



Events & Speeches

Chief Justice's Address at the Official Opening of the Singapore Mediation Centre Saturday, 16 August 1997



It gives me great pleasure to welcome you to the official opening of the Singapore Mediation Centre. Today marks a new direction for the culture of dispute resolution and the development of our civil justice system. Alternative Dispute Resolution ("ADR"), in particular private, non court-based mediation, will now be institutionalised and will play a significant role here.

Some time ago, I read with amusement, a small column in the newsletter of the English-based ADR organisation CEDR. This was an article entitled "Early Scottish ADR Techniques" and it told of the Peoples of Glencoe and the lands of Loch Leven who earned a particular reputation for their unique and highly successful methods of resolving disputes. People who had a dispute with each other would be rowed across the loch to the Isle of Discussion. There they would stay with nothing but some food and water and each other's company until they settled their problems. Then they would send a signal to those waiting on the mainland. They would then be rowed out to another island, called the Isle of Reconciliation to celebrate their agreement!

Of course, this was not a dispute resolution technique or ADR system that we envisage here today. The questions that come to mind then are: What makes a superior dispute resolution system? What do we want to work towards?

The court's primary charter has been and will always be to do justice in accordance with the law. It is open to disputants with irreconcilable differences. On the other hand, it is important to acknowledge that no system can afford a sufficient number of Judges or courts or enough public money to allow every citizen to litigate in its courts for every real or imagined wrong. Any attempt to allow that will inevitably result in delayed access to justice. Further, the social and economic costs of dispute resolution will be intolerable.

The ideal system should be one that assists parties to resolve their conflicts fairly, at an affordable cost, and with due despatch. ADR mechanisms like mediation have to be integrated into the dispute resolution system if we want to work towards the ideal system. Mediation must complement litigation. Disputants should have the alternative of attempting private, non-court based mediation, with the assistance of their lawyers where necessary. The limited resources of the judiciary can then be freed to dispose of cases that cannot be privately resolved and to dispose of those cases fairly, affordably and quickly.

Mediation as a form of dispute resolution is not new. In fact, it is deeply embedded in the Asian culture. For example, as observed by academics like Louise Wong and Chang Weining, an important traditional Chinese philosophy is that compassion and kindness and duties and reason take precedence over law. I may add that they also take precedence over rights or entitlement. Consequently, lawsuits were avoided whenever possible. Disputes were usually dealt with by respected elders or third parties. The parties generally talked over their differences and tried to resolve them in a reasonable and respectful manner. To engage in direct confrontation in court was seen as a "loss of face", amounting to the washing of dirty linen in public. More significantly, it was also regarded as not properly valuing human relationships or according due respect to the other party, an abandonment of the sense of duty.

Unfortunately, this aspect of Asian culture was gradually eroded by the "fault-based" culture. With the increase in economic activities and societal affluence, we are seeing an increasing number of suits filed in court, including those involving family disputes. Litigation has now become the usual mode of dispute resolution. Whenever there is a disagreement, someone must be at fault, someone must pay for the wrong. Suits are filed and legal battles fought. There is too much emphasis on rights and entitlements and far too little on compassion, duties and regard for relationships.

We have to arrest this trend and ensure that we are doing enough to contribute to the building of a congenial society for our future generations. Singapore's society and economy are built on a network of social and business relationships. It will be beneficial for all to build long term relationships that can survive disputes. We are therefore starting by encouraging the use of mediation as a non-confrontational and less costly process of settling problems in terms of time, money and more importantly, relationships.

Litigants have to spend time and effort to prepare their cases and attend formal and often lengthy court proceedings. They also have to suffer the anxiety and stress associated with litigation. For businesses, litigation undermines their competitiveness by eating up management time and damaging business goodwill and reputation. Litigation is often, and rightly, viewed as a "self-inflicted competitive disadvantage" for businesses.

Indeed, almost any one who has experienced litigation will not wish for more of it. Charles Dickens described the Chancery in England in Bleak House in 1853 in these words - it "so exhausts finances, patience, courage, hope; so overthrows the brain and breaks the heart; that there is not an honourable man among its practitioners who would not give - who does not often give - the warning, 'Suffer any wrong that can be done to you, rather than come here!'"

Of course, the courts have come a long way since the 1800s and the situation is not so bleak. In fact, the judiciary and the rest of the legal profession in Singapore have been working incessantly to achieve even higher levels of excellence in the administration of justice. Cases commenced in court are normally settled with the lawyers' assistance and help from the courts. The Supreme Court has since early 1992 assisted litigants to settle their cases at Pre-trial conferences. In 1996, only 3.7% of the civil suits filed in the Supreme Court were finally disposed of by trial. Unfortunately, settlements often do not occur early enough, with many of the cases settled on the day of trial, or even during the trial. The fact remains that in many cases, there are better and more natural ways of resolving disputes other than resorting to litigation. One of the ways is the amicable settlement of disputes through mediation. In fact, many cases that have been filed in court need not have been commenced at all, if parties had attempted mediation first.

When disputants attempt mediation, they give themselves an early opportunity to discuss the problems they face and understand the dispute from each other's perspective. Mediation enables them to clear up miscommunications or misconceptions, test and take a realistic view of their cases. Further, parties can be encouraged to re-visit the reasons why they have started on their business ventures and commercial dealings in the first place, to analyse what went wrong and put in place sensible remedies and future action plans. It is possible for parties to go away with more than a settlement arrived at by splitting the difference one way or another.

