

BUILDING SUSTAINABLE MEDIATION PROGRAMMES: A SINGAPORE PERSPECTIVE

*The Honourable the Chief Justice Sundaresh Menon**

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1. I am honoured to have this opportunity to address you today, and to offer a Singapore perspective on building sustainable mediation programmes.

Mediation and its relevance to Asian culture

2. The resolution of disputes through informal mediation has an impressive vintage in Singapore. In days long gone by mediations usually involved community leaders – often respected elders – intervening in community disputes, bringing the parties together to talk things through, and encouraging amicable settlement.¹

3. Singapore's experience with informal mediation of this sort is mirrored in many of our ASEAN neighbours, such as Brunei Darussalam², Indonesia³, Malaysia⁴, the Philippines⁵, Thailand⁶ and Vietnam⁷. In some respects, this may be

* I am very grateful to my colleague, Ms Delphine Ho, Assistant Registrar of the Supreme Court of Singapore, for her assistance in the research and preparation of this paper.

¹ Joel Lee and Teh Hwee Hwee, eds, *An Asian Perspective on Mediation*, Academy Publishing 2009, at pp 10-11.

² Ahmad Jefri Rahman, "Developments in Arbitration and Mediation as Alternative Dispute Mechanisms in Brunei Darussalam" (paper delivered at the 11th General Assembly of the ASEAN Law Association) (online: <http://www.aseanlawassociation.org/11GAdocs/workshop5-brunei.pdf>).

³ Mas Achmad Santosa, "Development of Alternative Dispute resolution (ADR) in Indonesia" (online: http://www.aseanlawassociation.org/docs/w4_indo.pdf).

⁴ Lee and Teh, *An Asian Perspective on Mediation*, *supra* note 1 at pp 5-6.

⁵ Patricia-Ann T Prodigalidad, "Building an ASEAN Mediation Model: the Philippine Perspective" (paper delivered at the 11th General Assembly of the ASEAN Law Association) (online: <http://www.aseanlawassociation.org/11GAdocs/workshop5-phil.pdf>).

traced to the fact that mediation is particularly suited to many traditional Asian cultures, where despite cultural differences, concepts of social order, harmony and honour are highly regarded. In countries such as China and South Korea, the influence of Confucianism has contributed to the practice of informal or non-institutionalised mediation as a means of resolving disputes.⁸ In Japan, where value is placed on social harmony and personal honour, the settlement of disputes through non-litigious means such as mediation is preferred as it allows parties to preserve relationships and enables the individual to save face.⁹

The development of modern mediation in Singapore

4. The growth of Singapore into a modern metropolis and the rapid urbanisation of her people led to a decline in the practice of these traditional forms of mediation. It was not until the 1990s that the practice of mediation saw a revival with the establishment of several avenues for formalised mediation.

5. At that time, a decision was made to promote alternative dispute resolution, or ADR, processes, and in particular mediation, throughout the legal system. This was prompted in part by concerns over a trend of Singaporeans becoming excessively litigious, as well as by the desire to achieve a number of specific goals:

⁶ Sorawit Limparangsri and Montri Sillapamahabundit, "Mediation Practice: Thailand's Experience" (paper delivered at the 11th General Assembly of the ASEAN Law Association) (online: <http://www.aseanlawassociation.org/11GAdocs/workshop5-thai.pdf>). See also: Lee and Teh, *An Asian Perspective on Mediation*, *supra* note 1 at p 6.

⁷ Prof Dr Le Hong Hanh, "Mediation and Mediation Law of Vietnam in context of ASEAN integration" (paper delivered at the 11th General Assembly of the ASEAN Law Association) (online: <http://www.aseanlawassociation.org/11GAdocs/workshop5-vn.pdf>).

⁸ Professor Lim Lan Yuan, "Mediation Styles and Approaches in Asian Culture" (paper delivered at the 2nd Asia Pacific Mediation Forum) at pp 2-3 (online: <http://www.asiapacificmediationforum.org/resources/2003/limlanyuan.pdf>).

⁹ Professor Lim Lan Yuan, "Mediation Styles and Approaches in Asian Culture", *ibid.*, at p 3. See also: Katja Funken, "Comparative Dispute Management: Court-connected mediation in Japan and Germany" (online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=293495).

- a. to provide a less costly and adversarial method of dispute resolution that could be deployed for different types of conflicts;
- b. to assist in case management and in particular to ease the burden of the judicial caseload; and
- c. to maintain the Asian way of life by promoting the harmonious settlement of disputes.¹⁰

6. Three avenues for formalised, institutional mediation were established to address these concerns:

- a. First, alternative dispute resolution was introduced in the State Courts in 1994 to promote a non-confrontational approach towards the resolution of court proceedings;
- b. Second, a network of Community Mediation Centres, or CMCs, was established to help relatives, friends and neighbours to resolve community disputes. The first Community Mediation Centre opened its doors in 1997; and
- c. Third, also in 1997, the Singapore Mediation Centre was set up not only to provide commercial mediation services, but also to serve as a training and accreditation body for mediators.

