) Using the DCM*

As previously suggested, the DCM technique should be established in the Court. Judges will then know which cases need more or less intervention and will have spare time to perform their managerial role in the supervision of all cases.

#### *b) Increasing the number of case officials per judge*

The Court's practice is to increase the numbers of both case officials and judges where a shortage occurs. My proposal is that Court has a choice to increase the numbers of either case officials or judges; I propose that the Court case official numbers per judge should be increased because it is much cheaper and easier to add their staff than to increase the numbers of judicial officers. If it is necessary to have more judges dealing with the high volume of cases, of course the Court should not reluctant to recruit them.

c) Providing more efficiency in supporting systems

Currently the Court and the OAC implement the new CTS and other IT systems to support the judges' and other court officers' work. My recommendation is that the Court and the OAC should continue to improve, assess and refine the functioning of these systems with a formal and practical plan.

*Censor Division*

The Censor Division is functioning as a double checking unit for drafts of judgments or statements to ensure high standards in the Administrative Court's work. However, this study indicates that this unit also causes delays in administrative case proceedings because, generally, it corrects only the writing style or wording rather than issues of fact and law, and its operation is oriented to being a proof reading unit. It is a bottleneck in the system because many judgments and statements wait for completion of this process before being delivered.

*Recommendations*

The unit is important to maintain the quality of judgments and statements. Nevertheless, the correction of writing styles should not be done here. As recommended earlier, the Court should provide suggested models or styles in writing for such important judicial work. Instead, the Court should lay down guidelines for the clear operation of this unit and it should not continue to operate as a proof reading unit.

*Postal Communication*

The Court's proceedings allow the parties to submit all documents and evidence by post. The mailing system increases accessibility, but lack of knowledge of the parties reduces the benefits of the system by permitting incomplete evidence to be filed. The slowness of the mail also causes delays and unpredictable timing of events.

### *Recommendation*

Again, education can reduce this problem. In addition, judicial accountability to closely supervise and monitor case progress will help to identify and resolve obstacles more quickly.

### *Unreliable Original CTS and Unpredictable New CTS*

The Court is developing an automated case information system (ACSP) to improve the capacity of the original system (ACAS). The new system is expected to be a better tool for judges to monitor their cases. The objectives of the Court in using both tracking systems are not being achieved due to an unreliable original system and an unpredictable new system.

### *Recommendations*

- a) Assess and refine the new system (as proposed in the ACSP Implementation Plan).
- b) Enhance the knowledge of the Court's IT officers (to maintain the new system and to identify operating problems for correction by the contractor).

### *Incomplete Clerical System*

While this research was in progress, the clerical work system had some deficiencies such as the means of collecting and maintaining case files, shortage of typists and an incomplete legal database.

### *Recommendations*

The Court, at present, has policies to improve the system for collecting and maintaining case files and completing the legal database as well as other IT systems supporting judicial work. The Court is also recruiting more typists to serve all divisions and other supporting units. For these reasons, my recommendation is that the plan on assessment

and refinement of the ACAS should have two main parts: case tracking system and a clerical management system. The Court should assess and refine the tracking and management systems together in accordance with my proposal provided earlier in the ACSP Improvement Plan.<sup>14</sup>

## *5. Policy*

The Court has many policies related to the improvement of case management and court management. However, there are some urgent policies that are being widely discussed and directly affect the judges' managerial roles. These are the policies on finalisation of cases initiated in 2001 and on standard numbers of settled cases per judge. They are alleged to be obstacles to the achievement of the objective of reducing delays in administrative case proceedings. It should be noted that these policies are parts of the Court's principles of backlog reduction and speeding up cases to be finalised in the Directive on Performance and Assessment.

## *Recommendations*

(See the recommendations on backlog reduction and speeding up policy in 6.2.1.2, p. 245 and Table 6.2 Suggested Standards for Judicial Outputs per Month, p. 248).

## *6. Case Officials*

The lack of expertise of some core officials in some specific laws or regulations also causes delays.

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<sup>14</sup> See the ACSP Improvement Plan in 6.2.1.7, Monitoring and Information System via the Use of CTS (ACSP), p. 254.



## *Recommendations*

### *Providing Seminars or Training Programmes*

The Court has a policy of increasing the legal knowledge of the case officials, This policy was widely implemented in the opening year of the Court. However, now the seminars or training programmes are organised only occasionally. Because of the huge increase in the number of case officials and administrative cases, training courses are hard to organise.

My proposal is that seminars or training programmes should be continuing; however, the OAC should conduct questionnaires on administrative cases' issues to assess the interest of the case officials. The Court should then run training programmes to be attended by representatives of each division. A peer group educating system would then be employed by these representatives. They would give all information deriving from the seminars to their co-workers in each division. I suggest that a test or examinations of their understanding of each legal course may be required to limit the number of attendants. These programmes could also be used for groups of specialised case officials. In these ways, the education programme would provide a group of specialists in administrative law amongst the case officials.

#### 6.2.2.2 Case Tracking System (CTS)

Although the original system had some deficiencies, its objectives were generally achieved. The development of the new system is to improve any deficiencies. The strengths of the new CTS are considered across four modules. The person related module includes not only parties, but also judges and court officers who are responsible for each case event. All related court officers have to input their name and their activities into each related case event. This ensures a credible inputting data entry process into the ACSP ensuring reliable and updated data on a case's progress. The time module includes the new reminder-triggering system essential in assisting judges in managing time more efficiently. It can also be used to remind the Chief Justices to examine the delays based on the timeframes. The case module would be enhanced by

producing better multifaceted statistical reports. It is important for judges to plan their managerial work and for Chief Justices to compose case and court management policies. The financial module is related to the person module by making it easier to trace the payment of court fees.

### *Recommendations*

The new CTS seems to solve all the problems of the original one. However, it is a new system and has only been implemented for one year. Its functioning needs to be assessed and refined in the six steps I proposed in the ACSP Improvement Plan above.<sup>15</sup>

## **6.2.3 The Administrative Court in the Future**

The assessment and improvement of the case tracking system of the Court has been discussed above.<sup>16</sup> The overall assessment of the Court's performance and case flow management programme should be carried out to ensure high standards of performance in the Court. In this section, I propose guidelines for the assessment and improvement of court performance and case flow management.

