

**4TH ASIAN MEDIATION ASSOCIATION CONFERENCE**  
**MEDIATION AND THE COURTS – THE SINGAPORE EXPERIENCE\***

Beijing, China, 20 October 2016

The Honourable Justice Andrew Phang, Judge of Appeal  
Supreme Court of Singapore

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Distinguished Guests

Ladies and Gentlemen

**Introduction**

1 It appears to be almost a contradiction in terms to speak of mediation in the context of litigation within an adversarial system under the common law. However, it is well-known that most cases are, in fact, settled. So here is the primary function of mediation – to assist litigious parties to *settle* the case at hand at the earliest opportunity. Such assistance may be rendered *even after* the parties have progressed substantively along the litigation trail – for example, where the matter is on the cusp of (or has actually) come to trial.

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\* I would like to express my deepest gratitude to Ms Deborah Koh, Consultant (Singapore Mediation Centre and the Singapore Academy of Law) for all her kindness and assistance with the preparation of this paper. I would also like to express my deepest appreciation to my colleague, Justice Belinda Ang Saw Ean of the Supreme Court of Singapore; Ms Teh Hwee Hwee, Deputy Registrar, Supreme Court of Singapore; Ms Jennifer Marie, Deputy Presiding Judge and Registrar of the State Courts of Singapore; Mr James Leong, Principal District Judge and Principal Director, State Courts Centre for Dispute Resolution; Mr Chia Wee Kiat, Senior District Judge and Registrar, Family Justice Courts; Ms Laura Lau, District Judge, State Courts of Singapore; Mr Loong Seng Onn, Executive Director, Singapore Mediation Centre; Ms Sabiha Shiraz, Deputy Director, Singapore Mediation Centre; Ms Delphine Ho, Registrar, Singapore International Arbitration Centre; and Ms Yan Jiakang, Justices' Law Clerk, Supreme Court of Singapore for their very helpful comments and suggestions. However, all errors remain mine alone. Further, all views expressed in this paper are personal only and do not reflect in any way the views of the Supreme Court of Singapore.

2 I had one such case where I had attempted to counsel the parties without entering, in any way, into the merits of the case itself. At that time, mediation was not yet developed to the extent we are familiar with today. I had been explicit with the parties that, in order for them to reconnect, it might be best if the strictly legal issues were put to one side – at least on a temporary basis. I was almost successful. Virtually all the parties concerned were in tears but one of the chief protagonists just could not bring herself to lead the parties on her side of the divide past the emotional baggage concerned. I had failed in my attempt to bring the parties together.

3 I hasten to add that this was itself a rare occasion when I thought that the litigation could be handled in this somewhat unorthodox manner. Indeed, it is not the task of the judge to seek to settle the matter concerned. The duty of the judge is to hear the case and decide on all the objective evidence that is available before him or her. However, on a very rare occasion, there might be some utility in seeking to unite the parties outside the strictly technical legal sphere. This is the case when the primary narrative is the emotional instability that gave rise to the litigation in the first place. Perhaps, with the benefit of hindsight, what I ought to have done was to have sent the matter for mediation before *a third party* (perhaps even a third party judge), and a different outcome might have ensued. This is, in fact, how mediation has since developed in Singapore.

4 Before I elaborate on the systemic developments that have taken place since then, which will concern a large part of the present paper, I wish to highlight, at the outset, the significant role that the judiciary has played in cementing mediation as one of the primary modes of Alternative Dispute Resolution (“ADR”) in Singapore:

- a) We re-introduced mediation in the 1990s through pre-trial conferences and different court ADR programmes;

- b) We incentivised the use of mediation through judicial policies and practices, procedural requirements, rules on potential adverse costs orders and other measures;
- c) We led the legal profession in embracing the use of mediation by endorsing mediation, training judges and judicial officers, and encouraging lawyers to follow suit by undergoing mediation training and mediation advocacy training;
- d) We supported the setting up of the Singapore Mediation Centre under the Singapore Academy of Law, to promote the use of mediation to businesses, professional bodies and different groups, and to work with ADR bodies overseas to bring best ADR practices to Singapore.

5 With these very preliminary thoughts, let me now turn to the paper proper.

### **The Historical and Cultural Backdrop**

6 The court's primary charter has been – and always will be – to do justice in accordance with the law. At the same time, 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.<sup>1</sup>

7 Hence, the ideal system should be one that assists parties to resolve their conflicts fairly, at an affordable cost and with due dispatch. In order to achieve the ideal system, ADR mechanisms such as mediation had to be

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<sup>1</sup> See Yong Pung How CJ's address at the official opening of the Singapore Mediation Centre, 16 August 1997.

integrated into the dispute resolution system. Only with mediation complementing litigation can the limited resources of the judiciary be freed up to dispose of cases that cannot be privately resolved,<sup>2</sup> thus increasing access to justice as well as the delivery of justice.<sup>3</sup>

8 During the early 1990s, the courts were also facing a massive backlog of cases waiting to be disposed of. At the Supreme Court, there were more than 2,000 pending cases which had been set down for trial for which trial dates were available only 3 years or more later. There were over 10,000 inactive cases, some over 10 years old. Approximately 44% of cases took between 5 and 10 years from commencement to disposal while appeals took a further 2 to 3 years to be heard. Added to these delays were delays in the handing down of judgments.<sup>4</sup> To address this backlog, the Singapore judiciary implemented a host of measures, including diversionary measures in the form of ADR, to divert (wherever possible) disputes from full-blown litigation.<sup>5</sup> Voluntary mediation was the key measure implemented. The voluntariness of mediation is a unique feature of mediation in Singapore in contrast to other jurisdictions which have made mediation mandatory. As a result of the voluntary nature of mediation, it has become vital that we engage in innovative measures to encourage disputants to consider ADR, which I will elaborate on later in the paper.

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<sup>2</sup> *Ibid.*

<sup>3</sup> Sundaresh Menon CJ, “State Courts Workplan 2014, Keynote Address”.

<sup>4</sup> See Justice Judith Prakash “Making the Civil Litigation System more efficient”, Speech delivered at the Asia Pacific Judicial Reform Forum Round Table Meeting in Singapore on 21 January 2009.

<sup>5</sup> See generally Foo Chee Hock “Civil Case Management in Singapore: of Models, Measures and Justice”, Speech delivered at the 11<sup>th</sup> ASEAN Law Association General Assembly Conference in Bali, February 2012 and Prakash, above, note 4; *cf* the views of Dorcas Quek and Joyce Low “An Overview of Court Mediation in the State Courts of Singapore” at para 9.003 in *Mediation in Singapore: A Practical Guide* (Sweet & Maxwell, 2015).