¹⁰ Adrian Loke, "Mediation in the Singapore Family Court", (1999) 11 SAcLJ 189 at p 194 (online: [http://www.sal.org.sg/digitallibrary/Lists/SAL%20Journal/Attachments/237/1999-11\(1\)-SAcLJ-189-Loke.pdf](http://www.sal.org.sg/digitallibrary/Lists/SAL%20Journal/Attachments/237/1999-11(1)-SAcLJ-189-Loke.pdf)).

Court-annexed mediation in the State Courts: Establishing mediation as a parallel process to court litigation

7. Let me begin with the first of these measures. In 1994, the Primary Dispute Resolution Centre, or PDRC, was set up in the State Courts to offer court-annexed alternative dispute resolution services, including mediation and neutral evaluation. This was particularly targeted at civil cases filed in the State Courts (which have a monetary ceiling of S\$250,000).¹¹ Initially, all mediators at the PDRC were Judges of the State Courts who had received specialised training in mediation and mediation techniques. Increases in the number of cases to be mediated subsequently led to an expansion of the pool of mediators to include legally trained, and accredited, volunteer mediators.¹²

8. The PDRC and its mediators played an important role in raising the public's awareness of mediation as an alternative method of dispute resolution to court litigation, and establishing mediation as an accepted parallel process alongside court litigation. Disputants were quick to recognise the benefits of mediation, including the greater control that they themselves had over the course and the outcome of mediation proceedings, as well as the potential savings in costs and time if an amicable settlement could be reached.

9. From the courts' perspective, mediation has proved to be an extremely useful tool for case management. Our experience suggests that most litigants in fact

¹¹ State Courts brochure, *Mediation* (online: <http://www.statecourts.gov.sg/CivilCase/Documents/Mediation.pdf>).

¹² State Courts official website, *Mediation Process* (online: <https://www.statecourts.gov.sg/CivilCase/Pages/Mediation%20process.aspx>). Volunteer mediators at the Primary Dispute Resolution Centre are accredited by both the State Courts as well as the Singapore Mediation Centre.

prefer to avoid the strain and the publicity associated with an open-court trial and are not averse to settling their disputes privately. Court-annexed mediation offers them an opportunity to do just that under the guidance of a trained mediator.

10. Settled cases also had the direct benefit of easing the court's case load. In those cases where a settlement could not be reached, it was sometimes the case that specific issues might be resolved, or differences narrowed. Thus, as a direct result of the mediation process, it transpired not infrequently, that less trial time would be required to resolve the remaining issues.

11. The success of mediation in the context of civil claims led to its extension to minor criminal matters in 1996. This was particularly the case with private prosecutions where a party initiates the process by filing a Magistrate's Complaint.¹³ In such cases, the Magistrate may, if satisfied that there may be grounds to the complaint, direct parties to attend a "criminal mediation". If an amicable settlement is reached, the complaint will usually then be withdrawn.

12. Mediation has also been extended with great success to matrimonial and family matters. Such proceedings are often emotionally charged and may involve minor children or elderly dependents. Mediation was introduced into this context to minimise the damage caused to the family by excessive acrimony.¹⁴ Mediators in

¹³ State Courts official website, *File a Magistrate's Complaint* (online: <http://www.statecourts.gov.sg/CriminalCase/Pages/InformationaboutFilingaMagistratesComplaint.aspx>). See also Section 155 of the Criminal Procedure Code (Cap. 68).

¹⁴ Teh Hwee Hwee, "Mediation Practices in ASEAN: The Singapore Experience", (paper delivered at the 11th General Assembly of the ASEAN Law Association) at p 5 (online: <http://www.aseanlawassociation.org/11GAdocs/workshop5-sg.pdf>).

this context are trained and encouraged to keep the parties focussed on areas of common interest such as the children.

13. The success of mediation and ADR for civil cases in the State Courts led, in 2012, to the introduction of a presumption of ADR¹⁵ for all civil disputes. Under this initiative, civil cases in the State Courts are automatically referred to the most suitable mode of ADR – whether it is mediation, neutral evaluation or arbitration under the Law Society Arbitration Scheme¹⁶ – unless parties themselves opt out of the ADR process.¹⁷

14. The State Courts continues to offer court-annexed mediation today. The Singapore experience with court-annexed mediation has been a very positive one, as can be seen from recent statistics:

- a. in 2013, 7,292 cases were mediated and of these, 92% were successfully settled; and
- b. in 2014, 6,420 cases were mediated, of which 89% were settled.¹⁸

15. I suggest there are three foundations that have underpinned the success of court-annexed mediation and ADR in Singapore :

¹⁵ State Courts Practice Directions Amendment No. 2 of 2012; see also State Courts Practice Directions, paragraph 18(6).

¹⁶ The Law Society Arbitration Scheme is a service provided by the Law Society of Singapore. For more information, see: The Law Society of Singapore official website, *Arbitration Scheme* (online: <http://www.lawsociety.org.sg/forMembers/ResourceCentre/ArbitrationScheme.aspx>).

¹⁷ State Courts Practice Directions, paragraph 25.

¹⁸ Statistical information provided by the State Courts. The number of cases mediated includes civil and criminal cases, but excludes family cases.