### **6.2.3.1 The Administrative Court Performance Measurement Scheme**

According to the examination of the Trial Court Performance Standard conducted by Pamela Casey, the Administrative Court Performance Measurement should be as proposed in Table 6.3 below.<sup>17</sup>

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<sup>15</sup> See the ACSP Improvement Plan in 6.2.1.7 Monitoring and Information System via the Use of CTS (ACSP), p. 254.

<sup>16</sup> See 6.2.2.2, Case Tracking System (CTS), p. 267.

<sup>17</sup> Pamela Casey, *Defining Optimal Court Performance: The Trial Court Performance Standards* (1998) <[http://www.ncsconline.org/WC/Publications/Res\\_TCPS\\_DefiningOptCrtPerfTCPSPub.pdf](http://www.ncsconline.org/WC/Publications/Res_TCPS_DefiningOptCrtPerfTCPSPub.pdf)> at 15 October 2003.

Table 6.3: Administrative Court Performance Measurement Scheme

This Court Performance Measurement Scheme is based on a community standpoint. These standards define court performance not judicial performance. They are not standards for gauging the performance of individual judges, rather they measure the Court as an organisation. Besides this, the provision of standards is useful to enhance internal assessment rather than to compare performance against that of other courts. These standards should be adopted by the Court as its policies for assessment and presentation to the public.

#### 6.2.3.2 The Administrative Court Case Flow Management Improvement Project

The proposal on the Court's Case Flow Management Improvement Project is based on the study of the improvement in the US and is adjusted for implementation in the Administrative Court. There are fifteen steps in the operation of such a project.

Step 1: Appoint the working group on the project (consisting of key persons participating in administrative case proceedings, both internal and external).

Step 2: Design a strategic plan.

Step 3: Assess the current situation and the success of the Court by reviewing its case flow management (particularly the pending list).

Step 4: Suggest possible alternative schemes (based on the objectives of the Court's case flow management and its practical implementation).

Step 5: Choose the best scheme for implementation.

Step 6: Design the details of that scheme.

Step 7: Publish the Administrative Court Case Flow Management Improvement Project.

Step 8: Prepare an evaluating programme.

Step 9: Implement the project by dealing with backlogs in the pending list.

Step 10: Manage new cases in light of the project plan.

Step 11: Supervise the implementation and render an intermediate assessment.

Step 12: Overcome resistance to change.

Step 13: Evaluate its operation and refine the project.

Step 14: Suggest improvements in its implementation.

Step 15: Build on success and make further improvements.

This suggested project will benefit the assessment and improvement of the present case flow management system. The model is developed from the results of this research project and may require some adjustment to fit into the current situation when carried out.

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## **APPENDICES**

## **APPENDIX A: Interview Questions**

### **Federal Court: The Proposed Guide for Interview Questions about the CFM and the CTS**

1. What are the objectives of CFM and CTS of the Federal Court? How do they work? And do they efficiently help/promote the Federal Court's performance?
2. What are the measures taken to achieve the objectives of the Federal Court?
3. Can the CFM and CTS of the Federal Court reach their objectives?
4. How can the CFM and CTS help the Federal Court attain the Court's objectives?
5. About CFM, what is the old system before using the IDS? Why was the old system replaced?
6. What is the strength and weakness of the IDS?
7. About CTS, why is FEDCAMS being replaced by CASETRACK? Who made the decision to replace FEDCAMS? And was the decision made based on any research? (Formal or informal method.)
8. Are the objectives of the FEDCAMS and CASETRACK different?
9. How is CASETRACK beneficial to the Federal Court, especially to the IDS?
10. What are your projected efficiencies and deficiencies in implementing CASETRACK?
11. When will the Federal Court plan to implement and assess the Casetrack?

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#### **Note**

Could you recommend to me some IT people to interview who know about the FEDCAMS and CASETRACK systems of the Federal Court?

Could you find or recommend some written documents about the CFM and CTS of the Federal Court to me?

## **Federal Court: The Proposed Guide for Interview Questions about the CTS**

1. Could you tell me about general functions of CASETRACK of the Federal Court?
2. Why is FEDCAMs to be replaced by CASETRACK?
3. What are the similarities and differences between CASETRACK and FEDCAMs?
4. What are the similarities and differences between CASETRACK of the Family Court and the Federal Court? Who has a responsibility for adapting CASETRACK of the Family Court to CASETRACK of the Federal Court? And why was it adapted?
5. To make CASETRACK user-friendly, which data were to be captured? How were data used? (To make sure that CASETRACK is not tracking too much detail but still covers all needed information.)
6. Do you have a security system for using CASETRACK? How can you decide who can or cannot access data? And who have responsibilities to input the data?
7. What are the projected efficiencies and deficiencies in implementing CASETRACK?

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### **Note**

Do you have some written documents about the benefits of using a case tracking system in courts, in general?



## **Central Administrative Court: The Standard Interview Schedules of executive judges**

### 1) Personal Details

- a) Name.....
- b) Gender.....
- c) Age.....
- d) Position.....
- e) Special Panel.....
- f) Years (on the Central Administrative Court Bench).....
- g) Would you briefly describe what you did before your appointment to the Central Administrative Court Bench?

### 2) The Case Flow Management (CFM)

- a) Do you know who designs the CFM?
- b) Do you know why the CFM has been developed?
- c) What do you see as the objectives of the CFM?
- d) Do you think the system is achieving the objectives?
- e) What are your expectations from the system?
- f) How can your expectation be reached?
- g) In any degree can the system affect the Administrative Courts' performance?

3) General case management practices

- a) On what principles, laws and/or regulations are case management practices based?
- b) Are you independent in managing your cases? If so, could you give me some examples?
- c) Are there standard orders that the Court and/or you consider at a specific stage of a case?
- d) Could you briefly clarify how you manage your cases in your docket?
- e) How different are you in managing each case in your docket?
- f) On what factors are you reckoning in differentiation of cases?
- g) Do you have your own system in managing cases? If so, how it is different to the CFM of the Court?
- h) How closely do your practices correlate with the CFM?
- i) Do you monitor the general progress of cases on your docket? If so, how do you go about doing this?
- j) What is your policy on actively encouraging litigants to settle?
- k) Do you think that judges differ in their policy? If so, do you think this creates any problems?
- l) Do you encourage litigants to settle via Alternative Dispute Resolution (ADR)?
- m) Has the system affected whether or when you decide to refer a case to ADR? If so, how?

