

# NON-COURT ANNEXED MEDIATION IN SINGAPORE PAPER FOR THE INTERNATIONAL CONFERENCE & SHOWCASE ON JUDICIAL REFORMS\*

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## 1. Introduction

This paper traces the development of non-court annexed mediation in Singapore. The focus is on the setting up of Singapore's flagship private mediation centre, the Singapore Mediation Centre ("SMC"), the types of cases for mediation, and its mediation process. This paper will also examine some of the factors affecting the mediation process in a survey of disputants and lawyers of the SMC. In conclusion, the paper will examine the future of non-court annexed mediation in Singapore.

## 2. Mediation in Singapore

The mediation movement in Singapore began in the mid 1990s and is enjoying growing popularity. Today's mediation movement can be divided into 3 broad categories, namely, court-connected mediation, mediation in tribunals, government departments and agencies and private mediation.

### 2.1 Court-connected Mediation

2.1.1 In Singapore the majority of court-connected mediations are court-based, in that they take place in the Subordinate Courts and are part of the Primary Dispute Resolution Centre. However, the courts may refer cases to external mediation centres like SMC and the Community Mediation Centres, in appropriate cases. In such a situation, the court, on its own initiative, suggests or recommends that the parties proceed to mediation or encourages the parties to consider mediation.<sup>2</sup>

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<sup>2</sup> L.Boulle & HH.Teh *Mediation : Principles Process Practice* (Singapore Edition) 2000, p.216

2.1.2 The court may also refer cases to mediation with the consent of parties. In Singapore, the mediations conducted in the Family Court are examples of this category of court-connected mediation. The Women's Charter (Cap 353) imposes a duty to consider the possibility of reconciliation for parties to divorce or judicial separation proceedings. Under the Community Mediation Centres Act (Cap 49A), a magistrate, upon receiving a complaint, may refer the complaint to a Community Mediation Centre if he is of the opinion that the matter may be more appropriately resolved by mediation and if the parties are agreeable to such a referral.<sup>3</sup>

2.1.3 Court-based mediation is practised in the Subordinate Courts in Singapore. In fact, a 'Singapore Courts Mediation Model' has been developed. The model was created with the diverse ethnic and cultural backgrounds of Singaporeans, and present day social conditions, in mind. The model involves a Settlement Conference presided over by a Settlement Judge. The Settlement Judge plays a pro-active role in guiding the parties and offering advice and suggestions on possible solutions. The directive and evaluative approach was adopted as it is believed that Singaporeans are less vocal in a formal setting. Given the foregoing, a greater degree of intervention is required in order to facilitate negotiations.<sup>4</sup>

## **2.2 Mediation in tribunals, government departments and agencies and other professional and trade bodies.**

2.2.1 The Insolvency and Public Trustee's Office maintains a Bankruptcy Mediation Unit where post-bankruptcy mediation is provided to resolve differences concerning the nature and quantum of debt between bankrupts and their creditors. The Community Mediation Centres assist in the resolution of neighbour and community disputes. The Ministry of Manpower provides conciliation services to employer-employee disputes. Mediation is also an integral part of the process at the Tribunal for Maintenance of Parents.

2.2.2 Several professional associations and trade and industry bodies have set up their own mediation services. These include the Singapore Institute of Surveyors and Valuers, the Singapore Institute of Architects, the Consumers' Association of Singapore, the Institute of Estate Agents, the National Association of Travel Agents Singapore, the Renovation and Decoration Advisory Committee and the Real Estate Developers' Association of Singapore. These organizations usually maintain their own panel of mediators and some institutional ties with SMC for the promotion of the proper use of mediation.

