Guiding Cases Surveys™
指导性案例 调查™

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Survey of Judges in China (2013-2014)

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Guiding Cases Surveys™ is a publication of empirical data collected by the China Guiding Cases Project through its first-hand surveys of Chinese legal actors and analyses of subsequent cases referring to the Guiding Cases to illustrate how Guiding Cases are perceived and used.

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In July 2013, the China Guiding Cases Project (“CGCP”) invited judges from a city in Southern China to share their experiences with and views on Guiding Cases (“GCs”). Almost a hundred judges accepted, on condition of anonymity, and the CGCP launched its first survey (“2013 Survey”). In July 2014, to follow up, the CGCP conducted a similar survey in the same courts and over a hundred judges responded (“2014 Survey”).

At the time of each Survey, the respondents sat on one of the three Basic People’s Courts or on the Intermediate People’s Court in the South China city, which had a population of eight million. Of the approximately 500 judges on these courts, approximately 85% have bachelor of law degrees (and another 13% received part-time training that allowed these judges to acquire bachelor-level qualifications), 30% have masters of law degrees, and 0.4% have doctorates. The Supreme People’s Court (“SPC”) has praised the performance of these courts in handling cases fairly and efficiently. The CGCP targeted these judges for its inaugural surveys, at a time when the Guiding Cases System (“GCS”) was relatively new, to get a glimpse of how GCs were perceived and used by judges who generally have good qualifications and perform well.

Ninety judges participated in the 2013 Survey: 72 working in the Basic People’s Courts and 17 in the Intermediate People’s Court. (One judge did not identify his or her court.). A hundred and five judges participated in the 2014 Survey: 73 from the Basic People’s Courts and 32 from the Intermediate People’s Court.

The following sections present and analyze results on the judges’ general awareness of GCs, their experiences in using GCs, their views on GCs, and potential challenges facing Chinese judges and the GCS. The discussion ends with recommendations for improvement to help the SPC achieve its goal of using GCs to “summarize adjudication experiences, unify application of law, enhance adjudication quality, and safeguard judicial justice.”

Basic Awareness

To date, the SPC has released seven batches of GCs, the first batch on December 20, 2011 and the seventh and latest on June 23, 2014. To establish the GCS, the SPC promulgated the Provisions of the Supreme People’s Court Concerning Work on Case Guidance (“Provisions”) on November 26, 2010. Of the 105 judges who participated in the 2014 Survey, 60% first heard about GCs in or prior to 2011, 36% heard about them in 2012 or 2013, and 4%

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(i.e., 4 judges) had not heard of them until recently.

The *Provisions*, although it consists of only 10 articles, provides the basic framework for not only the selection of GCs by the SPC but also the use or application of GCs by courts at all levels. The *Provisions* thus represents one major source of awareness and knowledge of GCs. Of the 90 judges surveyed in 2013, nearly 58% (i.e., 52 judges) had read the *Provisions*; the number was slightly higher among the 105 judges surveyed in 2014: 61% (64 judges) (see Chart 1).

**Chart 1: Percentage of Judges Having Read the Provisions on GCs**

- **Read Provisions**: 60.95% (2014), 57.78% (2013)
- **Never read Provisions**: 39.05% (2014), 42.22% (2013)

**Chart 2** breaks down the sources from which the surveyed judges had heard of the GCs (respondents could select multiple sources). In both years, materials circulated within China’s court system were identified as the most common source. The second most common source was the Gazette of the SPC in 2014 and “formal or informal discussions with judges, attorneys, officials and/or other legal experts” in 2013. With 12 issues a year, the Gazette serves as the official source of select cases, judicial interpretations, and other materials released by the SPC.

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3 *Id.*
The above findings offer at the same time some comfort and some cause for concern regarding the implementation of the GCS. The fact that the major source from which the surveyed judges heard about GCs consisted of materials circulated within the court system suggests that the court system has in place some mechanism(s) to keep judges apprised of legal developments. However, the facts that only a little more than half of the judges surveyed had read the document that established the GCS, that the number barely rose from 2013 to 2014, and that there are still judges who had not heard about GCs until almost four years after the release of the Provisions suggest inadequate efforts to educate the judges.

The Use of Guiding Cases and Challenges

Article 7 of the Provisions provides:

“People’s courts at all levels should refer to the Guiding Cases released by the Supreme People’s Court when adjudicating similar cases.”

Have the surveyed judges followed this provision?

The Surveys first asked the judges whether they had considered any GCs in adjudicating
cases before them. In 2013, approximately 39% of the judges answered affirmatively, while 61% said they had not considered any GC in any of their decisions (the numbers were 35 and 55 judges, respectively); in 2014, the corresponding numbers were 54% (57 judges) and 46% (48 judges) (see Chart 3).