#### 4) Timeframes

- a) On what principles, laws, and/or regulations are the timelines for administrative cases based?
- b) Who made a decision in creating the timeline?
- c) What were the factors reckoning in such a decision?
- d) How is the flexibility of the timeline in practice?
- e) Is the timeline in administrative cases designed properly? (in a practical way)
- f) From your experience, are there any factors which make it impossible to comply with the timeframe?
- g) How is the timetable for a case decided? (That is, is it between you and the parties or their lawyers?)
- h) Do you work to any overall timeframe?
- i) In case of a party applying for an urgent interlocutory application, would you briefly describe what you did, or what you would do if such a situation arose?
- j) Is there a standard of the Court's practice in such matter?
- k) Have you experienced some cases which have very short or long case life? Why could those cases be finalised in short or long period of time?

#### 5) Case Allocation

- a) On what principles, laws and/or regulations is case allocation based?

- b) How well do you think that the method of allocating cases to judges is working? (In terms of equitable distribution of cases and diversity of case load.)
- c) Do you see any problems with this system?
- d) What would you do if your docket became extremely overloaded? (Is there a process for redistributing work if necessary?)

6) Court Relations

- a) Does the Court have any measure to bring the judiciary closer, in both judicial duties and personal relationships?
- b) Are you aware of how other judges go about managing their docket?
- c) Do you think there is any significant difference between divisions? If so, do you think this would affect users of the Court in any way? (For example, would regular users of the court notice the differences between chambers?)
- d) Thinking of some of the differences you are aware of, are some ways of doing things better than others? Please give examples.
- e) Why do you prefer your style in doing things?
- f) How much do you know generally about what your colleagues are doing?
- g) What role does the Office of the Administrative Courts (OAC) or its staff play in the management of your docket?
- h) Can you comment on the communication between judges in the Court both in the same and in the different divisions, and the relationship between divisions and the OAC?

7) Technological Support and Monitoring of Court's Performance and the Case Tracking System (CTS)

### 7.1) Technological Support and Monitoring of Court's Performance

- a) What information do you, or your staff, maintain in relation to matters on your docket, and how do you maintain this information? (That is, do you have any other administrative systems besides the court file kept in the OAC and its CTS.)
- b) Do you, or your staff, use any type of information technology system in your divisions to help you manage cases?
- c) Do you receive or prepare any statistical summaries or other reports relating to the general state of your docket (as distinct from a particular case)? If so, do you use these reports? How?
- d) How can the Court link the IT system to the Supreme Administrative Court?

### 7.2) Case Tracking System (CTS)

- a) What is the CTS of the Court?
- b) How does the CTS of the Central Administrative Court link to the Supreme Administrative Court?
- c) What do you see as the objectives of the CTS?
- d) Do you think the system can achieve the objectives?
- e) Can you specify the relationship between the CTS and the CFM?
- f) Do you know why the CTS have been developed?
- g) Do you know on which indicators the efficiency of the system is evaluated?
- h) Could you explain to me the similarities and differences between the existing CTS and the new system?
- i) Would you give me a reason why the CTS is being adjusted?

- j) Do you know the process in adjusting and designing the CTS?
- k) What information do you, or your staff, employ via the CTS?
- l) Have you experienced any obstacle in employing the existing CTS? Please explain.
- m) Do you think, and to what degree, the CTS can help you in managing your docket? How? Please explain. What are your expectations in employing the CTS?
- n) How can your expectations be reached?

8) The Parties: Plaintiffs, Defendant, and their Representatives

- a) How do you think that parties have generally responded to the CFM?
- b) Do you think that the CFM has any effect on the way parties approach the litigation process?

**Central Administrative Court: The Standard Interview Schedules of  
the High-Ranking Officials (an executive  
panel) of the Office of the  
Administrative Courts (OAC)**

1) Personal Details

- a) Name.....
- b) Gender.....
- c) Age.....
- d) Position.....
- e) Would you briefly describe your work experience before your current position?

2) The Case Flow Management (CFM)

- a) What do you know about the CFM?
- b) What were your responsibilities while the CFM was being developed?
- c) What do you see as the objectives of the CFM?
- d) Do you think the system is achieving the objectives?
- e) What are your expectations from the system?
- f) How can your expectation be reached?
- g) In any degree can the system affect the Administrative Courts' performance?

### 3) General Case Management Practices

- a) What do you see as the role of the Court in managing a case?
- b) Could you briefly clarify how the OAC or its staff helps the judges in managing their cases?
- c) Do you think that judges differ in their policy? If so, do you think this creates any problems?
- d) Does the OAC actively monitor judges' dockets? If so, how?
- e) Does the OAC monitor the progress of individual cases? If so, how?
- f) Does the OAC communicate directly with parties? If so, under what circumstances and for what purpose? Who usually initiates such communication?
- g) Does the OAC or its staff encourage litigants to settle via Alternative Dispute Resolution (ADR)?
- h) Has the system affected whether or when you decide to refer a case to ADR? If so, how?

### 4) Timeframes

- a) On what principles, laws, and/or regulations are the timelines for administrative cases based?
- b) Do you know who made a decision in creating the timeline?
- c) Do you know what the factors are in such decision?
- d) How is the timetable for a case decided? (That is, is it between you and the parties or their lawyers.)



5) Case Allocation

- a) On what principles, laws and/or regulations is case allocation based?
- b) How well do you think that the method of allocating cases to judges is working?  
(In terms of equitable distribution of cases and diversity of case load.)
- c) Do you see any problems with this system?
- d) Is there any method of redistribution of cases between judges if this becomes necessary? (For example, if a judge's docket becomes overloaded.)

6) The Court and the OAC Relations

- a) Do the Court and the OAC have any measure to bring those officers closer in both work and personal relationship?
- b) Can you comment on the communication between judges and the relationship between judges and the OAC officers?

7) Technological Support and Monitoring of Court's Performance and the Case Tracking System (CTS)

7.1) Technological Support and Monitoring of Court's Performance

- a) What systems has the OAC developed in order to support the Court's performance?
- b) How many types of information technology systems do the OAC and its staff have to support the judges in managing their cases?
- c) Do the OAC prepare any statistical summaries or other reports relating to the general state of judges' dockets?
- d) Do you know how the Court links the IT system to the Supreme Administrative Court? And what is the responsibility of the OAC in doing so?