## **3. Background of the Singapore Mediation Centre**

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<sup>3</sup>*ibid*, p.217

<sup>4</sup> *ibid*, p.221

SMC is the flagship mediation centre of Singapore. It was incorporated on 8 August 1997, and officially launched by the Honourable Chief Justice Yong Pung How on 16 August 1997. The SMC is a non-profit organisation guaranteed by the Singapore Academy of Law (a body created by statute). It is linked institutionally with many professional and trade associations and receives the support of the Supreme Court of Singapore, the Subordinate Courts of Singapore and the Singapore Academy of Law. The SMC has successfully spearheaded the mediation movement in Singapore and is dedicated to the promotion of amicable and efficient settlement of disputes. It aims to create an environment in which people can work together to find enduring solutions to conflicts and tensions created by human interactions. It contributes to the building of a harmonious society, and a thriving business community, by broadening awareness of, and providing access to, constructive means of dispute resolution and conflict management.

#### **4. Cases for Mediation**

- 4.1 The types of cases mediated at SMC include (but are not limited to) banking disputes, construction disputes, contractual disputes, corporate disputes, contested divorces and divorce ancillary matters, employment disputes, family disputes, information technology disputes, insurance disputes, negligence claims, partnership disputes, personal injury claims, shipping disputes and tenancy disputes. SMC has handled cases where the quantum of dispute exceeds S\$90 million. As at 31 July 2005, 1,290 matters were referred to SMC. About 75% of the cases that are mediated at SMC are successfully settled. Of those successfully resolved, more than 90% were settled within 1 working day. To-date, the total quantum of disputes handled by SMC is in excess of S\$1.19 billion.
- 4.2 As of 31 August 2004, disputants who participated in the mediations and provided feedback, 83% reported cost savings, 87% reported time savings and 94% would recommend the process to other persons in the same situation. Also the SMC's institutional partners and supporters report tremendous cost savings. It is estimated that as at 31 July 2005, the Supreme Court alone recorded a savings of about S\$18 million and 2,764 court days.

#### **5. Panel of Principal Mediators**

- 5.1 SMC maintains its own panel of trained and experienced Mediators and Neutrals comprised of the most distinguished members of different professions and fields. They include Members of Parliament, former High Court Judges, Senior Counsel, architects, doctors, engineers, IT specialists, project managers, psychologists and university professors. All SMC Principal Mediators have undergone formal mediation and conflict management training and a strict evaluation before being appointed to the panel. For international clients, there is also an International Panel consisting of internationally renowned neutrals. If

disputes require technical expert knowledge, the SMC usually appoints two mediators to the case to co-mediate the dispute. One of these mediators will be a professional of the industry concerned who is familiar with the subject matter to which the dispute relates. The other mediator is generally a lawyer who would be familiar with the legal issues.

- 5.2 The SMC will match the language abilities of the mediators to the disputants to facilitate the free flow of conversation between the parties and to avoid the mediation of cases through translators who may hinder rapport building. So far, besides English, cases have been successfully mediated in Mandarin and other Chinese dialects as well as Tamil and Malay.
- 5.3 There is no national system or law to regulate the accreditation, the quality or standards of mediators nor is there a law regulating the practice of mediation as such in Singapore. Therefore, the SMC has developed its own system of mediator training and accreditation. The number of Principal Mediators accredited by SMC is limited by the demand for mediation services in order to ensure that all mediators on the Panel of Principal Mediators (currently 106) are regularly mediating.
- 5.4 The majority of mediators on the SMC Panel are nominated by their peers in their professional or trade organizations. These nominees attend a mediation workshop at the SMC and are assessed at the end of the workshop. Those assessed to be suitable for mediation and with the right temperament are accredited and appointed to the Panel. The SMC's accreditation is limited for a period of one year and is subject to renewal. Re-accreditation will be granted if the mediator engages in at least 4 hours of annual continuing education in mediation and is available to conduct at least 5 mediations per year if requested to do so in order to ensure the maintenance of his skills.
- 5.5 The SMC's Mediation Procedure ensures that mediations under the SMC's auspices are to be governed by the provisions in the Mediation Procedure. Clause 4 of this Procedure provides that a mediator has to subscribe to the SMC's Code of Conduct. These provisions are binding upon all mediators appointed by the SMC to mediate. They direct and guide the mediator through the mediation process with regard to issues such as confidentiality, neutrality and impartiality.

## **6. The Mediation Process**

- 6.1 The SMC's mediation process is set out in the Agreement to Mediate. The Agreement to Mediate requires the parties to abide by the SMC's mediation procedure and to give effect to the terms of any settlement reached.