9 Mediation is not an unfamiliar concept in the Singapore context. It is, in fact, deeply embedded in Asian culture, especially in countries like China, South Korea and Japan where Confucianism has had a certain influence and social order, harmony and face-saving are highly valued. Migrants from South China, for example, brought along with them the practice of settling disputes according to their rules and customs, at times, in Chinese clan associations.<sup>6</sup> At the same time, Malays in Singapore valued personal relationships and trust, preferring non-confrontational solutions consistent with Islamic principles, and the informality of mediation conducted by village headmen in accordance with customary standards and etiquettes of social interaction.<sup>7</sup> In the Indian communities, disputes were also resolved by their community councils and Hindu temples.<sup>8</sup>

10 Disputes were traditionally settled by respected elders or third parties as direct confrontation in court was considered a “loss of face”, amounting to washing dirty linen in public. Unfortunately, this aspect of Asian culture was eroded by the advent of “fault-based” culture, and litigation became the usual mode of dispute resolution. Rights and entitlements were emphasised over compassion, duty and relationships.<sup>9</sup> The cultural orientation of the Chinese Singaporean is no longer the same as the Chinese migrants of the past who came to settle in Singapore from the People’s Republic of China, largely because of Western influence as well as the impact of modernization.<sup>10</sup>

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<sup>6</sup> See Teh Hwee Hwee, “*Mediation Practices in ASEAN: The Singapore Experience*”, Speech delivered at the 11<sup>th</sup> ASEAN Law Association General Assembly Conference in Bali, February (2012).

<sup>7</sup> See Lawrence Boule and Teh Hwee Hwee, *Mediation – Principles, Process, Practice* (Butterworths Asia, 2000) at pp 191-192.

<sup>8</sup> *Ibid.*

<sup>9</sup> See Yong Pung How CJ’s address, above, note 1.

<sup>10</sup> See Lim Lan Yuan “Mediation Styles and Approaches in Asian Culture”, Paper delivered at the 2<sup>nd</sup> Asia Pacific Mediation Forum (2003) at p 3.

11 It became important to arrest this trend and ensure a congenial society for future generations; after all, Singapore's society and economy are built on a network of societal and business relationships. Hence, the courts started to encourage the use of mediation as a non-confrontational and less costly process of settling problems in terms of time, money and relationships.<sup>11</sup> In this regard, mediation offered a more harmonious way of resolving disputes.

### **An Asian Perspective on Mediation in Singapore**

12 The style of mediation currently practised in the Singapore context is a hybrid style based on both the traditional Western facilitative<sup>12</sup> and evaluative<sup>13</sup> model,<sup>14</sup> without, however, strict adherence to either. The procedures used tend to be formal with techniques focused on getting the parties concerned to explore an amicable settlement. Generally, listening to the parties and "gathering of information" from which a resolution may be crafted are important aspects of the mediation process.<sup>15</sup> Given the cultural differences between the East and the West, it is only natural that a unique Asian

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<sup>11</sup> *Ibid.*

<sup>12</sup> The interest-based model in mediation is generally associated with the facilitative mode of mediation, and comes with certain Western cultural assumptions such as the focus on rights of individuals and autonomy, the importance of direct and open communication and the maintenance of good relationships. In our Asian context, this interest-based model can be made more appropriate by recourse to changing the focus to social hierarchy, the preservation of harmony, relationships and face and context-dependent relationship maintenance: see Joel Lee "The ADR Movement in Singapore" in *The Singapore Legal System* (Singapore University Press, 1999) at 418.

<sup>13</sup> In the evaluative mode of mediation, similar to neutral evaluation or expert appraisal, the mediator uses his or her expertise to express a view on the merits of the specific or technical legal issues that will enable disputing parties to negotiate, encourage settlement, or help parties narrow the specific issues should they decide to arbitrate or litigate: see Lee, *ibid.*

<sup>14</sup> See Lum Kit-Wye "The Singapore Mediation Model – Are We Facilitative or Evaluative, and How Should We Choose?" [2012] Asian JM 19 at para 13.

<sup>15</sup> See Lim, above, note 10 at p 7.

perspective of mediation has developed. As Singapore is predominantly a Chinese society, this is a perspective that:

- (a) acknowledges Confucianist values, for example, that hierarchical relationships exist in society, social harmony is valued and attributes such as being compromising, yielding, and non-litigious are virtues;
- (b) places more importance on community needs over individual needs, and cherishes relationships or *guan xi* (关系); and
- (c) values the preservation of “face” or *mianzi* (面子).<sup>16</sup>

13 Unlike the Western model which puts the parties first and makes them the centre of the mediation, the Asian perspective prefers the mediator to be at the centre of the process.<sup>17</sup> In this regard, the mediator is an esteemed authoritative figure from whom guidance and opinions are sought. Thus, a mediator who adopts a purely facilitative, informal manner and does not seek to assume authority may be less effective. Intervention by the mediator may be necessary to correct power imbalances in Singapore’s highly hierarchical society,<sup>18</sup> where, in some cases, open debate and confrontation during joint sessions may lead to a loss of face. The Asian perspective thus entails a greater use of private sessions to unearth issues that may cause one party

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<sup>16</sup> See generally Joel Lee and Teh Hwee Hwee, *An Asian Perspective on Mediation* (Academy Publishing, 2009) at pp 54-61.

<sup>17</sup> *Ibid*, at para 3.62.

<sup>18</sup> Singapore has a high power distance dimensional score of 74 in Hofstede’s framework. This hierarchy is likely along the lines of gender and seniority in terms of age and rank: see Ng Wan Qing, “Could Power Inbalance be Power in Balance?” by Ng Wan Qing in Joel Lee & Marcus Lim (eds), *Contemporary Issues in Mediation Vol 1* (World Scientific Publishing Co Ltd, 2016), pp 1–15 at pp 3, 4 and 9.

embarrassment.<sup>19</sup> An approach that protects face and honour would engender cooperation<sup>20</sup> and therefore a greater likelihood of resolving the dispute.

14 To reduce this power imbalance in mediations, where possible, mediators and co-mediators from different backgrounds and expertise are matched to cases according to the profiles of the parties.<sup>21</sup>

## **Specific Judicial Reform in Support of Mediation/ADR in Singapore**

### ***Background***

15 We turn now to consider specific judicial reform in support of ADR in general and mediation in particular in the various Singapore courts. Before proceeding to do so, an extremely brief overview of the courts system in Singapore would be apposite.

16 In this regard, we note that the vast majority of cases are commenced in the State Courts – which comprise, *inter alia*, the Magistrates' Courts, the District Courts and, previously, the Family Courts.<sup>22</sup> In this last-mentioned regard, it should be noted that the Family Justice Courts (which include the Family Courts) were established as a separate judicial entity in October 2014<sup>23</sup> and are governed by a separate Act.<sup>24</sup> Indeed, the Family Justice Courts

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<sup>19</sup> See above, note 16.

<sup>20</sup> See Ng, above, note 18 at p 10.

<sup>21</sup> This occurs at the Community Mediation Centre to reduce power imbalance in areas of race, gender, religion and language (see Ng, above, note 18 at p 10) as well as in private mediation centres such as the Singapore Mediation Centre.