Chart 3: Percentages of Judges Who Have Considered GCs in Adjudicating Cases

Thus, from 2013 to 2014, there was an increase of 15.4 percentage points in the number of judges who had considered GCs in adjudicating cases. The 57 judges who said in the 2014 Survey that they had considered GCs in adjudication were asked to identify what prompted them to do so. Approximately 79% said they independently recalled or researched and found the GCs and 37% said the GCs were brought to their attention by another judge. Only 7% said that the GCs were referred to by a party or a party’s lawyer.

The judges who responded that they had never considered GCs in their adjudication were asked to explain the reason (see Chart 4). In 2013, the main reason identified by judges (78%) for not considering GCs in cases before them was that GCs were still relatively new and their significance remained unclear. In 2014, this reason and the reason that “GCs are not important” were both the least important (2%).

In 2014, approximately 65% of the 48 judges who responded that they had never considered GCs in their adjudication attributed it to the proposition that there were no GCs that concerned the areas of law at issue in court cases that they had adjudicated. In addition, 6 judges (13%) chose the reason “not familiar with GCs”; only 2 judges (4%) chose this reason in 2013.

In 2013, 3 judges chose “other reasons”, which included: “do not handle adjudication”, “handles enforcement cases”, and “don’t have the relevant skills; can handle the cases by simply applying judicial interpretations and current practice; no courage to try new things”. In 2014, 9 judges chose “other reasons”: eight of them essentially explained that they worked for the enforcement division of the court and thus did not handle adjudication and one that s/he was not
responsible for adjudication work (which could mean that s/he worked in any non-adjudication division such as the division for enforcement or the division for the acceptance of cases).

**Chart 4: Reasons for Not Considering GCs in Adjudication**

The 35 and 57 judges who responded, in 2013 and 2014, respectively, that they considered GCs in adjudication were asked further questions to see whether and how they used GCs in their written decisions. In 2013, only a single judge (3%) explicitly specified some of the GCs that s/he considered and 11 (31%) did not explicitly specify the GCs they considered in the written decisions, but only specified the relevant parts of the GCs considered. In addition, 23 (66%) judges did not explicitly specify, quote or paraphrase any GCs or any parts of GCs. In 2014, the corresponding numbers are 0%, 44% (25 judges), and 56% (32 judges) (see **Chart 5**).
These judges were then asked why they did not explicitly specify, in their written decisions, some/any GCs they considered. In 2013, the main reason (chosen by 38% of these judges) was that they did “not know how to properly identify guiding cases in the decisions so as to meet the Supreme People’s Court requirement that guiding cases should be “referred to””. In 2014, only 23% of these judges chose this reason, whereas 46% chose “I did not think that I should explicitly specify GCs in the decisions”.

In 2013, 1 judge chose “other reasons” and wrote that s/he had not decided a case to which a GC could be applied. In 2014, 5 judges chose “other reasons”: two provided the same reason as the judge giving “other reasons” in 2013 and the three others essentially explained that the Chinese legal system is not a common law system and thus GCs should not be specified explicitly in decisions (see Chart 6).
Arguably, the most salient observation from the above results is that, as compared to 2013, a larger percentage of the judges surveyed in 2014 had considered one or more GC(s) in deciding cases before them.

At the same time, while the main reason given by judges in 2013 for not having considered GCs in their adjudication was that GCs’ were relatively new and their significance remained unclear, an overwhelming majority of judges in 2014 explained that they could not find any GCs that touched upon the areas of law they adjudicated. In addition, while there were, respectively, only one and no judge who explicitly specified GCs in their written decisions in 2013 and 2014, there was an increase of approximately 12 percentage points from 2013 to 2014 in situations that judges chose to quote or paraphrase relevant parts of GCs in their decisions. All of these changes suggest an increased recognition and acceptance of the GCS by these judges.

However, the consistently significant percentages of surveyed judges choosing responses such as “did not think that they should explicitly specify GCs in the decisions” and “did not know how to properly identify GCs in the decisions so as to meet the SPC’s requirement that GCs should be “referred to” reveal some potential challenges facing the GCS and the judges who should use it.
Recommendations

To allow us to make recommendations addressing the challenges facing Chinese judges in the implementation of the GCS, we also asked surveyed judges a series of questions aimed at obtaining an understanding of their perception of this new legal framework. This section covers our recommendations and the findings upon which those recommendations are founded.