## 7.2) Case Tracking System (CTS)

- a) What is the CTS of the Court?
- b) How does the CTS of the Central Administrative Court link to the Supreme Administrative Court?
- c) What do you see as the objectives of the CTS?
- d) Do you think the system can achieve the objectives?
- e) Can you specify the relationship between the CFM and the CTS?
- f) Do you know why the CTS has been developed?
- g) Do you know on which indicators the efficiency of the system is evaluated?
- h) Could you explain to me the similarities and differences between the existing CTS and the new system?
- i) Would you give me a reason why the CTS is being adjusted?
- j) Do you know the process in adjusting and designing the CTS?
- k) What information does the OAC staff obtain via the CTS?
- l) Have you heard or experienced any obstacle in employing the existing CTS? Please explain.
- m) What are your expectations in employing the CTS?
- n) How can your expectations be reached?

## 8) The Parties: Plaintiffs, Defendant, and their Representatives

- a) How do you think that parties have generally responded to the CFM and the CTS?
- b) Do you think that both systems have any effect on the way parties approach the litigation process?

## APPENDIX B: Questionnaires

### Central Administrative Court: Non-Executive Judge Questionnaire

#### 1. Personal Details

1. Gender.....
2. Age     ☐ under 45                      ☐ 46-55                      ☐ over 55
3. Division.....Specialisation.....
4. Years (on the Central Administrative Court Bench).....
5. What was your occupation before your appointment to the Administrative Court bench?
  - ☐ A government official                      Position.....
  - ☐ Retirement from a government official                      Position.....
  - ☐ Others .....

**In these questions, you can choose more than 1 answer.**

#### 2. The Case Flow Management (CFM)

(Case flow management is the supervised process of time and events in order to move cases from filing to disposition, regardless of the type of disposition.)

##### 2.1 In your opinion, what are the objectives of the CFM of the Court?

- ☐ equal treatment of all litigants
- ☐ reducing delay in administrative case proceedings
- ☐ reducing cost in administrative case proceedings
- ☐ making the timing of events more predictable
- ☐ making the timing of events more timely
- ☐ enhancing of the quality of the litigation process
- ☐ laying down a standard of a lawful act acted by administrative agencies or state officials
- ☐ protection of the people's rights





#### 4. Timeframes

- 4.1 The timeframe is flexible in practice.
- 4.2 The timeframe in administrative cases  
has been designed with a realistic standard.
- 4.3 From your experience, there are some factors  
causing difficulties to comply with the timeframe.
- 4.4 You decide the timetable for a case.
- 4.5 You work to an overall timeframe.
- 4.6 There is a standard of the Court's practice in  
an urgent application.
- 4.7 You have experienced some cases which have very  
short or long case life

1	2	3	4	5

#### 5. Case Allocation

- 5.1 The method of allocating cases to judges is working very well.  
(In terms of equitable distribution of case and diversity of case load.)
- 5.2 You can see some problems with this system.
- 5.3 There is a process for redistributing work if necessary.

1	2	3	4	5

#### 6. Court Relations

- 6.1 The Court has measures to bring judges closer in both  
judicial duties and personal relationships.
- 6.2 You are aware of how other judges go about managing their docket.
- 6.3 There are some significant differences between  
divisions (e.g. the difference in ordering a notice).

1	2	3	4	5

## 7. Technological Support and Monitoring of Court's Performance and the Case Tracking System (CTS)

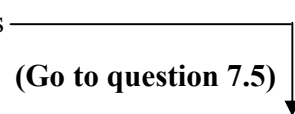
### Technological Support and Monitoring of Court's Performance

7.1 You use some types of information technology system in your division to help you manage cases.

7.2 You receive or prepare any statistical summaries or other reports relating to the general state of your docket.

7.3 The Court efficiently links the CTS to the Supreme Administrative Court.

7.4 Apart from the Court's CTS, do you employ any other administrative system to manage your case?

☐ Yes  ☐ No (Go to section 7.2)  
(Go to question 7.5)

7.5 You employ other administrative systems because the CTS is not able to provide enough information to manage cases.

1	2	3	4	5

**In these questions, you can choose more than 1 answer.**

### Case Tracking System (CTS)

7.6 In your opinion, what are the objectives of the CTS of the Court?

- ☐ tracking events of cases
- ☐ tracking time of cases
- ☐ tracking parties of cases
- ☐ expediting cases to be finalised
- ☐ tracking a court fee
- ☐ enhancing the efficiency of CFM
- ☐ others.....

7.7 According to the answer in question (7.6) do you think the system is achieving all objectives?

☐ Yes

☐ No



If no, which objectives have not been achieved and why?

.....

.....

.....

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.....

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7.8 What type of data do you obtain via the CTS?

- ☐ person-related data (defendants, parties, authorised person)
- ☐ time-related data (court calendars and reminders)
- ☐ case data (history and records)
- ☐ financial data (fee and fines)

7.9 Have you experienced any obstacle in employing the existing CTS? Please explain.

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7.10 What improvement of the CTS do you need to see so as to help you improve your work?

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**In these questions, PLEASE RATE how strongly you agree or disagree with the following statements**

1 = strongly disagree  
4 = agree

2 = disagree  
5 = strongly agree

3 = Don't know

**8. The Parties: Plaintiffs, Defendant, and their Representatives**

8.1 You think that parties have general understanding  
in the Court CFM.

8.2 You think that the CFM has some effects on the way  
parties approach the litigation process. If so, how?

1	2	3	4	5

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## Central Administrative Court: Case Official Questionnaire

### (The Office of the Administrative Courts)

#### 1. Personal Details

- 1.1 Gender ☐ female ☐ male
- 1.2 Age ☐ under 25 ☐ 25-34 ☐ 35-44 ☐ 45-54 ☐ over 55
- 1.3 Position ☐ Case Officials assisting judges in charge of the case  
☐ Case Officials assisting judges who make a conclusion
- 1.4 What is your responsibility assigned by the judge and the Secretary General  
 .....
- 1.5 What is your work experience/career before your current position?  
 .....

**In these questions, you can choose more than 1 answer.**

#### 2. The Case Flow Management (CFM)

(Case flow management is the supervised process of time and event in order to move cases from filing to disposition, regardless of the type of disposition.)