<sup>22</sup> And see generally s 3 of the State Courts Act (Cap 321, 2007 Rev Ed).

<sup>23</sup> See State Courts Annual Report 2014 at p 3: <https://www.statecourts.gov.sg/Resources/Documents/AnnualReport2014.pdf> (accessed on 2 October 2016).

<sup>24</sup> See the Family Justice Act 2014 (Act No 27 of 2014).

comprise the Family Division of the High Court,<sup>25</sup> the Family Courts and the Youth Courts.<sup>26</sup> A Family Court shall be presided over by a District Judge or a Magistrate who has been designated by the Chief Justice to be a Judge of the Family Court.<sup>27</sup>

17 The next – and higher level – of courts are to be found in the Supreme Court.<sup>28</sup> The Supreme Court itself comprises the High Court (which has both first instance as well as appellate<sup>29</sup> jurisdiction) and the Court of Appeal (which is the highest appellate court in Singapore<sup>30</sup>). Let us turn now to consider specific judicial reforms in support of both ADR and mediation in these various courts, commencing with the State Courts.

### ***Court Mediation at the State Courts and Family Justice Courts***

18 When the Small Claims Tribunals were set up in 1985 as a division of the State Courts, their main purpose was to provide a speedy and inexpensive machinery for handling small claims between consumers and suppliers.<sup>31</sup> The Tribunals aim to resolve negotiated settlements through an agreed settlement and, hence, mediation is used extensively in the first stage of proceedings for case disposal.<sup>32</sup> Even if the case is not resolved through mediation at the

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<sup>25</sup> And see the next paragraph.

<sup>26</sup> See s 3 of the Family Justice Act 2014, above, note 24.

<sup>27</sup> See s 13(1) of the Family Justice Act 2014, above, note 21.

<sup>28</sup> See generally the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed).

<sup>29</sup> It hears – in appropriate instances – appeals emanating from the various State Courts.

<sup>30</sup> And which hears, *inter alia*, appeals from the High Court.

<sup>31</sup> The Tribunals have jurisdiction to hear claims up to \$10,000, or \$20,000 if the parties concerned consent: see s 5 Small Claims Tribunals Act (Cap 308, 1998 Rev Ed) as well as <https://www.statecourts.gov.sg/SmallClaims/Pages/GeneralInformation.aspx>

<sup>32</sup> See Ong Chin Heng “Rethinking Tribunals Justice – Serving the Community”, Paper presented at the 4<sup>th</sup> Annual AIJA Tribunals Conference, held in Sydney on 8 June 2001.

consultation stage when the parties first appear before the Tribunals, the referee may subsequently explore the possibility of settlement before adjudicating the claim.<sup>33</sup> In 2015, 10,908 cases were filed at the Small Claims Tribunal. Half of these cases went through mediation<sup>34</sup> with settlement rates of above 75%.<sup>35</sup>

19 In 1994, court-based or judicial mediation<sup>36</sup> was initiated as a pilot project in the former Subordinate Courts,<sup>37</sup> now known as the State Courts. Civil claims of S\$250,000 and under and criminal cases except those involving life imprisonment or capital punishment are heard by these courts. The State Courts witnessed a total caseload of 326,450 cases in 2015, which forms more than 90% of the entire Judiciary's caseload.<sup>38</sup>

20 Under the 1994 pilot project, selected District Judges were assigned to resolve civil disputes using ADR processes, primarily mediation.<sup>39</sup> The project

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<sup>33</sup> See <https://www.statecourts.gov.sg/SmallClaims/Pages/GeneralInformation.aspx> (accessed 26 August 2016).

<sup>34</sup> SCT claims are disposed of *via* other avenues such as judgment in default, withdrawal by parties etc.

<sup>35</sup> Statistics provided by State Courts Centre for Dispute Resolution.

<sup>36</sup> See Alexandra Otis, "A Quiet Revolution: How Judicial Mediation is Changing the Face of the Traditional Court System in Canada and Singapore" [2007] Asian JM 28.

<sup>37</sup> The lower Courts within Singapore used to be termed the Subordinate Courts of Singapore, encompassing civil Courts, criminal Courts and family Courts. Since March 2014, the Subordinate Courts were re-named the State Courts *via* the State Courts Act, above, note 20. As already noted above (at para 16), the State Courts currently include only civil and criminal Courts, as the independent Family Justice Courts were formed in October 2014 *via* the Family Justice Courts Act 2014, above, note 24.

<sup>38</sup> Compare 14,396 new cases filed in the Supreme Court in 2014: see the *Supreme Court Annual Report 2014/2015* at p 49 and see "The Role of the State Courts in Providing & Facilitating the Use of Alternative Dispute Resolution", Speech presented by Jennifer Marie, Registrar/Deputy Presiding Judge of the State Courts at the Global Pound Conference, 17 March 2006.

<sup>39</sup> Known as Court Alternative Dispute Resolution.

was a success and the Primary Dispute Resolution Centre was established the following year, formalising the provision of Court Dispute Resolution services.

21 Senior judges were deployed as judge-mediators as they evoked confidence and authority, and could play the role of the respected authority figure to guide the parties towards an amicable settlement. Initially, these “settlement judges” practised a more rights-based, directive type of mediation.<sup>40</sup> Over the years, this approach has evolved to incorporate a more facilitative process.<sup>41</sup>

22 The mediation process includes joint sessions and, on appropriate occasions, private sessions, before engaging all the parties in finding a mutually acceptable solution. The judge plays a pro-active role during the mediation and guides the parties in understanding each other’s concerns as well as the implications of going for a trial in the event that no agreement can be arrived at. With the parties’ agreement, the judge may also provide an early neutral evaluation of the parties’ likelihood of success at trial.<sup>42</sup> If the parties reach a settlement, the terms of settlement are recorded by the judge and have

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<sup>40</sup> Former District Judge and director of the former Primary Dispute Resolution Centre of State Courts, Liew Thiam Leng, in “Alternate Dispute Resolution in Singapore”, stated that settlement judges were meant to take on “a more pro-active role by suggesting and guiding the parties with possible options but not to the extent of giving a definite opinion on the matter”: cited in Alexandra Otis, “A Quiet Revolution: How Judicial Mediation is Changing the Face of the Traditional Court System in Canada and Singapore,” [2007] Asian JM 28 at 50 and Lawrence Boule and Teh Hwee Hwee *Mediation – Principles, Process, Practice* (Butterworths Asia, 2000) at p 221.

<sup>41</sup> See Lum, above, note 14 at paras 8-9.