- 6.2 The parties contact the SMC with a request for mediation. Where only one of the parties makes the initial request, the Centre will contact all the other parties to persuade them to attempt mediation. When all the parties agree to mediate their dispute, the SMC arranges for the Mediation Agreement to be signed, designates a date, time and place for mediation, appoints a mediator and attends to all other administrative details.
- 6.3 On the day of the mediation, the mediator will lead and guide the parties through a problem-solving process. The lawyers of the parties will attend to play the important role of assisting the mediator and advising the parties throughout the settlement process. When a settlement is reached, the terms or main points of the settlement will be reduced to writing and signed by or on behalf of the parties.
- 6.4 Parties requesting mediation at the SMC are required to pay for the services rendered. An administrative fee of S\$250 per party is charged. Thereafter, parties are charged mediation fees starting from S\$900 per party per day. Mediation fees are charged on a sliding scale depending on the quantum of claim submitted for mediation. SMC includes in its services administrative and secretarial support, setting up of and arranging for the mediation session, pre-mediation conferencing (where necessary), meals and refreshments.

## **7. Factors Affecting the Mediation Process : A Survey of Disputants and Lawyers**

This segment will focus on the impact of mediation in terms of end-user satisfaction and the effect of mediator intervention in relation to substantive matters.<sup>5</sup>

- 7.1 All preparations in advance aside, the final outcome of the mediation process is determined by the disputants' and their lawyers' behaviour. They ultimately determine whether a mediation process is perceived as efficient and successful or inefficient and unsuccessful. Their behaviour as such is influenced by different factors such as their surroundings and their perception of the mediator's neutrality. This segment will focus on the impact of mediation in terms of end-user satisfaction and the effect of mediator intervention in relation to substantive matters according to surveys of the SMC. The SMC has been consolidating feedback from their disputants and their lawyers by requesting that they complete survey forms at the end of each mediation process at the SMC regardless of the outcome of the mediation. The object is to contribute to the development of theoretical models that are based on practice, and that reflect the needs of modern Singaporeans.

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<sup>5</sup> All statistics obtained from SMC data collected from surveys of disputants and lawyers from SMC cases, collated since January 1998 to August 2004.

- 7.2 There are different survey forms for lawyers and parties. The study is based on 1,177 completed forms of lawyers and 1,343 completed forms of parties from January 1998 to August 2004. Unless otherwise stated, all figures are rounded to the nearest whole number. The respondents were asked to rate their answers on a scale of 1 to 5; 1 and 2 meaning 'not at all', 3 'somewhat' and 4 and 5 'a great deal'.
- 7.3 Efficiency in mediation was measured in terms of savings in time as well as tangible and intangible costs. The survey showed that overall (parties who settled and parties who did not settle) 83% reported cost savings and 87% reported time savings. 82% of the lawyers reported cost savings and 81% reported time savings. The number of parties that believed to have saved time is greater than the number of parties thought that they saved costs. The converse is true for lawyers. It is to be noted that even parties and lawyers who did not reach a settlement reported time and cost savings.
- 7.4 Effectiveness of the mediation process was measured with reference to the nature of the outcome in terms of the impact on relationship. 71% of all parties reported improvements in party relationships whereas 81% of all lawyers perceived that the relationships improved through the mediation. 87% of all lawyers found that their own relationship with the opposing counsel improved. This proves that mediation is an effective tool to improve party and counsel relationships.
- 7.5 Effectiveness was also measured through other factors including fairness, opportunity for meaningful participation and control over the outcome. The findings show that the mediation process provided the parties for meaningful participation and control over the outcome of their disputes. 97% of the parties indicated that they had a chance to communicate their views about the disputes, 91% said that they had an opportunity to speak, 90% felt that they had a better understanding of the strengths and weaknesses of their own case as a result of mediation, 98% felt that they had their views understood by the mediators and 92% believed that their inputs had determined the mediated outcome.<sup>6</sup> It is further noteworthy that for cases which did not reach settlement, 84% of parties and 95% of lawyers would be willing to recommend mediation to others. It would thus appear that mediation was still considered effective even if the case was not settled.
- 7.6 In this segment, the factors contributing to satisfaction with the mediated outcome were explored. 87% of parties rated the overall satisfaction of the final outcome of the mediation as 'a great deal'. It is further to be noted that they also rated the following features of mediation as 'a great deal' or when asked 'yes' or 'no' gave their answer in the affirmative.