- 2.1 In your opinion, what are the objectives of the CFM of the Court?
- ☐ equal treatment of all litigants
  - ☐ reducing delay in administrative case proceedings
  - ☐ reducing cost in administrative case proceedings
  - ☐ making the timing of events more predictable
  - ☐ making the timing of events more timely
  - ☐ enhancing of the quality of the litigation process
  - ☐ laying down a standard of an lawful act acted by administrative agencies or state officials
  - ☐ protection the people's rights
  - ☐ promoting public confidence
  - ☐ performing earlier settlements
  - ☐ encouraging solicitor/party accountability
  - ☐ court monitoring: using case tracking system





[illegible]

## 6. Technological Support and Monitoring of Court's Performance and the Case Tracking System (CTS)

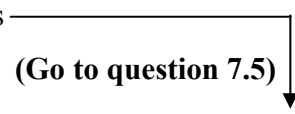
### Technological Support and Monitoring of Court's Performance

7.1 You use some types of information technology system in your division to help the judge manage cases.

7.2 You receive or prepare any statistical summaries or other reports relating to the general state of judge's docket.

7.3 The Court efficiently links the CTS to the Supreme Administrative Court.

7.4 Apart from the Court's CTS, do you employ any other administrative systems to manage your case?

☐ Yes  ☐ No (Go to section 7.2)  
(Go to question 7.5)

7.5 You employ other administrative systems because the CTS is not able to provide enough information to manage cases.

1	2	3	4	5

**In these questions, you can choose more than 1 answer.**

### Case Tracking System (CTS)

7.6 In your opinion, what are the objectives of the CTS of the Court?

- ☐ tracking events of cases
- ☐ tracking time of cases
- ☐ tracking parties of cases
- ☐ expediting cases to be finalised
- ☐ tracking a court fee
- ☐ enhancing the efficiency of CFM
- ☐ others.....

7.7 According to the answer in question (7.6) do you think the system is achieving all objectives?

☐ Yes

☐ No



If no, which objectives have not been achieved and why?

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7.8 What type of data do you obtain via the CTS?

☐ person-related data (defendants, parties, authorised person)

☐ time-related data (court calendars and reminders)

☐ case data (history and records)

☐ financial data (fee and fines)

7.9 Have you experienced any obstacle in employing the existing CTS? Please explain.

.....

.....

.....

7.10 What improvement of the CTS do you need to see so as to help you to promote improve your work?

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.....

**In these questions, PLEASE RATE how strongly you agree or disagree with the following statements**

1 = strongly disagree  
4 = agree

2 = disagree  
5 = strongly agree

3 = Don't know

**9. The Parties: Plaintiffs, Defendant, and their Representatives**

9.1 You think that parties have general understanding  
of the Court CFM.

9.2 You think that the CFM has some effects on the way  
parties approach the litigation process. If so, how?

1	2	3	4	5

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11. The Court has uniformity in case management practice across divisions, and different judges.
12. You experienced differences in monitoring compliance and/or progress between different judges.
13. You think judges differ in relation to their attitude towards encouraging disposition.
14. The case judge speedily finalised your case.
15. You had some difficulties in complying with the timeframe.
16. The timetable for a case was only decided by a judge.
17. A timeline for a case was set down at the beginning of a case.
18. You are aware of the method used by the Court to allocate cases.
19. Cases should be allocated to particular judges based on their expertise in the relevant field or fields.
20. You dealt/deal mainly with the OAC staff.
21. You dealt/deal mainly with the chambers.
22. What information did you need from the Court when your case was in process?

1	2	3	4	5

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23. Have you experienced any obstacle in getting information from the Court? Please explain.

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24. Are there any improvements you would like to see implemented?

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25. Do you have other comments about the Court's performance? If so, please explain.

.....

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THANK YOU

## APPENDIX C: Methodology in Thailand

### 1. Research in the Thai Central Administrative Court

- 15 Dec to 21 Dec 03
  - Translating the information sheet, consent form, questionnaire for non-executive judges and non-executive court officials, and guided interviews for executive judges and executive court officials
- 22 Dec 03 to 1 Feb 04
  - Project preview study: Selection of particular judges and court officials in the Central Administrative Court
    - 1) Review and adjustment of the non-executive judges' questionnaire (with one case judge and one conclusive judge).
    - 2) Review and adjustment of the non-executive case officials' questionnaire (with 4 case officials assisting the case judges and assisting conclusive judges)
    - 3) Review and adjustment of the parties' questionnaire (with 3 plaintiffs and 2 defendants)
    - 4) Review and adjust of the guided interview for executive judges (with one executive judge)

- 5) Review and adjust the guided interview for executive court officials (with a single executive court official)

- Selecting population and samples for the study

Based on the adjusted guided interviews and questionnaires, I developed seven formats as follows.

- 1) Guided interviews for 2 out of 4 executive judges. The interviews conducted were mainly related to policies on CFM and CTS.
- 2) Guided interviews for 9 samples of non-executive judges. The samples consisted of 2 out of 16 Senior Judges of divisions of the Central Administrative Court, 5 out of 33 case judges and 2 out of 24 conclusive judges. The interviews conducted were mainly related to the practices or styles of judges in their management and tracking of cases.
- 3) Guided interviews for 2 out of 4 high-ranking, executive court officials. The interviews conducted were mainly related to policies in the CFM and the CTS.
- 4) Guided interviews for 6 selected skilful, executive court officials: half of the interviewees have an expertise in case management systems and the other half have an expertise in the case tracking system. The interviews conducted were mainly on historical issues and the development of CFM and CTS. In addition, the new CTS was discussed in the interviews.
- 5) Questionnaires for 64 out of 73 non-executive judges. There were two groups: 42 case judges and 22 conclusive judges.

However, questionnaires were not distributed to 7 case judges and 2 conclusive judges who participated in guided interviews (see above, 2).

- 6) Questionnaires for all 135 case officials assisting the judges in the Central Administrative Court. There are two groups: 109 of case officials assisting the case judges and 26 of case officials assisting conclusive judges.
- 7) Questionnaires for 400 parties. There are two groups: 200 plaintiffs and 200 defendants.

In addition, to gain in-depth information on some practical issues emerging from case flow management and the case tracking system of the Court, I canvassed the points with some case officials who have direct experience of the operation of these systems.

- Searching and collecting data and information: related to the study of the Central Administrative Court's CFM and CTS
- 2 Feb to 29 Feb 04
  - Final editing of the consent form and information sheet for the respondents
  - Conducting the research interviews with the selected executive judges, non-executive judges, executive court officials and other related court officials in the issues of the study concerned
  - Distributing questionnaires to and collecting questionnaires from non-executive judges, non-executive court officials and parties.

## **2. Limitations in the research methodology**

I had intended to personally hand the questionnaires to the participants who were not interviewed. However, with limited time and the large number of judges and particularly case officials, I was not able to distribute all questionnaires. Table App. C (i) and (ii) below illustrate the population and samples of the judges and case officials participated in this research.