<sup>42</sup> See the State Courts Practice Directions 35(4).

the effect of an order of court,<sup>43</sup> but, if not, the case will proceed to trial as scheduled and it will be heard by another judge.<sup>44</sup>

23 Court Dispute Resolution was provided free up to 1 May 2015.<sup>45</sup> Since 1 May 2015, higher value civil cases filed pursuant to the District Court jurisdiction<sup>46</sup> attract Court ADR fees of S\$250 per party.<sup>47</sup>

24 Since the mid-1990's, the State Courts have been very pro-active in using mediation to divert civil claims from full-blown litigation. Apart from civil suits encompassing commercial and tortious claims, the use of mediation was then expanded to other types of cases, *viz*:

- (a) divorce and family proceedings since 1995;

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<sup>43</sup> See the Singapore Court of Appeal decision of *Jonathan Lock v Jesseline Goh* [2008] 2 SLR 455 at [37]–[38]:

37 ... If and when the parties reach a court-mediated settlement on liability and/or damages and the CDR settlement judge records the terms of the settlement, his mediatory function comes to an end. Thereafter, he resumes the ordinary judicial role of a district judge such that he may exercise any judicial power in relation to the settlement and enter judgment against the losing party in accordance with the terms of the settlement for enforcement purposes.

38 In sum, in order to give efficacy to CDR, a court-mediated settlement must be binding on the parties and carried out according to its terms. Any failure to comply with those terms by any party entitles the other party to enforce the settlement as a court order without the necessity of another hearing before the same CDR settlement judge or another judge.”

<sup>44</sup> See the State Courts Practice Directions 35(6).

<sup>45</sup> *Ibid* at 35(2).

<sup>46</sup> In the State Courts, the District Courts are situated at a higher level than the Magistrates Courts.

<sup>47</sup> See O 90A r 5A of the Rules of Court (Cap 322, R5, 2006 Rev Ed) and State Courts Practice Directions 35(7).

- (b) minor criminal offences or Magistrates' Complaints<sup>48</sup> since 1996; and
- (c) community justice matters.

*The use of mediation in different types of cases*

Divorce and Family Proceedings

25 In the Family Justice Courts, mediation is now accepted by legal practitioners as the first substantial step in the legal process.<sup>49</sup> Indeed, the Family Justice Court's mission states as follows: "Making justice accessible to families and youth through effective counseling, *mediation* and adjudication." Mediation was first introduced to minimise damage to the family from excessive acrimony.<sup>50</sup> Mediation and counselling were entrenched through s 50(1) of the Women's Charter in 1996 which allowed courts to direct parties to participate in mediation and counselling.<sup>51</sup>

26 In 2006, in order to consolidate and focus family court mediation services, the Family Resolution Chambers were set up. This was followed by the Maintenance Mediation Chamber in 2007, which dealt with the issue of maintenance and enforcement of maintenance.<sup>52</sup> In order to mitigate the impact

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<sup>48</sup> See s 151 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

<sup>49</sup> Launched in 2014 as the standalone Family Justice Courts. As ahead, noted in this paper, the Family Courts was previously a division of the State Courts. See also generally Kevin Ng "Family Mediation – The Perspective of the Family Court" in *Mediation in Singapore: A Practical Guide* (Sweet & Maxwell, 2015) and Chia Wee Kiat, "Paving A Better Way – The Family Justice Courts in Providing and Facilitating the Use of ADR", Paper presented at the Global Pound Conference Series 2016 - Singapore.

<sup>50</sup> See Teh, above, note 6.

<sup>51</sup> See also s 26(9) Family Justice Act 2014 which is wider in scope as it applies to any proceedings in Family Court, and is also referred to in Family Justice Courts Practice Directions, Part V, para 11(1).

<sup>52</sup> See Ng, above, note 49 at paras 12-008 and 12-022.

of divorce on children, court-based mediation took a big step in 2011, making mediation and counselling *mandatory* for divorcing couples with at least one minor child at the Child Focused Resolution Centre.<sup>53</sup> Issues such as child maintenance and division of matrimonial property are also dealt with here as they are closely linked to the welfare and care of the child<sup>54</sup>

27 Mediation and counselling services are provided free of charge for the parties. However, with effect from 1 October 2016, divorces (with no contested child issues) and estate proceedings where gross assets of \$3m and above are contested will be referred for mediation at the Singapore Mediation Centre unless parties have agreed upon a mediator.<sup>55</sup>

#### Magistrate's Complaints

28 Magistrate's Complaints are minor non-seizable criminal cases where victims could file a complaint in court. These cases generally concern interpersonal relationships, such as those involving relatives, friends and neighbours, and are referred to mediation in the hope that this would help to heal the broken relationships or at least prevent future recurrences of similar events.<sup>56</sup> After the complaint is filed, if the Magistrate is satisfied that there are grounds for the complaint, parties will be directed to appear for mediation before a Magistrate, a Justice of Peace or a volunteer mediator serving in the

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<sup>53</sup> See the Family Justice Courts Practice Directions, Part V, para 12(1).

<sup>54</sup> *Ibid*, para 12-067.

<sup>55</sup> See the Family Justice Courts Practice Directions (Amendment No 3 of 2016), paras 11(2)-(3). These amendments also provide in para (1A) that it is the responsibility of advocates and solicitors to advise their clients of mediation as a form of ADR for proceedings in the Family Justice Courts.

<sup>56</sup> See Boule and Teh, above, note 7 at p 224.

State Courts or the Community Mediation Centre.<sup>57</sup> If a settlement is reached, the complaint is withdrawn and no further action is taken. Otherwise, parties will proceed to trial by way of a private summons.<sup>58</sup>

#### Motor Accident, Personal Injury and Medical Negligence Cases

29 Pre-action protocols were introduced for motor accident cases, personal injury and medical negligence cases as litigation of these cases require the expenditure of a large amount of resources which are often significantly disproportionate to the value of the dispute. These pre-action protocols help parties save time and costs by stipulating a series of steps to be taken including the exchange of documents and negotiation, before a case is filed in court. Adopting these measures improves the parties' chances of settlement through negotiation<sup>59</sup> without the need for court proceedings.<sup>60</sup> For cases that are filed in court, a summary form of neutral evaluation is conducted by a judge, followed by negotiations between the parties based on that evaluation.<sup>61</sup>

#### Community Justice Matters

30 With effect from 2015, for matters arising under the Protection from Harassment Act<sup>62</sup> and the Community Disputes Resolution Act 2015,<sup>63</sup> parties

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<sup>57</sup>

And see <https://www.statecourts.gov.sg/CriminalCase/Pages/InformationaboutFilingaMagistratesComplaint.aspx> (accessed 26 August 2016).

<sup>58</sup>

*Ibid.*

<sup>59</sup>

See Prakash, above, note 4 and Foo, above, note 5.

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See *Havelock Square News*, June 2016, p 6.

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See State Courts Practice Directions 37 and 38.

<sup>62</sup>

Cap 256A, 2015 Rev Ed.