- a. first, ease of access to mediation and related ADR services. We deliberately located the Primary Dispute Resolution Centre within the premises of the State Courts, thus giving litigants easy access to mediation and ADR services. Aside from physical accessibility, we also ensured that access to these services would not be compromised through high cost. In fact, the PDRC currently provides free mediation and ADR services to users of the State Courts, though this is under review, but this has undoubtedly translated into greater access to justice for the average court user;
- b. second, judicial officers in the State Courts themselves worked hard to establish mediation and ADR as a first choice for resolving many disputes.¹⁹ This has led to greater acceptance of the legitimacy of mediation and other ADR processes by members of the public; and
- c. last, but certainly not least, a user of court-annexed mediation services is assured of quality and the adoption of best practices by mediators at the State Courts.²⁰ Judicial officers, court counsellors and volunteer mediators at the State Courts are all guided by a Code of Ethics and Basic Principles on Mediation, and they provide quality and professional mediation services that are comparable with what is offered by private mediation institutions.

¹⁹ Joyce Low and Dorcas Quek, *Introducing a "Presumption of ADR" for Civil Matters in the Subordinate Courts* (online: <http://www.lawgazette.com.sg/2012-05/415.htm>).

²⁰ Teh Hwee Hwee, "Mediation Practices in ASEAN: The Singapore Experience", *supra* note 14 at p 6. See also: State Courts official website, *The State Courts of Singapore: Code of Ethics and Basic Principles on Court Mediation* (online: <https://www.statecourts.gov.sg/CivilCase/Documents/CodeOfEthics-and-BasicPrinciplesOnCourtMediation-190314.pdf>).

Mediation initiatives in the Supreme Court

16. Let me briefly touch on the mediation initiatives of the Supreme Court. Although court-annexed mediation is not routinely offered for cases in the Supreme Court, the Court works closely with the Singapore Mediation Centre on several levels to ensure that suitable cases are referred to mediation.

17. First, the conduct and progress of civil cases filed in the Supreme Court is managed through a series of case management conferences which are presided over by a Judge or Registrar of the Supreme Court. During these case management conferences, active steps are taken to explore the option of mediation and ADR. In suitable cases, the Judge or Registrar may directly refer a case to mediation at the Singapore Mediation Centre. In general, mediation is raised for consideration at an early stage of the proceedings on the basis that early resolution will translate directly into savings in costs and time, both from the perspective of the litigants as well as the courts.

18. To strengthen the mediation framework in the Supreme Court, the Supreme Court Practice Directions were amended in January 2014 to introduce a process for parties to make and accept (or refuse) offers to mediate. The "ADR Offer procedure", as this process is known, is intended to encourage litigants to consider mediation or other methods of ADR at an early stage of the court proceedings "in order to facilitate the just, expeditious and economical disposal of civil cases"²¹.

²¹ Supreme Court Practice Directions, paragraph 35B(2).

19. Where parties agree to attempt mediation following the exercise of the ADR Offer procedure, the court may give directions to facilitate the intended mediation process.²² Such directions may include holding court timelines in abeyance pending the mediation process, or the setting of time frames for mediation to be formally initiated and completed.

20. There are also provisions under the Rules of Court and the Supreme Court Practice Directions, under which the court may take into account the parties' attempts at mediation or other means of dispute resolution when exercising its discretion as to the award of costs.²³ The purpose of these provisions is to incentivise litigants to consider and participate meaningfully in mediation or other ADR processes. Accordingly, while the usual rule is for the winning party to be compensated a substantial part of his costs, a party who is ultimately successful at trial, but who has refused mediation (whether under the ADR Offer procedure or otherwise), or who attended mediation but did not participate in good faith, could find himself with a less favourable costs order.

21. As mediation of Supreme Court cases is not mandatory and is ultimately subject to the parties' willingness to mediate, fewer cases from the Supreme Court actually proceed to mediation. However, of the cases actually mediated, the rate of settlement has been encouraging, ranging between 66% and 81% over the last three years.²⁴

²² Part IIIA of the Supreme Court Practice Directions, paragraphs 35B and 35C.

²³ Order 59, rule 5(c) of the Rules of Court. See also Supreme Court Practice Directions, paragraph 35C.

²⁴ Statistical information provided by the Singapore Mediation Centre.

22. Mediation within the framework devised in the Supreme Court is not limited to civil disputes heard by the Singapore High Court at first instance. The ADR Offer procedure is also applicable to appeals before the Singapore Court of Appeal. In addition, it is open to appellate judges to ask the parties in an appeal to consider whether mediation or other forms of ADR could help them find a satisfactory solution to their dispute. In this connection, in 2014, twelve pending appeals were in fact referred by the Singapore Court of Appeal to the Singapore Mediation Centre for mediation. Seven of these matters were successfully settled after mediation, four were not settled and the outcome of the remaining matter is still pending.²⁵ The settlement rate, which is in excess of 50%, is impressive particularly as there is often less impetus for parties in an appeal to reach a settlement since one party would already have “won” at first instance.

Government-led efforts in the development of mediation

23. Let me turn to the second of the measures outlined above. Outside of the courts, the Government has encouraged the establishment and development of domestic mediation programmes. This process began in May 1996, when the Committee on Alternative Dispute Resolution was formed.²⁶ The Committee included representatives from various public agencies and private organisations and it submitted its findings and recommendations to the Government in July 1997.