Table App. C (i): Population and Samples in the Interviews

Interviews															
	Judges										High-ranking Court Officials		Experienced Court Officials		
	All	Executive J.		Conclusive J.		Case J.							CTS	CFM	
		All	Int.	All	Int.	All	Senior J.		Non-exe J.						
							All	Int.	All	Int.	All	Int.			
Number	77	4	2	24	2	49	16	2	33	5	4	2	3	3	

Table App. C (ii): Population and Samples in the Questionnaires

Questionnaires																		
	Judges									Case Officials								
	All J			Conclusive J			Case J			All CO			Conclusive CO			Case CO		
	All	Receive	Return	All	Receive	Return	All	Receive	Return	All	Receive	Return	All	Receive	Return	All	Receive	Return
<b>Number</b>	64	41	33	22	13	11	42	28	22	135	108	97	109	88	79	26	20	18

As mentioned earlier, not all judges and case officials participated in this research. As you can see in Table App A, the numbers of participants in the interviews are 19: 11 judges (2 executive, 2 conclusive and 7 case judges) and 8 court officials (2 high-ranking court officials, 3 case flow management specialists and 3 case tracking system specialists). In-depth information did emerge from the interviews. This ensures that all important data and comments related to both the case flow management and the case tracking systems were discovered.

Table App B shows that the numbers of judges participated by answering questionnaires are 33 (11 conclusive judges and 22 case judges). The case officials who participated in this research are 97 (18 case officials assisting conclusive judges and 79 case officials assisting case judges). Details of the population, samples and the returns of both groups can be explained. That is, case judges (including the senior judges) who received questionnaires were 28 (out of 42) with 22 returns. The conclusive judges who received questionnaires were 13 (out of 22) with 11 returns. The case officials assisting the case judges who received questionnaires were 88 (out of 109) with 79 returns. The case officials assisting the conclusive judges who received questionnaires were 20 (out of 26) with 18 returns.

The same table also indicates that 44 out of 77 (or 57%) of judges of the Central Administrative Court participated in the research. This 57% consists of 2 out of 4 (or 50%) executive judges, 29 out of 49 (or 59%) of case judges and 13 out of 24 (or 54%) conclusive judges. In addition, 97 out of 135 (or 72%) case officials assisting both the case and the conclusive judges participated in the research. This 72% consists of 79 out of 109 (or 72.5%) case officials assisting the case judges and 18 out of 26 (or 70%) case officials assisting the conclusive judges. Therefore, more than a half of the judges and about 70% of case officials of the Central Administrative Court participated in this research project. In addition, there is a distribution of respondents focusing on different groups.

The return rate from the Court's officers (both judicial and non-judicial) is very high. That is, 44 out of 52 (or 84.6%) judges and 97 out of 108 (or 89%) case officials gave feedback to the questionnaires. The rate of returns came from the careful distribution of



the questionnaires to judges and case officials in every division. This assures reliable data representing diverse perspectives and practices in each division. For these reasons, the numbers of respondents representing the viewpoints of each group are adequate and reliable in answering the research questions. In this research, I refer percentage of the returns in the discussion of all issues.

In the case of the parties' questionnaires, which were distributed to 200 plaintiffs and 200 defendants, the return rate was low. Only 64 copies out of the 400 were returned; that is, 16%. 52 (or 13%) were returned from plaintiffs and 12 copies (3%) from defendants. Although this return rate is low, it is only 4% under the standard for acceptable proportion of returns in the case of mailed questionnaires.<sup>1</sup> Furthermore, the parties returns' results provide many interesting comments on issues in relation to their perception of the case flow management and case tracking system of the Court. It is useful to discuss these results as a part of this study.

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<sup>1</sup> The statistic consultant said that normally only 20% return of mailed questionnaires is adequate and acceptable. Interviewed with the statistic consultant, The Statistical Consultation Service, University of Wollongong, (Face to face interview, 13 November 2003).

## APPENDIX D: The Process of Administrative Cases in the Central Administrative Court of Thailand<sup>1</sup>

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<sup>1</sup> This diagram is translated from the Thai original source (the Report of Performance of the Administrative Courts and the Office of the Administrative Courts, 2001) and adapted by the writer. It is drawn under the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) and Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E. 2543 (2000).

<sup>2</sup> A plaintiff is any person who is irretrievably aggrieved or injured or who may irretrievably be aggrieved or injured in consequence of an act or omission by a State agency or State official or who has a dispute in connection with an administrative contract or other case falling within the jurisdiction of the Administrative Court (Section 42).

<sup>3</sup> The judge who makes the conclusions is a judge in the Administrative Courts of First Instance who is not in the same division as the judge who undertakes the consideration. The judge shall present a “statement”—a summary of issues of fact, issues of law, and opinions on the judgement—to the division before the final trial. The opinion of the judge who makes a conclusion is considered as an opinion of a single judge in that case. It is not a judgement. Although only a decision of the division is considered as a judgement, the presentation of such “statement” to the division encourages a prudent exercise of power on the judgement of the division.

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<sup>4</sup> The judge in charge of the case is the judge in the Administrative Court of First Instance who is appointed by the senior Judge of a division for collecting facts of the plaint, explanations of the parties and relevant evidence, with the assistance of the case official as entrusted by the judge in charge of the case.





## **APPENDIX E: Federal Court of Australia: A Typical Time Standard**

Note: This time standard was designed by the Federal Court in Federal Court of Australia, *Case Management Approach: The Individual Docket System*, a document related to an interview with John Mathieson, the District Registrar, the Federal Court of Australia, (Face to face interview, 7 October 2003).