<sup>63</sup>

Act No 7 of 2015.

may be referred for mediation with or without their consent in order to promote conciliatory resolution of community disputes.<sup>64</sup>

*Other Judicial Policies, Practices and Procedural Requirements to Support Mediation at the State Courts*

31 Apart from the benefits that ADR brings to litigants, ADR has proven to be an effective tool for better case management. In order to ensure that ADR is invoked at the earliest opportunity so as to facilitate the early settlement of cases, pre-trial conferences were introduced.<sup>65</sup> To ensure that parties properly consider using ADR (primarily, mediation), the ADR Form containing information on the suitability of a case for ADR was introduced in 2010.<sup>66</sup> Parties are required to complete the ADR Form and submit it before the Case Management Conference (for Magistrate Court Suits<sup>67</sup>) or Pre-Trial Conference (for District Court Suits<sup>68</sup>), along with a certification that their respective lawyers have explained the different ADR options available to them. The parties are also to indicate their decision as to whether or not they would attempt ADR. It was observed that, with the implementation of this ADR Form, the number of cases referred to court mediation from pre-trial conferences has more than doubled.<sup>69</sup>

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<sup>64</sup> See See Kee Oon JC's Speech at the Launch of the Community Justice and Tribunal's Division on 24 April 2015: <https://www.statecourts.gov.sg/NewsAndEvents/Documents/Launch%20of%20CJT%20-%20Speech%20by%20Presiding%20Judge.pdf> (accessed 26 August 2016).

<sup>65</sup> See Boule and Teh, above, note 7 at pp 199-200.

<sup>66</sup> See the Subordinate Courts Practice Directions No 2 of 2010.

<sup>67</sup> Now governed by the simplified process set out in O 108 of the Rules of Court (Cap 322) implemented in 2015: see the State Courts Practice Directions 36(4). Case Management Conferences are convened within 50 days of filing of the Defence pursuant to O 108, r 3 of the Rules of Court: see the State Courts Practice Directions 36(2).

<sup>68</sup> See the State Courts Practice Directions 36(10). The State Courts Practice Directions 36(6) requires PTCs to be convened within 4 months after the writ is filed.

<sup>69</sup> See the *Subordinate Courts Annual Report 2010*, quoted in Foo, above, note 5.

32 The pool of mediators at the State Courts (and Family Justice Courts) was expanded in 2009 to include volunteer mediators comprising largely of legally qualified persons who had at least three years of post-qualification experience, and who had undergone mediator training and accreditation conducted by the Singapore Mediation Centre. The community is also involved in the mediation process, with social workers, court interpreters and other lay persons trained as counsellors or mediators particularly in the areas of family, criminal and relational disputes.<sup>70</sup>

33 Another important development in encouraging the use of mediation was the introduction in 2010 of cost sanctions where parties unreasonably refuse to consider mediation. Order 59 r 5(1)(c) of the Rules of Court, which applies to proceedings in both the Supreme Court and State Courts, mandates that the Court in exercising its discretion as to costs shall, where appropriate in the circumstances, take into account the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution. For example, a successful defendant may be deprived of a portion of the costs it otherwise would have been awarded because it was found to have unreasonably refused to engage in mediation.

34 This was followed by the presumption of ADR in 2012<sup>71</sup> which has since been extended to all civil cases.<sup>72</sup> Mediation/ADR has been promoted as the “first stop” to be seriously considered by court users “at the earliest stage” in all cases that enter the State Courts system as it provides parties the opportunity to resolve their disputes “faster and more cheaply compared to

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<sup>70</sup> See Teh, above, note 6.

<sup>71</sup> See the Subordinate Courts Practice Directions Amendment No 2 of 2012.

<sup>72</sup> See the State Courts Practice Directions 35(9).

litigation”.<sup>73</sup> Under the presumption of ADR, the court will, as a matter of course, refer appropriate matters to ADR.<sup>74</sup> There is even the option of mediations *via* Skype where one party is based overseas.<sup>75</sup> The early referral of cases to mediation is crucial in stemming escalating legal costs, and helps parties to avoid becoming too entrenched in their respective positions. The introduction of the Primary Justice Project in 2014 further encouraged the public to seek pre-writ settlement through negotiation and other modes of ADR such as mediation. For claims under \$60,000 and divorce matters where ancillaries are close to settlement, lawyers on the panel established under the Primary Justice Project seek to assist clients in the resolution of their disputes without involving legal action.<sup>76</sup>

35 In 2015, all Court Dispute Resolution services for civil, criminal<sup>77</sup> disputes and matters under the Protection from Harassment Act<sup>78</sup> and Community Disputes Resolution Act<sup>79</sup> were consolidated and are heard at the State Courts Centre for Dispute Resolution.<sup>80</sup>

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<sup>73</sup> The Honourable the Chief Justice Sundaresh Menon, Speech delivered at the Joint Launch of the State Courts Centre for Dispute Resolution and *Mediation in Singapore: A Practical Guide*, A Publication by Thomson Reuters (4 March 2015) at para 11; see also the State Courts Practice Directions 35(2) and 35(9).

<sup>74</sup> See the State Courts Practice Directions 35(9).

<sup>75</sup> See the State Courts Practice Directions 35(22).

<sup>76</sup> See <http://cjc.org.sg/programme/> (accessed 22 August 2016).

<sup>77</sup> Magistrate’s Complaints lodged to initiate private prosecution of criminal offences in the Crime Registry.

<sup>78</sup> Above, note 62.

<sup>79</sup> Above, note 63.

<sup>80</sup> Previously, civil claims were referred to the Primary Dispute Resolution Centre, while Magistrate’s Complaints filed by individuals in respect of criminal offences were referred to the State Courts’ Crime Registry for ADR. The Centre for Dispute Resolution has also been providing ADR services for applications filed under the Protection from Harassment Act, above, note 62, which took effect in November 2014.

*Response Towards Mediation at the State Courts*

36 The early results of court mediation were very encouraging. From 1995 to 1999, the number of cases dealt with through Court Dispute Resolution increased from 1,133 to 4,640 cases. Settlement rates in those years exceeded 85%, demonstrating that a high number of cases were successfully mediated. User surveys conducted in 1997 also reflected a high level of satisfaction with the Court Dispute Resolution process.<sup>81</sup> The overwhelming preference was for District Judges to act as mediators because of the public confidence and respect that they command, as well as the convenience to the parties of being able to directly enforce a court-mediated settlement by means of a court order.<sup>82</sup>

37 Court-annexed mediation in Singapore is now widely accepted by legal practitioners and litigants as a viable alternative to litigation. Between 2012 and 2015, 7,100 cases were mediated at the State Courts annually,<sup>83</sup> and settlement rates were maintained at above 85%. The mediated cases comprised mainly civil suits and Magistrate's Complaints which made up approximately 94% and 5% of the caseload, respectively. The Family Justice Courts mediated a total of 8,569 matters in 2015, with an 80% settlement rate.

38 A Court User Survey conducted in 2015 had 98% of respondents agreeing that alternate dispute services provided by the courts met their expectations in providing satisfactory resolution of disputes.<sup>84</sup>

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<sup>81</sup> See Quek and Low, above, note 5 at para 9.006-7.