It is for these reasons that the Singapore Mediation Centre is set up. It is a company limited by guarantee. The Singapore Mediation Centre aims to develop its expertise in, and standing as, an independent ADR institution specialising in mediation. It will take the lead in promoting private, non court-based mediation in Singapore and serve the public sector, professions and businesses. It is the first and only one of its kind in Singapore. This flagship mediation centre will also provide mediation services, train and accredit mediators, maintain a Panel of Mediators ("Panel"), and eventually, provide consultancy services in dispute avoidance, dispute management and ADR mechanisms, both locally and abroad.

The Singapore Mediation Centre is the result of more than one year's work by dedicated members of the Singapore Academy of Law ("Academy") and the legal profession. In July last year, a Sub-committee was formed by the Executive Committee of the Academy under the chairmanship of the Honourable Justice Goh Joon Seng to look into setting up a specialist mediation centre. Then, in late December 1996, the Supreme Court and the Academy started a pilot project, the Commercial Mediation Service, to study how the Singapore Mediation Centre can provide quality mediation services. The results of the Commercial Mediation Service are encouraging. As at 13 August 1997, 84 cases had been referred to the Commercial Mediation Service. Of those dealt with, 75% had been successfully settled. 12% were part-mediated, or still pending with standing offers, or with settlements arrived at but subject to further approval by, for example, the disputants' Board of Directors. Only 13% of the mediated cases had not been settled.

I understand that the parties were able to see each other in a new and better light in many of the mediated cases. Many business projects were resumed and family and neighbourly ties re-newed. For the cases that were not settled, the benefits of mediation lay in the clarification and narrowing of the issues in dispute. All the successfully mediated cases were concluded within half to one day except for 3 highly complicated ones. Generally, people were relieved that they were able to get on with their lives.

Since the beginning of the pilot project, feedback has been constantly gathered. The problems that have arisen were carefully studied and adjustments made. A ready structure and working system for providing mediation services is now in place. The Singapore Mediation Centre will absorb the Commercial Mediation Service with effect from today.

With the absorption of the Commercial Mediation Service, mediation services will continue to be available at all stages of disputes, and even before they enter the court system. The Singapore Mediation Centre has also entered into Memoranda of Understanding with the Singapore International Arbitration Centre, the Association of Banks in Singapore, the Society of Project Managers, the Real Estate Developers' Association of Singapore, the Singapore Contractors Association, the Association of Consulting Engineers, the Institution of Engineers and the General Insurance Association. These MOUs provide for the co-operation between these organisations and the Singapore Mediation Centre and the use of the Singapore Mediation Centre's mediation services. The Attorney-General's Chambers have also recommended that future government contracts should carry a clause for referral of disputes for mediation whenever appropriate.

Further, the Singapore Mediation Centre will absorb the mediation service provision function of the

Singapore Information Technology Mediation Centre ("SITMC") with effect from today. The SITMC's Board has now been re-constituted and re-named the "Singapore Information Technology Dispute Resolution Advisory Committee" or "SITDRAC" and will serve as an honorary advisory committee to the Singapore Mediation Centre on IT disputes.

The Singapore Mediation Centre is now institutionally linked to a number of internationally renowned ADR institutions. Together with them, it will continue to promote the proper use of mediation and provide a comprehensive range of training programmes of a high standard. That will include training for persons involved in or who will be engaging in ADR practices, including mediators and instructors for mediators. Courses and seminars will also be conducted for lawyers and persons from the other professions and fields who will be involved in mediation. It will also provide public education on the subject of mediation.

The Singapore Mediation Centre will also maintain its own Panel of Mediators ("the Panel"). It will train and select suitable persons for accreditation and appointment to its Panel. Later today, a group of mediators will be accredited and appointed to the first Panel. I am pleased to note that this will be a distinguished Panel comprising persons from varied backgrounds, including Senior Counsel, leaders from the various professions and fields, and nominees from a number of industrial groups. The users of the Singapore Mediation Centre's services can now draw upon this rich mix of experience and expertise that these mediators will bring along with them from their respective fields. I extend my congratulations to each of them on their accreditation and appointment to the Panel.

The judiciary has always been supportive of mediation and will continue to do so. Mediation will be here to stay. So where do the legal profession and public go from here?

The legal profession has a new and exciting role to play. It should see itself as being in the business of providing a whole array of dispute resolution services. In addition to the litigation services which are traditionally being provided, lawyers should now provide mediation-related services as well. They should train and equip themselves to participate in or to conduct mediations. Already, the Faculty of Law in the National University of Singapore is conducting courses on mediation for our undergraduates. Lawyers today will have to work more closely with their clients to salvage damaged relationships before the disputes escalate into litigation. They can also help to put their clients back on the track of their original businesses or other objectives whenever possible. Eventually, the Singapore Mediation Centre will assist in exporting these local mediation services abroad.

Once lawyers see themselves as the professionals in dispute resolution and gain the confidence of their clients that they are pro-business and pro-relationship, clients will turn to them earlier for assistance. The lawyers in Charles Dicken's era may not have had the benefit of the ADR developments; however, today's lawyers should provide clients with the full range of ADR services - including negotiation to mediation as viable alternatives to litigation. This will help clients by giving them the opportunity to resolve their differences, more quickly and privately.

The public and commercial sectors will have to shift out of the litigation gear and be willing to attempt mediation. The Singapore Mediation Centre should be the first stop for parties to try to resolve their disputes. This will go towards enhancing Singapore's competitiveness in international commerce and to building a gracious Singaporean society.

Let me congratulate the Honourable Justice Goh Joon Seng and his team for the good work that has been accomplished. I now declare the Singapore Mediation Centre officially open.

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