²⁵ *Ibid.*

²⁶ Community Mediation Centre official website, *Our History* (online: <https://www.mlaw.gov.sg/content/cmc/en/what-we-do/our-history.html>).

The establishment of the Community Mediation Centres

24. One of the Committee's recommendations was the creation of an avenue for the resolution of disputes between members of the community without the disputants having to pursue legal action in the courts. This led to the setting up of the first Community Mediation Centre in 1998 to provide an alternative, and less confrontational, way of resolving day-to-day relational disputes between neighbours, family members and friends.²⁷

25. Today, there are two main Community Mediation Centres where mediations may be held. As their name suggests, these centres do not mediate disputes involving legal issues or commercial cases.²⁸ The most common disputes mediated at the Community Mediation Centres are disputes between neighbours, which make up about 60% of all the cases mediated.²⁹

26. Disputing parties may approach the Community Mediation Centres directly for assistance in mediating their disputes.³⁰ Cases may also be referred to the Centres by Magistrates of the State Courts pursuant to the Community Mediation

²⁷ Community Mediation Centre Annual Report 2012/2013, at p 3 (online: <https://www.mlaw.gov.sg/content/dam/minlaw/cmc/News%20and%20Publications/CMC%20AR%202012-13%20ver%20Final.pdf>). See also: Gloria Lim, "Community Mediation in Singapore" (paper presented at the 2nd Asia-Pacific Mediation Forum in November 2003) at p 10 (online: <http://www.asiapacificmediationforum.org/resources/2003/glim.pdf>). The Community Mediation Centres are administered by the Community Mediation Unit, a specialised department within the Ministry of Law which is tasked to promote the resolution of community disputes through mediation: Ministry of Law official website, *Community Mediation Centre* (online: <http://www.cmc.gov.sg/content/minlaw/en/our-work/community-legal-services-group/community-mediation-centre.html>).

²⁸ Ministry of Law official website, *Community Mediation – Frequently Asked Questions* (online: http://www.ifaq.gov.sg/minlaw/apps/fcd_faqmain.aspx#FAQ_11483). Disputes involving legal issues or commercial cases may be mediated at the Primary Dispute Resolution Centre (PDRC) or at the Singapore Mediation Centre.

²⁹ Community Mediation Centre Annual Report 2012/2013, *supra* note 27 at p 5.

³⁰ *Ibid.*

Centres Act (Cap. 49A), by the Singapore Police Force, the Town Councils or other community-based agencies.³¹

27. The mediators at the Community Mediation Centres are trained volunteer mediators who come from all walks of life. To ensure quality standards, the Community Mediation Centres introduced a Mediator Management Framework in 2012 which sets out the criteria for the appointment and training of its volunteer community mediators.³²

28. Since its establishment in 1998, the CMC's caseload has increased steadily and to date, more than 7,000 community disputes have been mediated at the Community Mediation Centres. The overall settlement rate of mediated cases is 70%.³³

The Singapore Mediation Centre

29. The third measure – namely the establishment of the Singapore Mediation Centre – also stemmed from the report of the Committee on Alternative Dispute Resolution.³⁴

³¹ Community Mediation Centre Annual Report 2012/2013, *supra* note 27 at p 4.

³² Ministry of Law press release, "New Mediator Management Framework to be rolled out by the Community Mediation Unit" (17 July 2012) (online: http://www.news.gov.sg/public/sgpc/en/media_releases/agencies/minlaw/speech/S-20120717-2/AttachmentPar/00/file/).

³³ Ministry of Law official website, *Community Mediation – Frequently Asked Questions*, *supra* note 28..

³⁴ Loong Seng On, *Laws of Singapore – Overview – Ch 3 Mediation* (online: <http://www.singaporelaw.sg/sglaw/laws-of-singapore/overview/chapter-3>).

30. The cases mediated at the Singapore Mediation Centre are primarily private commercial matters. Since its establishment, more than 2,300 matters have been mediated at the Singapore Mediation Centre with an overall settlement rate of 75%.

31. The Singapore Mediation Centre has also partnered with a number of key industries to develop industry-focussed mediation schemes which better serve the particular needs of those industries. Some examples of such industry-focussed mediation schemes include the Council for Estate Agencies Mediation Sub-Scheme and the Council for Private Education Mediation-Arbitration Scheme.³⁵

Other government-led mediation initiatives

32. The Government has also played a pro-active role in other ways to encourage prospective litigants to consider mediation or other forms of ADR before turning to formal court processes. Thus, by way of example, the Attorney-General's Chambers' has issued a recommendation to government agencies, to use mediation as a first option for dispute resolution; and in general most government contracts include a mediation clause referring disputes to the Singapore Mediation Centre.³⁶

33. A number of Government ministries and public agencies have set up private mediation schemes to facilitate the resolution of disputes within particular sectors and industries. For example, the Ministry of Manpower, with the support of the Singapore National Employers Federation and National Trade Unions Congress, introduced the Tripartite Mediation Framework in 2011 to assist in the amicable

³⁵ Singapore Mediation Centre official website, *Industry Schemes* (online: <http://www.mediation.com.sg/business-services/industry-schemes/>).