<sup>82</sup> See *Jonathan Lock v Jesseline Goh* above, note 43 at [28].

<sup>83</sup> This does not include cases that are disposed of via other avenues such as judgment in default, summary judgment, automatic discontinuance as well as discontinuance by parties etc: information from State Courts Centre of Dispute Resolution.

<sup>84</sup> Information obtained from State Courts Centre for Dispute Resolution.

***Mediation of cases from the Supreme Court***

39 Over at the Supreme Court, mediation is not conducted by the judges. During pre-trial conferences, judges and registrars would encourage and refer appropriate cases for mediation at the Singapore Mediation Centre. In particular, cases involving family law issues (such as the division of matrimonial property, maintenance and custody) or which have a relational element (such as commercial or other disputes between relatives, business partners or parties with a pre-existing relationship) may be appropriate in this regard.<sup>85</sup> International cases originating from the Singapore International Commercial Court would, on the other hand, be referred to the Singapore International Mediation Centre.

40 In 2014, the ADR Offer process was implemented, and a party receiving an ADR Offer had 14 days to file a Response to an ADR Offer stating whether or not the party was agreeable to ADR, or to otherwise state reasons for their unwillingness or make counter-proposals.<sup>86</sup> An ADR Offer could be made by any party at any time of the proceedings.<sup>87</sup> Like the State Courts' ADR Form, prescribed forms have to be signed by parties and their lawyers, encouraging lawyers to discuss ADR with their clients.<sup>88</sup> Where parties opt for mediation, the court supports this election by giving directions to facilitate mediation such as holding court timelines in abeyance pending mediation, or setting the time frames for mediation to be initiated and completed.<sup>89</sup>

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<sup>85</sup> See Foo, above, note 5.

<sup>86</sup> See the Supreme Court Practice Directions 35B, 35C, Forms 28 and 29.

<sup>87</sup> See Part IIIA Supreme Court Practice Directions 35C(3).

<sup>88</sup> See the Supreme Court Practice Directions (Amendment No 6 of 2013), Part IIIA Supreme Court Practice Directions 35B(2).

<sup>89</sup> See Part IIIA Supreme Court Practice Directions 35C(4).

41 Practice Directions issued also require that ADR be considered at the earliest possible stage in order to facilitate the just, expeditious and economical disposal of civil cases, and this was expanded to state that this was especially so where ADR may save costs, achieve a quicker resolution and constitute a surer way of meeting client's needs.

42 From 1997 till 31 August 2016, a total of 1,972 matters from the High Court and 51 cases from the Court of Appeal<sup>90</sup> were mediated at the Singapore Mediation Centre. Of the High Court cases,<sup>91</sup> 69.2% of these cases were settled, and for Court of Appeal cases, the settlement rate was 47.06%.<sup>92</sup> The lower settlement rate for Court of Appeal cases reflects the difficulty in settlement where parties have engaged in protracted litigation and one party would already have "won" at first instance.

43 In 2016, Amendment No 1 of 2016 of the Supreme Court Practice Directions made it the professional duty of advocates and solicitors to advise their clients about the different ways disputes may be resolved using ADR, as well as to advise their clients on potential adverse costs orders for unreasonable refusal to engage in ADR. Detailed guidelines for advocates and solicitors on advising clients about ADR were also issued which, in particular,

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<sup>90</sup> Court of Appeal cases have only been referred to mediation from 2014 onwards.

<sup>91</sup> Domestic cases are referred to SMC while international cases, particularly those from the Singapore International Commercial Court ("SICC"), are referred to the Singapore International Mediation Centre (SIMC). The SICC Practice Directions paras 76 and 77 provide that even before the first Case Management Conference ("CMC") (which, unlike the High Court and Court of Appeal, are conducted by the SICC Judges themselves and not registrars), counsel for all parties should take instructions from their clients on their intention and willingness to proceed with mediation or other forms of ADR. What is envisaged is a very hands-on approach by the Judge in exploring the proper use of ADR right from the beginning, since the first CMC is called soon after close of pleadings: see Deputy Registrar Teh Hwee Hwee's note of 4 May 2016 (personal communication). Statistics provided by the Singapore Mediation Centre.

<sup>92</sup> Statistics provided by the Singapore Mediation Centre.

highlighted the essential differences between litigation and mediation as a means of resolving commercial disputes.<sup>93</sup> The Response to ADR Offer was amended to include a section for clients to certify that they had been advised of ADR options, the benefits of settling by ADR as well as the potential of an adverse costs order.<sup>94</sup>

44 To supplement this duty of advocates and solicitors, there are plans to amend the Legal Profession (Professional Conduct) Rules in the near future to include a new rule aimed at preventing the misuse or abuse of mediation proceedings, for instance, the intimidation of another party or fishing for information and documents for later use at trial. An ADR Offer or Response to ADR Offer should not be made with a view to “spy” on the other party’s case to gain an advantage in the proceedings but with a view to resolving the dispute at hand amicably and efficiently.

### **Institutional Mediation Infrastructure supported by the Courts**

#### ***Singapore Mediation Centre (“SMC”)***

45 In 1997, the SMC was established to promote the use of mediation, and over the course of time provide mediation services for suitable High Court and Court of Appeal cases.<sup>95</sup> To support the growth of institutional infrastructure, the Supreme Court drew up guidelines on disputes suitable for mediation and these cases were actively diverted to mediation during pre-trial hearings.<sup>96</sup> Gradually, this developed into a process where letters were sent by the SMC to parties inviting them to consider mediation once memorandums of appearance

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<sup>93</sup> See Appendix I, Supreme Court Practice Directions.

<sup>94</sup> Part IIIA, Supreme Court Practice Directions (Amendment No 1 of 2016).

<sup>95</sup> Court of Appeal cases have only been referred for mediation from 2014 onwards.

<sup>96</sup> See Prakash, above, note 4.

were entered for writs filed.<sup>97</sup> In 2016, 42.1% of the SMC's cases originated from referrals by the Supreme Court.

46 Unlike mediation at the State Courts, the SMC is a private mediation centre where mediations are conducted for a fee. The SMC maintains three panels of mediators,<sup>98</sup> of which the principal mediator panel includes former High Court judges, Senior Counsel and industry professionals.

47 Over the last 19 years, the SMC has administered over 2,700 mediations with a settlement rate of about 72.5%, of which more than 90% settle within a day. The total quantum of disputed sums mediated is estimated at over \$3.3 billion. The SMC is located in the Supreme Court building, giving parties the confidence of a judiciary-endorsed centre.

48 The SMC has been undertaking the ongoing task of changing society's mindset to embrace mediation and amicably resolve disputes. Specific segments of society have been targeted, for instance, the legal sector and key industries like construction, insurance, healthcare, maritime and oil and gas as well as small and medium enterprises.