## APPENDIX F: Comparison of Objectives that were not being Achieved by the CFM of the Central Administrative Court of Thailand (collected between 2 - 29 February 2004)

Objectives that were not being achieved	Views on Causes				
	Conclusive judges	Conclusive judges' Case officials	Case judges	Case judges' Case officials	Parties
Reducing delays in administrative case proceedings	i) <b>Parties</b> : lack of knowledge and cooperation	i) <b>Parties</b> : –	i) <b>Parties</b> : lack of knowledge and cooperation	i) <b>Parties</b> : –	i) <b>Parties</b> : –
	ii) <b>Nature of Case</b> : –	ii) <b>Nature of Case</b> : 1. <i>A complex case</i> causes additional time in the inquiry of fact	ii) <b>Nature of Case</b> : 1. <i>A complex case</i> causes additional time in the inquiry of fact	ii) <b>Nature of Case</b> : 1. <i>A complex case</i> causes additional time in the inquiry of fact	ii) <b>Nature of Case</b> : –
	iii) <b>Judges</b> : 1. <i>Lack of skill</i> due to the assignment of varied case types 2. <i>Lack of devotion</i> of judges to expedition of cases	iii) <b>Judges</b> : –	iii) <b>Judges</b> : –	iii) <b>Judges</b> : 1. – 2. – 3. Awkward styles of judges in writing judgements, memorandums and statements	iii) <b>Judges</b> : 1. – 2. <i>Lack of commitment</i> of judges to finalise case in an expeditious manner
	iv) <b>CFM system</b> : 1. <i>Caseload</i> : many cases versus a small number of judges 2. <i>Allocation system</i> : a specific case type was not allocated to a specialist judge 3. <i>Censor division</i> : did not work properly (being a proof reading unit)	iv) <b>CFM system</b> : 1. <i>Caseload</i> : many cases versus a small number of judges	iv) <b>CFM system</b> : 1. <i>Caseload</i> : many cases versus a small number of judges 2. – 3. – 4. <i>Administrative proceedings</i> , which allowed using mail, created delays	iv) <b>CFM system</b> : 1. <i>Caseload</i> : many cases versus a small number of judges 2. <i>Allocation system</i> : specific case type not allocated to a specialist judge	iv) <b>CFM system</b> : –
	v) <b>Policy</b> : –	v) <b>Policy</b> : <i>The policy on</i> 1. <i>finalisation of cases</i> that had been initiated since 2001	v) <b>Policy</b> : <i>The policy on</i> 1. <i>finalisation of cases</i> that had been initiated since 2001 2. <i>standard numbers of settled cases per judge</i>	v) <b>Policy</b> : <i>The policy on</i> 1. <i>finalisation of cases</i> that had been initiated since 2001 2. <i>standard numbers of settled cases per judge</i>	v) <b>Policy</b> : –
	vi) <b>Case Officials</b> : –	vi) <b>Case Officials</b> : –	vi) <b>Case Officials</b> : 1. may not have expertise in some specific laws or regulations applied to the case.	vi) <b>Case Officials</b> : –	vi) <b>Case Officials</b> : –
	vii) <b>Other</b> : –	vii) <b>Other</b> : –	vii) <b>Other</b> : –	vii) <b>Other</b> : –	vii) <b>Other</b> : –

Objectives that were not being achieved	Views on Causes				
	A Conclusive judge	A Conclusive judge's Case official	A Case judge	A Case judge's Case official	Parties
Making the timing of events more predictable	i) <i>Parties</i> : lack of knowledge and cooperation	An achievable objective/Not an objective	i) <i>Parties</i> : –	i) <i>Parties</i> : –	An achievable objective/Not an objective
	ii) <i>Nature of Case</i> : –		ii) <i>Nature of Case</i> : 1. <i>A complex case</i> causes difficulties in the prediction of the timing of events	ii) <i>Nature of Case</i> : 1. <i>A complex case</i> causes difficulties in the prediction of the timing of events	
	iii) <i>Judges</i> : –		iii) <i>Judges</i> : –	iii) <i>Judges</i> : –	
	iv) <i>CFM system</i> : –		iv) <i>CFM system</i> : –	iv) <i>CFM system</i> : –	
	v) <i>Policy</i> : <i>The policy on</i> 1. <i>finalisation of cases</i> initiated since 2001		v) <i>Policy</i> : –	v) <i>Policy</i> : –	
	vi) <i>Case Officials</i> : –		vi) <i>Case Officials</i> : –	vi) <i>Case Officials</i> : –	
Making the timing of events more realistic	An achievable objective/Not an objective	i) <i>Parties</i> : lack of knowledge and cooperation	i) <i>Parties</i> : lack of knowledge and cooperation	i) <i>Parties</i> : lack of knowledge and cooperation	Not enough data to indicate the achievement of the Objective
		ii) <i>Nature of case</i> : 1. <i>A complex case</i> causes difficulties in making the events timely	ii) <i>Nature of case</i> : 1. <i>A complex case</i> causes difficulties in making the events timely 2. Using a single timeframe for all different case types	ii) <i>Nature of case</i> : 1. <i>A complex case</i> causes difficulties in making the events timely 2. Using a single timeframe for all different case types	
		iii) <i>Judges</i> : –	iii) <i>Judges</i> : –	iii) <i>Judges</i> : –	
		iv) <i>CFM system</i> : –	iv) <i>CFM system</i> : 1. – 2. – 3. – 4. <i>Administrative proceedings</i> , which allowed using mail, causes incomplete evidence	iv) <i>CFM system</i> : –	
		v) <i>Policy</i> : 1. No enforcement of any policy on performance of a judge	v) <i>Policy</i> : –	v) <i>Policy</i> : 1. No enforcement of any policy on performance of a case official	
		vi) <i>Case Officials</i> : –	vi) <i>Case Officials</i> : –	vi) <i>Case Officials</i> : –	
		vii) <i>Other</i> : –	vii) <i>Other</i> : –	vii) <i>Other</i> : –	



Objectives that were not being achieved	Views on Causes				
	A Conclusive judge	A Conclusive judge's Case official	A Case judge	A Case judge's Case official	Parties
Encouraging earlier settlement	An achievable objective/Not an objective	An achievable objective/Not an objective	An achievable objective/Not an objective	i) <i>Parties</i> : –	No data
				ii) <i>Nature of Case</i> : –	
				iii) <i>Judges</i> : –	
				iv) <i>CFM system</i> : –	
				v) <i>Policy</i> : –	
				vi) <i>Case Officials</i> : –	
				vii) <i>Other</i> : No law and/or regulation was/were issued to provide earlier settlement in administrative case proceedings	
Encouraging solicitor/party accountability	An achievable objective/Not an objective	An achievable objective/Not an objective	i) <i>Parties</i> : lack of knowledge and cooperation	i) <i>Parties</i> : lack of knowledge and cooperation	i) <i>Parties</i> : –
			ii) <i>Nature of Case</i> : –	ii) <i>Nature of Case</i> : –	ii) <i>Nature of Case</i> : –
			iii) <i>Judges</i> : –	iii) <i>Judges</i> : –	iii) <i>Judges</i> : –
			iv) <i>CFM system</i> : –	iv) <i>CFM system</i> : –	iv) <i>CFM system</i> : –
			v) : –	v) <i>Policy</i> : –	v) <i>Policy</i> : –
			vi) <i>Case Officials</i> : –	vi) <i>Case Officials</i> : –	vi) <i>Case Officials</i> : –
			vii) <i>Other</i> : –	vii) <i>Other</i> : –	vii) <i>Other</i> : The parties felt their participation hardly influenced administrative case proceedings but that judges did.