³⁶ Loong Seng On, *Laws of Singapore – Overview – Ch 3 Mediation*, *supra* note 34.

resolution of employment disputes between Professionals, Managers and Executives (PMEs) and their employers.³⁷

34. Further, legislation has been enacted in some instances to promote, or even mandate, the use of mediation in the event of the dispute.

- a. The Government Procurement Adjudication Tribunal is a tribunal set up under the Government Procurement Act (Cap. 120) to hear and determine challenges relating to procurements by the Singapore Government and public agencies. In exercising its powers, the Tribunal is empowered to refer the parties in a dispute to mediation.³⁸
- b. The Strata Titles Board is a dispute resolution authority set up under the Building, Maintenance and Strata Management Act (Cap. 30C) to hear, amongst other things, disputes arising out of the use of shared spaces in strata-title developments.³⁹ Mediation is mandatory under the

³⁷ Ministry of Manpower brochure entitled "A Guide to Tripartite Mediation" (online: <http://www.mom.gov.sg/Documents/employment-practices/Tripartite%20mediation%20brochure.pdf>). See also: Factsheet on Proposed Enhancements to the Tripartite Mediation Framework (online: [http://www.mom.gov.sg/Documents/Speeches/Annex-May%20Day%20Dinner%20Speech%202014%20\(290414\).pdf](http://www.mom.gov.sg/Documents/Speeches/Annex-May%20Day%20Dinner%20Speech%202014%20(290414).pdf)). The tripartite mediation process covers the following three types of common employment disputes: salary arrears, payment of retrenchment benefits and breach of individual employment contracts – see Ministry of Manpower official website, *Employment related services provided by the Ministry of Manpower* (online: <http://www.mom.gov.sg/employment-practices/disputes-and-claims/Pages/ea-services.aspx>). Mediation services are also offered under the Healthcare Mediation Scheme, which is established and administered by MOH Holdings Pte Ltd ("MOHH"), to resolve disputes between patients and public healthcare institutions: see MOHH official website, *About MOH Holdings* (online: http://www.mohh.com.sg/about_mohh.html). See also: MOHH official website, *What is the Healthcare Mediation Scheme?* (online: <http://www.mohh.com.sg/hms/>); Ministry of Health official website, *Inquiries and Complaints Guide* (online: https://www.moh.gov.sg/content/moh_web/home/about-us/feedback/inquiries_and_complaintsguide.html).

³⁸ Government Procurement Act (Cap. 120), section 22(2)(d).

³⁹ The types of disputes which come before the Strata Titles Board include complaints related to water-leakage between strata-titled units and defects in the common property: see Strata Titles Board official website, *About Us* (online: <http://www.mnd.gov.sg/stb/abtus1.html>). See also: Speech by Senior Minister of State Associate Professor Ho Peng Kee at the Strata Titles Board Annual Dinner, 16 February 2011 (online: <https://www.mlaw.gov.sg/news/speeches/speech-by-sms-assoc-prof-ho-peng-kee-at-the-strata-titles-board-annual-dinner.html>).

Board's processes, and the Board may only proceed to adjudicate a dispute if mediation was unsuccessful.⁴⁰

Developing and maintaining sustainable mediation programmes: Key requirements

35. The mediation landscape in Singapore has come a long way. From the traditional forms of mediation practiced early in Singapore's history to the establishment of modern mediation institutions in the 1990s, mediation is now an established, and widely accepted, means of resolving disputes. The practice of mediation in Singapore is not limited to low value or community disputes; it is a dispute resolution option, existing alongside court litigation and arbitration, that is considered viable for resolving even the most high-value civil and commercial disputes.

36. The sustained success of Singapore's mediation programmes over the years can, I suggest, be traced to four main factors.

37. First, the Government has given its strong support to the various mediation programmes, and has played an active role in raising public awareness of mediation as well as encouraged its use.

38. A second key ingredient for long-term sustainability has been the judiciary's efforts in entrenching mediation as a parallel process to traditional court proceedings, and setting up systems and processes – such as the Primary Dispute

⁴⁰ Building, Maintenance and Strata Management Act (Cap. 30C), Section 92.

Resolution Centre – to facilitate the public's access to justice through mediation and ADR. After all, justice can be accessed outside the courtroom when parties are able to resolve their disputes consensually at a fraction of the time and cost that it would otherwise take. To strengthen this framework, various initiatives have been launched to facilitate the public's access to legal advice or legal assistance even before any legal action is commenced in the courts.⁴¹

39. The third is the availability of a pool of trained and experienced mediators with real knowledge and who are truly able to apply a sophisticated process. This commitment led us recently to establish the Singapore International Mediation Institute ("SIMI") which will accredit and regulate mediators and make this a recognised and regulated profession marked by a commitment to high standards.

40. The fourth component is the continued evolution and development of established mediation programmes that are responsive to the needs of the users. In keeping with this, 2014 saw two significant evolutionary changes for domestic and international mediation in Singapore.