### ***Singapore International Mediation Centre ("SIMC")***

49 Established in 2014, the SIMC focusses on mediating cross-border international cases emanating primarily from the Singapore International Commercial Court and the Singapore International Arbitration Centre. It is a private commercial mediation centre with an international panel of mediators.

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<sup>97</sup> Except where default judgment has been entered, notice of discontinuance filed; the matter is sealed or stayed pending arbitration.

<sup>98</sup> International, Principal and Associate Panel of Mediators.

50 The SIMC was established pursuant to the recommendations of the International Commercial Mediation Working Group (the “Working Group”) made in November 2013.<sup>99</sup>

### **Establishment of the Working Group**

51 In April 2013, Chief Justice Sundaresh Menon appointed the Working Group, comprising international and local experts, to propose plans to develop international commercial mediation in Singapore.<sup>100</sup> Aside from the formation of SIMC, the Working Group also proposed, *inter alia*:

- a) The establishment of the Singapore International Mediation Institute (SIMI) as a professional body to set standards and provide accreditation for mediators;<sup>101</sup>
- b) The enactment of a Mediation Act;<sup>102</sup>
- c) Extension of tax exemptions and incentives applicable to arbitration to mediation.<sup>103</sup>

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<sup>99</sup> See Recommendations of the International Commercial Mediation Working Group found at <https://www.mlaw.gov.sg/news/press-releases/icmwg-recommendations.html> (accessed 2 October 2016).

<sup>100</sup> *Ibid*, see Annex A.

<sup>101</sup> See para 54 below.

<sup>102</sup> See para 56 below.

<sup>103</sup> A work-pass exemption applies to non-residents performing arbitration or mediation services in Singapore as of 1 February 2008. A withholding tax exemption for non-resident mediators was also implemented in 1 April 2015 (s 13(16) Income Tax Act. (Cap 134)). See <https://www.mlaw.gov.sg/content/minlaw/en/legal-industry/incentive-and-exemption-schemes.html> (accessed on 2 October 2016).

## **Mediation Training and Developing a Culture of Mediation**

52 Over the years, numerous judges and judicial officers have undergone mediation and ADR training at the SMC and leading ADR institutions in the US and UK to equip them with mediation skills.

53 In 2016, the Singapore International Dispute Resolution Academy (“SIDRA”) was established as the first regional hub dedicated to training and educational excellence in negotiation and dispute resolution.<sup>104</sup> SIDRA will collaborate with both local partners and renowned overseas institutions to establish training and educational programmes, research and development projects and other initiatives.<sup>105</sup> Significantly, SIDRA will offer an international platform for exchanging and developing ideas on theory, practice and policy development and will bring a strong presence of contemporary Asian voices into the global conversations on dispute resolution.<sup>106</sup>

## **Regulation of the Practice of Mediation**

54 In working towards establishing a standard of professionalism against which mediators can be measured, the SMC has been on a mission to professionalise mediation. The SMC is effecting this by raising the bar for entry into its panel of international, principal and associate mediators and tightening its accreditation programme.

55 To raise mediation standards, the Singapore International Mediation Institute (SIMI) was incorporated in July 2014 to drive transparency and raise

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<sup>104</sup> See Sundaresh Menon CJ, “Shaping the Future of Dispute Resolution & Improving Access to Justice”, Paper delivered at the Global Pound Conference Series 2016 – Singapore at para 50.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

competency standards in mediation practice.<sup>107</sup> SIMI will contribute to the development of mediation in Singapore in three main areas:

- i. through its credentialing schemes, it will ensure the professionalism and quality of mediators on its panel;
- ii. it will serve as a mark of quality assurance of mediators, instilling trust and confidence in users of the mediation services provided; and
- iii. it will promote greater understanding and inspire wider use of mediation, through educational and awareness workshops and programmes on mediation.<sup>108</sup>

### ***Mediation Bill***

56 The Working Group had recommended that a Mediation Act be introduced to help strengthen the framework for mediation in Singapore and provide certainty for users where the position in law is unclear.<sup>109</sup> A Mediation Bill was presented for public consultation earlier this year,<sup>110</sup> and when passed,<sup>111</sup> it will have provisions:

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<sup>107</sup> <http://www.simi.org.sg/> (accessed 22 September 2016).

<sup>108</sup> See speech by Senior Minister of State for Law, Indranee Rajah, at the launch of SIMI, 5 Nov 2014 at para 14: at <https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/SMS-speech-at-SIMI-launch.html> (accessed 22 September 2016).

<sup>109</sup> See Annex A: Executive Summary of International Commercial Mediation Working Group at para 15 (<https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/FINAL%20ICMWG%20Press%20Release%20-%20Annex%20A.pdf>) (accessed on 2 October 2016).

<sup>110</sup> See <https://www.mlaw.gov.sg/content/minlaw/en/news/public-consultations/public-consultation-on-the-draft-mediation-bill.html>

<sup>111</sup> It has, at the time of writing, yet to be tabled for its First Reading in Parliament.

- a) staying proceedings pending a mediation outcome to ensure that parties' legal positions are preserved and to remove disincentives from mediation;
- b) strengthening the enforceability of mediated settlements by allowing certain mediated agreements to be enforced as Orders of Court;
- c) clarifying confidentiality and privilege in the context of mediation; and
- d) extending existing Legal Profession Act exceptions applicable to arbitration to mediation.<sup>112</sup>

### ***Immunity of Mediators***

57 At present, mediator immunity is conferred by legislation. In the State Courts and the Family Justice Courts, judge mediators and court-appointed volunteer mediators are protected under s 68(4) of the State Courts Act<sup>113</sup> and s 45(4) of the Family Justice Court Act,<sup>114</sup> provided that they have acted in

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<sup>112</sup> Annex A: Summary of International Commercial Mediation Working Group Recommendations (<https://www.mlaw.gov.sg/news/press-releases/icmwg-recommendations.html>) and the Draft Mediation Bill (<https://www.mlaw.gov.sg/content/minlaw/en/news/public-consultations/public-consultation-on-the-draft-mediation-bill.html>), both accessed on 2 October 2016.

<sup>113</sup> Cap 321, 2007 Rev Ed; s 68(4) itself reads as follows:  
“(4) No judicial officer, officer of a State Court or court-appointed mediator shall be liable to be sued for an act done by him for the purposes of any mediation or other alternative dispute resolution process conducted by him in a State Court, if the act —  
(a) was done in good faith; and  
(b) did not involve any fraud or wilful misconduct on his part.”

<sup>114</sup> Act 27 of 2014; s 45(4) itself reads as follows:  
“(4) No judicial officer, officer of the Family Justice Courts or court-appointed mediator shall be liable to be sued for an act done by him for the purposes of any court proceedings, or any mediation or other alternative dispute resolution process conducted by him, in the Family Division of the High Court, a Family Court or a Youth Court, if the act —

*(cont'd on next page)*

good faith, and there was no fraud or wilful misconduct. Immunity from legal process reflects the Courts' policy of allowing judges to take on the expanded role of assisting to resolve cases through mediation, and building a broad base of court mediators<sup>115</sup> to support these mediator-judges.