Objectives that were not being achieved	Views on Causes				
	A Conclusive judge	A Conclusive judge's Case official	A Case judge	A Case judge's Case official	Parties
Encouraging the use of the case tracking system for court monitoring	i) <i>Parties:</i> –	i) <i>Parties:</i> –	i) <i>Parties:</i> –	i) <i>Parties:</i> –	<i>No data</i>
	ii) <i>Nature of Case:</i> –	ii) <i>Nature of Case:</i> –	ii) <i>Nature of Case:</i> –	ii) <i>Nature of Case:</i> –	
	iii) <i>Judges:</i> –	iii) <i>Judges:</i> –	iii) <i>Judges:</i> –	iii) <i>Judges:</i> –	
	iv) <i>CFM system:</i> 1. – 2. – 3. – 4. – 5. Original CTS was unreliable and new CTS had unpredictable performance	iv) <i>CFM system:</i> 1. – 2. – 3. – 4. – 5. Original CTS created outdated case data	iv) <i>CFM system:</i> 1. <i>Caseload:</i> many cases versus a small number of judges. A judge had no time for monitoring or tracking cases by him/herself 2. – 3. – 4. – 5. Original CTS was slow and created outdated case data while a new system needed time to refine	iv) <i>CFM system:</i> 1. – 2. – 3. – 4. – 5. Original CTS was slow and created outdated case data. Besides, it could not indicate that the case was inactive because of a judge or case official	
	v) <i>Policy:</i> –	v) <i>Policy:</i> –	v) <i>Policy:</i> –	v) <i>Policy:</i> –	
	vi) <i>Case Officials:</i> –	vi) <i>Case Officials:</i> –	vi) <i>Case Officials:</i> –	vi) <i>Case Officials:</i> –	
	vii) <i>Other:</i> –	vii) <i>Other:</i> –	vii) <i>Other:</i> –	vii) <i>Other:</i> –	
Keeping case progress accessible	An achievable objective/ Not an objective	i) <i>Parties:</i> –	i) <i>Parties:</i> –	i) <i>Parties:</i> –	An achievable objective/ Not an objective
		ii) <i>Nature of case:</i> –	ii) <i>Nature of case:</i> –	ii) <i>Nature of case:</i> –	
		iii) <i>Judges:</i> –	iii) <i>Judges:</i> –	iii) <i>Judges:</i> –	
		iv) <i>CFM system:</i> 1. – 2. – 3. – 4. – 5. Original CTS created outdated case status, was not user-friendly and could be accessed by few officers	iv) <i>CFM system:</i> 1. – 2. – 3. – 4. – 5. Original CTS was not a user-friendly system	iv) <i>CFM system:</i> 1. – 2. – 3. – 4. – 5. Original CTS was not user-friendly and was unreliable 6. Parties did not know their rights to access their cases' information and officers were not confident about how much information they might disclose to parties.	
		v) <i>Policy:</i> –	v) <i>Policy:</i> –	v) <i>Policy:</i> –	
		vi) <i>Case Officials:</i> –	vi) <i>Case Officials:</i> –	vi) <i>Case Officials:</i> –	
		vii) <i>Other:</i> –	vii) <i>Other:</i> –	vii) <i>Other:</i> –	

Objectives that were not being achieved	Views on Causes				
	A Conclusive judge	A Conclusive judge's Case official	A Case judge	A Case judge's Case official	Parties
Promoting the efficiency of clerical work	An achievable objective/Not an objective	i) <i>Parties:</i> –	i) <i>Parties:</i> –	i) <i>Parties:</i> –	No data
		ii) <i>Nature of Case:</i> –	ii) <i>Nature of Case:</i> –	ii) <i>Nature of Case:</i> –	
		iii) <i>Judges:</i> –	iii) <i>Judges:</i> –	iii) <i>Judges:</i> –	
		iv) <i>CFM system:</i> 1) – 2) – 3) – 4) – 5) – 6) The collection and maintenance system of case files was inefficient	iv) <i>CFM system:</i> 1) – 2) – 3) – 4) – 5) – 6) – 7) The clerical system was inefficient; eg lack of typists or incomplete legal database.	iv) <i>CFM system:</i> 1) – 2) – 3) – 4) – 5) – 6) The collection and the maintenance system of case files was inefficient	
		v) <i>Policy:</i> –	v) <i>Policy:</i> –	v) <i>Policy:</i> –	
		vi) <i>Case Officials:</i> –	vi) <i>Case Officials:</i> –	vi) <i>Case Officials:</i> –	
		vii) <i>Other:</i> –	vii) <i>Other:</i> –	vii) <i>Other:</i> –	
Standardising the implementation of CFM	An achievable objective/Not an objective	An achievable objective/Not an objective	i) <i>Parties:</i> –	i) <i>Parties:</i> –	i) <i>Parties:</i> –
			ii) <i>Nature of Case:</i> –	ii) <i>Nature of Case:</i> –	ii) <i>Nature of Case:</i> –
			iii) <i>Judges:</i> –	iii) <i>Judges:</i> –	iii) <i>Judges:</i> –
			iv) <i>CFM system:</i> 1) – 2) – 3) – 4) – 5) – 6) – 7) – 8) No expert in Administrative CFM laid down directions for the CFM implementation since initiation, and this caused the different practices in diverse divisions.	iv) <i>CFM system:</i> 1) – 2) – 3) – 4) – 5) – 6) – 7) – 8) No directions for CFM implementation had been laid down since initiation and this caused the different practices in diverse division.	iv) <i>CFM system:</i> –
			v) <i>Policy:</i> –	v) <i>Policy:</i> –	vi) <i>Policy:</i> –
			vi) <i>Case Officials:</i> –	vii) <i>Case Officials:</i> –	viii) <i>Case Officials:</i> –
			vii) <i>Other:</i> –	ix) <i>Other:</i> –	x) <i>Other:</i> Parties felt the differences in practices between different judges and divisions.