⁴¹ The Primary Justice Project ("PJP") scheme, which is a collaborative project between the State Courts, the Law Society of Singapore and the Community Justice Centre, was launched with the objective of making basic legal advice available to the public at a fixed low cost with a view to encouraging the settlement of disputes before any legal action is commenced in the courts: see Community Justice Centre official website, *Programmes* (online: <http://cjc.org.sg/programme/>). The State Courts is also studying the possibility of extending legal assistance schemes to criminal matters, so that accused litigants-in-person may have access to legal assistance at an earlier stage in criminal proceedings, or even before the matter reaches the courts: see Chief Justice Sundaresh Menon, Response at the Opening of Legal Year 2015 (online: [https://www.supremecourt.gov.sg/data/doc/ManagePage/5684/Response%20by%20CJ%20-%20Opening%20of%20the%20Legal%20Year%202015%20on%205%20January%202015%20\(Final\).pdf](https://www.supremecourt.gov.sg/data/doc/ManagePage/5684/Response%20by%20CJ%20-%20Opening%20of%20the%20Legal%20Year%202015%20on%205%20January%202015%20(Final).pdf)).

Looking ahead

The new family justice model and a new era for the administration of family justice in Singapore

41. On the domestic front, mediation received a significant boost with the introduction of a new model for family justice in Singapore in 2014.

The Singapore Family Court

42. By way of background, the Singapore Family Court commenced operations in March 1995 as the dedicated venue for matters relating to maintenance, probate, adoption, spousal violence and other family-related matters.⁴² The Family Court, although a civil court, adopted procedures which made more extensive use of processes such as mediation and counselling, so as to help litigants resolve family and matrimonial disputes.⁴³ However, as the trial process in the Family Court remained fundamentally adversarial, it was not possible to fully ameliorate the distress and acrimony suffered by families litigating in the Family Court.

The Committee for Family Justice and the new Family Justice Courts

43. In 2012, the Committee for Family Justice was formed to consider and make recommendations on how family disputes may be managed differently so as to better serve the needs of families in distress.⁴⁴ The Committee was tasked in particular to establish a problem-solving family justice system that would, amongst other things:

- a. protect and support the family as the basic unit of Singapore society;

⁴² Adrian Loke, "Mediation in the Singapore Family Court", *supra* note 10 at p 192. Divorce and ancillary matrimonial matters were transferred to the purview of the Family Court in 1996.

⁴³ Adrian Loke, "Mediation in the Singapore Family Court", *supra* note 10 at p 193.

⁴⁴ Recommendations of the Committee for Family Justice dated 4 July 2014 (online: <https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Family%20Justice%20Report.pdf>) at pp 3-4.

- b. reduce the emotional burden, time and cost of resolving family disputes; and
- c. increase access to family justice for all.⁴⁵

44. The Committee undertook an extensive review of the family justice system, and consulted with experts in the relevant fields as well as with the public. The Committee's efforts culminated, in July 2014, in a set of wide-ranging recommendations for a complete overhaul of the existing family justice system. The recommendations included the establishment of specialist agencies with social service practitioners who are specially trained and sensitive to issues such as divorce and family violence, and the creation of a new family court where all family-related matters as well as cases involving youths and juveniles, could be dealt with under one judicial roof.

45. The Committee recognised that family cases often involve parties whose relationships will have to continue beyond the life of the case and the existing adversarial court process, which did little, if anything, to preserve such continuing relationships, was plainly in need of a rethink. The Committee therefore advocated more extensive use of non-confrontational methods of dispute resolution, such as mediation and conciliation, and for family court judges to be granted more powers to intervene in the course of such proceedings, so as to reduce conflict and acrimony. The Committee also recommended a shift to a more judge-led process that would be less adversarial in nature.

⁴⁵ *Ibid*, at p 4.

46. The Committee's recommendations were accepted. The new Family Justice Courts, comprising the Family Division of the High Court, the Family Courts and the Youth Courts, commenced operations in October 2014. Several of the recommendations of the Committee for Family Justice have already been adopted and implemented in respect of proceedings in the Family Justice Courts. Among other things of interest to this audience will be the following:

- a. For divorcing couples, mediation is now mandatory for couples with children under 21 years old. Prior to this, mediation was only mandated for couples with children under the age of 14; and
- b. Judges of the Family Justice Courts are empowered, as appropriate, to order parties to attend mediation and counselling as part of the court process. In proceedings involving custody or welfare of a child or any other person, the court may also appoint medical specialists, counsellors or social workers to examine and assess the child or other person.

47. With the greater emphasis on mediation and counselling, it is also intended that new professional standards and structures will be put in place for the training and accreditation of specialist family mediators who will be properly equipped with the relevant skills that will be required in order to handle sensitive family issues.

48. It is hoped that with these changes to the family justice system, people who have already found themselves in the distressing situation of having to face off

against family members in court proceedings, will be able to exit these proceedings without further or unnecessary deterioration in those relationships.

Alternative Dispute Resolution or Appropriate Dispute Resolution?

49. Let me digress here to make an observation as to how the reforms we have embarked on in family justice might point the way towards helping us to reframe our thinking on this important subject.

50. The "A" in ADR stands of course for "alternative", but it is worth pausing at least briefly to reflect on this. We tend to think of dispute resolution in conventional terms as being the sole and exclusive business of the courts and ADR is therefore seen as a variety of methods of dispute resolution that are *alternative* to the courts. This can have a negative connotation and I suggest that it would be helpful to granulate this a little.