58 In so far as mediators at private mediation institutions are concerned, they practise without legal safeguards other than those provided through contract, insurance or confidentiality agreements.<sup>116</sup> For instance, at the SMC, the Mediation Agreement concluded between parties and the mediator contains a waiver of liability clause.<sup>117</sup> Additionally, lawyer-mediators would presumably rely on their professional insurance coverage when faced with civil liability that arises from any act or omission in carrying out their practice as advocates and solicitors and "other incidental roles".

59 The confidentiality provisions of the Mediation Bill will impact on mediator immunity as it determines whether a party can use evidence from mediation in order to prove irregularities in the conduct of the mediator, and also whether the mediator can bring evidence to refute such a claim.<sup>118</sup> As

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(a) was done in good faith; and

(b) did not involve any fraud or wilful misconduct on his part."

<sup>115</sup> See Quek and Low, above, note 5 at paras 9.033 and 9.037.

<sup>116</sup> See Penny Brooker, "Mediator immunity: time for evaluation in England and Wales?" (2016) 36 *Legal Studies* 464 at p 465.

<sup>117</sup> "6.1 In consideration of SMC and the Mediator(s) providing the mediation services sought by the Parties:

a. The Parties shall not make any claim whatsoever against the Mediator(s) (subject to paragraph 6.1 b. herein) and/or SMC, its officers and employees for any matter in connection with or in relation to:

i. the mediation; and/or

ii. the services provided by the Mediator(s) and/or SMC; and/or

iii. the dispute between the Parties.

b. The Mediator(s) will not be liable to the parties for an act or omission in connection with the mediation service provided by him, unless the act or omission is fraudulent or involves negligence or misconduct.

c. SMC, its officers and employees, will not be liable to the parties for an act or omission in connection with the services provided by the mediator or in relation to the mediation."

<sup>118</sup> See Brooker, above, note 116 at pp 479-480.

mediation involves talks to reach settlement, settlement discussions are protected through the common law rules of “without prejudice” which encourage parties to make concessions or admissions in the belief that these cannot be used in later litigation.<sup>119</sup>

60 There is also no formal legal provision to censure mediators; neither have there been any reported cases against mediators on the grounds of their conduct. However, as claims against mediators are likely to centre on issues of competency and conduct, causes of action may be founded on breach of contract, tortious liability (criminal in more serious cases) and a breach of fiduciary duty.<sup>120</sup> As the number of mediations increases, the probability of litigation against mediators potentially escalates.<sup>121</sup>

## **The Future Practice of Mediation**

### *Use of Technology in Mediation*

61 In 2000, the State Courts ran the Court Dispute Resolution International programme in which a judge from a foreign jurisdiction would co-chair, by real-time video link, the settlement discussion with a Singapore judge. Litigants and lawyers were able, thereby, to gain a broader judicial perspective in disputes involving substantial claims or foreign parties.<sup>122</sup>

62 As our local judge-mediators became more experienced, this programme was gradually phased out. Various other initiatives leveraging on the use of technology in mediation were introduced then, as follows:

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<sup>119</sup> *Ibid* at p 480.

<sup>120</sup> *Ibid* at p 482.

<sup>121</sup> *Ibid* at p 489.

<sup>122</sup> <http://www.lawgazette.com.sg/2000-1/Jan00-27.htm> (accessed 21 August 2016); see also Boule and Teh, above, note 7 at p 202.

(a) In 2000, e@DR provided online mediation for e-commerce disputes;<sup>123</sup> and

(b) In 2002, DisputeManager.com<sup>124</sup> was designed to provide a suite of online ADR services such as negotiation, mediation and case appraisal and was operated by SMC.

63 Both were perhaps ahead of their time then.<sup>125</sup> Singapore's small size allows for face to face communications and mediations in person to take place easily. The only technology in use now in the mediation context is Skype when foreign parties are involved in mediation at the State Courts<sup>126</sup> and at the Family Justice Courts.<sup>127</sup> The Family Justice Courts and the SMC are currently exploring the use of encrypted video conferencing facilities.

64 With technological advancement, and to cater to a new generation of users and mediators, it is envisaged that mediation *via* video conferencing and other technological tools will complement traditional face to face mediation.

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<sup>123</sup> See Boule and Teh, *ibid* at p 203 and Sanjana Hattotuwa and Conley Tyler "An Asian Perspective on Online Mediation" [2005] Asian JM 13 at 17; Online Dispute Resolution: Challenges for Contemporary Justice by Gabrielle Kaufmann-Kohler, Thomas Schultz (Kluwer Law International, 2004) at p 272 and [https://www.smeportal.sg/content/smeportal/en/bizguides/legal/2015/resolving-disputes-out-of-court\\_g.html](https://www.smeportal.sg/content/smeportal/en/bizguides/legal/2015/resolving-disputes-out-of-court_g.html) (accessed 22 September 2016).

<sup>124</sup> See Speech of Yong Pung How CJ at the launch of DisputeManager.com in 2002: <http://www.sal.org.sg/Lists/Speeches/DispForm.aspx?ID=15&Source=http%3A%2F%2Fwww%2Esal%2Eorg%2Esg%2Fcontent%2FPR%5Fspeeches%5Farchive%2Easpx> (accessed 25 August 2016).

<sup>125</sup> DisputeManager is now the website for ".sg" domain name disputes under the Singapore Domain Name Dispute Resolution Service: <http://www.disputemanager.com.sg/SDRP/what.htm> (accessed 25 August 2016).

<sup>126</sup> See the State Courts Practice Directions 35(22).

<sup>127</sup> (Accurate as at 25 August 2016, all in chambers).

## Conclusion

65 The judiciary's support for mediation has resulted in significant success and mediation has now been established as a viable dispute resolution option for resolving even the most high-value civil and commercial disputes, alongside court litigation and arbitration. While the judicial function can never be replaced by ADR processes, a system of adjudication supported (as well as complemented) by such processes will be better equipped to deliver access to justice. In fact, there may be instances when it is indeed preferable for users to access and achieve justice through acceptable consensual outcomes, thus promoting a more gracious society in the process.

66 Barring events such as Brexit, major shifts in the global landscape towards increased economic openness and increased mobility of labour and capital, such as the "One Belt One Road" initiative in China, require that methods of dispute resolution evolve to remain relevant in these changing times.<sup>128</sup> We can expect growth in cross-border trade and, correspondingly, cross-border disputes.<sup>129</sup> Parties to such disputes need an avenue to explore their issues and interests beyond the strict legal confines of their national legal systems. This is where mediation, and the flexibility that it provides, can fill the gap and pave the way to a quicker, more cost-effective, and less acrimonious process of dispute resolution for all.

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<sup>128</sup> See Menon CJ, above, note 104 at para 5.

<sup>129</sup> *Ibid* at para 11.