1. Detailed guidance from the SPC.

There are conflicting opinions about the legal significance of the term “refer to” as provided in Article 7 of the Provisions. At one end of the spectrum, some maintain that GCs are legally binding, while at the other end, others contend that they are not. Given these diametrically opposed possibilities and the lack of any easily identifiable middle ground, it is not surprising to see that approximately 78% of the judges (i.e., 69 judges) surveyed in 2013 agreed or strongly agreed that the SPC should provide judges with more instructions on how to use GCs in adjudication; in 2014, more than 91% (96 judges) of surveyed judges expressed this view (see Chart 7).

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4 See 胡云腾 (Yunteng HU),《最高人民法院指导性案例参照与适用》(Referring to and Applying the Supreme People’s Court’s Guiding Cases) 140 (人民法院出版社 (People’s Court Press), 2012).
The rise in numbers between years, significant not only in percentage change but in how near a consensus the 2014 Survey indicates, comports with the findings above which suggest that judges surveyed in 2014 were less concerned with the novelty of the GCs than those surveyed in 2013. Instead, judges surveyed in 2014 were more concerned about getting instructions about the GCS.

The Survey results further confirm the need for clarification on the nature and function of GCs. Approximately 80% (71) of the judges surveyed in 2013 agreed or strongly agreed that the SPC should provide such clarification; in 2014, the percentage rose to approximately 86% (90 judges) and no judges disagreed at all with the notion that the SPC should further clarify the nature and function of GCs (see Chart 8).

**Chart 8: The SPC Should Further Clarify the Nature and Function of GCs**

In light of this strong demand for more instructions on how to use GCs in adjudication as well as for clarification on the nature and function of GCs, we specifically recommend that training of judges on GCs should promptly be offered by the SPC. This view was echoed by the judges surveyed. Over 74% (66) judges in the 2013 Survey agreed or strongly agreed that trainings on GCs should be organized for judges at every
level. In 2014, the percentage increased to approximately 88%, indicating more demand for such training (Chart 9).

**Chart 9: Trainings on GCs Should Be Organized for Judges at Every Level**

2. A comprehensive knowledge-base.

Despite the uncertainties surrounding GCs, the judges surveyed expressed interest in learning more about these new cases. The judges were asked whether they “would like to see more analysis of the impact of GCs on the Chinese legal system”: in 2013, 75% (67) of judges agreed or strongly agreed and only 1 judge (1%) disagreed; in 2014, 71% (75) of surveyed judges shared these sentiments and again only 1 judge (1%) disagreed (see Chart 10).
Chart 10: I Would Like to See More Analysis of the Impact of GCs on the Chinese Legal System

In addition, 76% (68) of the judges surveyed in 2013 agreed or strongly agreed, and only 3 judges disagreed, with the statement, “I would like to see more judges and other legal experts comment on GCs”; in 2014, 75% (79 judges) agreed or strongly agreed with the statement and though a larger percentage of judges responded neutrally, not a single judge disagreed (see Chart 11).
In response to such a strong desire for more analysis, the CGCP is committed to developing a comprehensive knowledge-base on GCs and related topics. The release of these surveys, Guiding Cases in Perspective™, and Guiding Cases Analytics™ is our first step to show this commitment.

3. More GCs with broader coverage and scope.

Approximately 61% of the judges surveyed in 2013 agreed or strongly agreed with the statement, “China’s Guiding Cases System could become an effective tool for unifying the application of law”, compared with 50% of the judges surveyed in 2014. This decrease in percentage points seems to suggest a pessimistic view of the future of the GCS. It is worth noting that whereas approximately 7% disagreed with the statement in 2013, approximately 33% responded in the neutral or with “don’t know”; the corresponding numbers in 2014 were 3% and 47% (see Chart 12).
The significant percentage of judges choosing “neutral” or “don’t know” prompts us to recommend that more GCs with broader coverage and scope need to be released to let more Chinese judges use GCs and see their positive impact. To date, only seven batches of GCs have been released, roughly every other quarter, for a total of 31 GCs covering very limited areas of law. In fact, most of the judges surveyed (65 (73%) in 2013 and 79 (75%) in 2014) agreed or strongly agreed that the SPC should expand the coverage and scope of GCs (see Chart 13).

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5 For a detailed overview of the timing of releases of GCs, see Guiding Cases Analytics™, available at http://cgc.law.stanford.edu/guiding-cases-analytics/.
6 For a detailed overview of the areas of law covered by the GCs released to date, see Guiding Cases Analytics™, available at http://cgc.law.stanford.edu/guiding-cases-analytics/.
As indicated above, a significant portion of judges explained that they had never considered GCs in their adjudication because there were no GCs that concerned the areas of law at issue in court cases that they had adjudicated. With this in mind, it is not a surprise that many judges surveyed reserved their opinions about the future of the GCS until later. As the coverage and scope of GCs are expanded, more judges will likely see the value of GCs and predict a brighter future for the GCS.