51. As I have already observed, for many of us in Asia, having to litigate a matter in the courts is not traditionally the conventional response to a dispute. Indeed, the involvement of respected members of the community committed to restoring the peace and finding a resolution is something that resonates in many of our cultures. I make this point because we should not see the basket of options that we group under the umbrella or rubric of ADR as in any way being inferior or as reflecting a compromise or a consolation prize when compared to litigation in the courts.

52. Aside from this, there is a further point. We speak of "alternative" DR as a form of DR that is differentiated from court processes because it is less adversarial

or contentious as compared to court litigation. But this is not necessarily the case. Some types of alternative dispute resolution, such as arbitration for instance, are in many respects as contentious and adversarial as court proceedings. Arbitration which was once seen as the faster and cheaper alternative to litigation is not often seen in those terms today. It is said in some quarters with a degree of disapproval that arbitration has been "judicialised"⁴⁶. This is a description that I, for obvious reasons, don't like. Moreover, because there is no error correction mechanism in arbitration through appeals, the trial process in arbitration has become an often exhausting one-shot battle to the end. So the idea that ADR is less adversarial or contentious than litigation is not always or necessarily true.

53. Moreover, it is interesting to note another trend away from the notion of a sharp divide and difference between these various dispute resolution methods. Some types of court dispute resolution have moved towards processes that do not look so conventional. The family justice reforms I have spoken of illustrate this. It is plainly counter-intuitive to think that we would take the most intimate human relationship, namely the family relationship, know that it already strained if not fractured and then choose to subject it to an adversarial process with lawyers who see themselves as fighters. Yet this is what we did for years and it continues to be done in many jurisdictions.

54. Around the world, the conception of the role of the family lawyer is changing and to a growing degree it is coming to be seen in terms of the lawyers being seen

⁴⁶ See, for example: Rémy Gerbay, "Is the end nigh again? An empirical assessment of the "judicialization" of international arbitration", 25 Am. Rev. Int'l Arb. 223; Thomas J Stipanowich, "Arbitration: The 'New Litigation'", University of Illinois Law Review, Vol 2010, No 1, 2010 (online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1297526).

as constructive, problem solving agents who act with due sensitivity to the issue and the unique problems faced by parties in this situation.

55. It was in this context and against this background that we embarked on the major reforms that I have outlined. I wish to highlight here 3 further aspects of these reforms:

- a. First, to the extent the differences cannot be consensually resolved and must be litigated, this will take place under a significantly less adversarial process that will be led by the judge and not by the counsel and that designed to be much more inquisitorial and much less adversarial in many respects;
- b. Second, within our new paradigm, mediation, counselling and other types of constructive problem-solving measures are not *alternatives* to the court process – they are instead necessary elements of the process and are worked into the life cycle of the case.
- c. Third, the judge is often assisted by a psychologist or social worker who works alongside her as part of a team. The judge remains the decider but a large element of the role calls for being alive to the opportunity to solve the problem using all the available resources.

56. This type of court process is very different from the conventional idea of how a dispute should be resolved in the courts.

57. So my point is that we need to shift our thinking and see ADR not as an *alternative* to traditional court systems and processes but as an essential element in a range of tools that are able to be found in a complex and rich tool kit that is available to resolve disputes. The better terminology then might be “*appropriate*” dispute resolution.

The internationalisation of Singapore's mediation services and Singapore as a dispute resolutions hub

58. Let me close by mentioning the second of the two major developments in 2014 that I alluded to earlier and this concerns the expansion of Singapore's mediation competencies into the international arena.

Growth in trade and investment and the consequential demand for quality dispute resolution services

59. Asia has, in recent years, been fortunate to have experienced strong growth in trade and investment. Between 2007 and 2012, Foreign Direct Investment (FDI) inflows into Asia have grown from US\$364.9 billion to US\$406.8 billion⁴⁷, with ASEAN countries showing a robust 30% growth in FDI in the same period.⁴⁸ ASEAN trade was valued at US\$2.51 trillion in 2013⁴⁹ and is expected to continue to grow.

⁴⁷ United Nations Conference on Trade and Development (UNCTAD) World Investment Report 2013 (Annex table 1 – FDI flows, by region and economy, 2007-2012, Pg 214).

⁴⁸ United Nations Conference on Trade and Development (UNCTAD) World Investment Report 2013 (Annex table 1 – FDI flows, by region and economy, 2007-2012, Pg 214).

⁴⁹ ASEAN Statistics Website, External Trade Statistics – Table 18: Intra- and extra-ASEAN trade (Annual) (online: www.asean.org/images/resources/Statistics/2014/ExternalTradeStatistics/Aug/table18_asof24Jul14.pdf).

60. It is not surprising that alongside the growth in international trade and commerce, is an increasing need for quality dispute resolution services that can address the concerns of international businesses and businessmen.

61. Singapore has sought over the years to develop a robust and efficient legal system, harness the use of technology and take advantage of its convenient geographical location to establish herself as a key neutral venue for the resolution of transnational commercial disputes.

62. Singapore's efforts in this regard have been particularly successful in the international arbitration services sector: Singapore has come to be recognised as a leader in this space, and is among the most preferred seats of arbitration in the world.⁵⁰ The Singapore International Arbitration Centre ("SIAC"), which was established in 1991, has played a key role in growing Singapore as a regional and international hub for commercial arbitration and the popularity of the SIAC as an arbitral institution can be seen from the growth of the SIAC's case load over the years.⁵¹

The launch of the Singapore International Mediation Centre

63. But we have felt the need to go beyond this to develop and offer other dispute resolution services to cater to the needs of international businesses,

⁵⁰ The White & Case 2010 International Arbitration Survey: Choices of International Arbitration (online: <http://www.whitecase.com/articles-10062010/>).

⁵¹ The Singapore International Arbitration Centre's ("SIAC") case load has grown from 64 new cases commenced in 2003, to 259 new cases commenced in 2013: see SIAC official website, *Why SIAC – Statistics* (online: <http://www.siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics>). The value of claims has also increased from an average value of S\$15.36 million in 2012, to S\$24.44 million in 2013: see SIAC Annual Report 2013, at p 4 (online: http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2013.pdf).

including in particular professional mediation services. The vibrant trade and investment opportunities in Asia, with its particular cultures and mindsets, suggest that there is and will be the demand for structured and quality dispute resolution services that are less adversarial compared to traditional court litigation and arbitration.

64. It was against this backdrop that in April 2013, a Working Group was appointed to assess and make recommendations on what could be done to develop Singapore into a centre for international commercial mediation.

65. The Working Group, after undertaking an extensive survey of the overall mediation landscape, submitted its findings and recommendations in November 2013. The recommendations were extensive and included, amongst other things, the establishment of a professional body to set standards and provide accreditation for mediators, and the enactment of relevant legislation to strengthen the framework for mediation in Singapore.⁵² It also recommended the establishment of an international mediation services provider to offer, among its services, a quality panel of international mediators and experts, as well as innovative products and services focussed on the needs of commercial users of mediation services.

66. This led to the launch of the Singapore International Mediation Centre ("SIMC") in November last year. The SIMC is the first organisation in Asia focused on offering international commercial mediation services. The SIMC aims to provide quality international mediation services under the umbrella of the SIMC's own

⁵² Report and Recommendations of the Working Group to develop Singapore into a Centre for International Commercial Mediation dated November 2013, at pp 6-10.

mediation rules. In addition, the SIMC offers logistical and administrative support throughout the mediation process to ensure that parties are knowledgeable about the mediation process and to facilitate the conduct of the mediation.

67. The SIMC has also collaborated with the SIAC to offer a unique “arb-med-arb” service. This service allows a seamless transition between the arbitration and mediation services offered by the SIAC and the SIMC, and is specifically designed for international businesses who may value finality and enforceability in addition to confidentiality and flexibility.

68. The establishment of SIMC constitutes a significant step towards developing a more comprehensive range of dispute resolutions available in Singapore. It also serves to demonstrate our commitment to mediation and to the development of Singapore as a dispute resolution services hub.

A new forum for resolving international and commercial disputes: the Singapore International Commercial Court

69. Finally, just to complete the picture, the Singapore International Commercial Court (“SICC”) was launched in January 2015.

70. The SICC, which is a division of the Singapore High Court, is set to hear international and commercial disputes that have little or no connection to Singapore. The SICC seeks to provide a middle ground between traditional court proceedings and arbitration proceedings, by offering the structured formality of the court process, coupled with some of the advantages of arbitration.

71. It is anticipated that these institutions will work together to advance our journey towards establishing a truly Asian hub for dispute resolution services.

Conclusion

72. These are undeniably exciting times for dispute resolution in Singapore.

73. Moving forward, to further bolster the legislative framework for mediation in Singapore, work is presently ongoing on a proposed Mediation Bill. The proposed Bill will include provisions relating to the enforceability of mediated settlements by the courts, as well as the confidentiality and admissibility of communications made in the course of mediation. The Bill will provide more clarity and certainty for users and providers of mediation services in Singapore, and boost the overall confidence in Singapore's mediation competencies.

74. I hope that this review of our experience over the last 20 or so years has given you a flavour of how we have gone about creating a sustainable mediation programme. Clearly, it is a multi-faceted effort that needs to be addressed at various levels. I believe mediation and ADR has flourished in Singapore because we have come to see them as essential parts of the range of options needed to resolve disputes. ADR is no longer an alternative but it is part of the mainstream of dispute resolution mechanisms. These exist together with and alongside litigation and other dispute resolution processes as part of a continuum. There isn't and shouldn't be a hard line that separates court processes from other processes. Indeed, over time

court processes will be refined through the influence of the best techniques from the world of ADR and perhaps even return the favour.

75. I am confident that, with the continued support of the Government and of the judiciary, the ability to adapt and change to accommodate evolving needs, and the continued promotion of Singapore's dispute resolution services both domestically and internationally, our mediation sector, alongside the other dispute resolution services, will continue to grow in the years to come. Most importantly, I also believe this will all ultimately work to the benefit of the most important people in this setting – namely, the disputants.