Table 1 : Common features associated with parties' satisfaction in relation to the outcome of mediation

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<sup>6</sup> Respondents with ratings of 3 and above were considered in this part of the survey results.

Conducive environment	98%
Impartiality of mediators	91%
Chance to tell their views	85%
Fairness of process	90%
Mediators who understood their views	90%

87% of lawyers rated overall satisfaction as ‘a great deal’. Out of these, the following features, *inter alia*, were rated ‘a great deal’.

Table 2 : Common features associated with lawyers’ satisfaction in relation to the outcome of mediation

Effectiveness of mediator	96%
Impartiality of mediator	95%
Productivity of process	91%
Fairness of process	89%
Conducive environment	87%

From the above results, it would seem that the most important factors, common to both parties and lawyers, influencing satisfaction of the overall outcome would be a conducive environment, mediator impartiality and fairness in the process. The results are in tandem with the interest-based approach to mediation taken by SMC mediators, where the emphasis is on party control over the process, where parties and lawyers are given the opportunity to express their views. In the same vein, mediators are required to be impartial and fair, ensuring that they do not favour one party over the other during the process. Further, SMC services include administrative support, specially customised mediation chambers as well as refreshments which contribute to the conduciveness of the mediation environment.

7.7 Finally, satisfaction of parties and lawyers was closely related to actions and abilities of the mediator. As such, the impact of different degrees of mediator intervention in the substantive outcome of the case was measured. The following table shows the percentage of parties and lawyers, who rated satisfaction highly<sup>7</sup>, who also rated the following features of mediator intervention ‘a great deal’.

Table 3 : Common Features associated with Mediator Intervention in relation to Satisfaction

	Parties	Lawyers
Evaluated merits of the case	83%	55%
Assisted in evaluation of case	89%	77%
Recommended particular settlement	68%	57%
Suggested possible options for settlement	85%	86%

<sup>7</sup> See paragraph 7.6 above for the number of respondents who rated overall satisfaction as ‘a great deal’.

Kept silent about their views	35%	46%
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7.8 The same set of features of mediator intervention were measured against 2 of the factors which parties and lawyers regarded as important factors contributing to overall satisfaction of the mediation namely, fairness and mediator impartiality. The following table sets out the comparison of mediator intervention against parties and lawyers who rated fairness of process 'a great deal'<sup>8</sup>.

Table 4 : Common Features associated with Mediator Intervention in relation to Fairness of Process

	Parties	Lawyers
Evaluated merits of the case	81%	57%
Assisted in evaluation of case	87%	78%
Recommended particular settlement	67%	58%
Suggested possible options for settlement	85%	88%
Kept silent about their views	34%	45%

Similar results were obtained when the same set of factors were measured against parties and lawyers who rated mediator impartiality 'a great deal'.<sup>9</sup>

Table 5 : Common Features associated with Mediator Intervention in relation to Mediator Impartiality

	Parties	Lawyers
Evaluated merits of the case	80%	56%
Assisted in evaluation of case	86%	78%
Recommended particular settlement	66%	57%
Suggested possible options for settlement	84%	87%
Kept silent about their views	35%	45%

7.9 The above results in paragraphs 7.7 and 7.8 reveal that parties and lawyers who found mediation to be satisfactory overall, the process to be fair and the mediator impartial, a high percentage also rated mediator intervention highly. This can be seen from the high percentage who rate evaluation of a case<sup>10</sup>, assistance in evaluation of the merits of the case, suggestions for possible options of settlement highly. Conversely the same conclusion can be reached by the low percentage of those who found the process satisfactory, fair and the mediator impartial where mediators kept silent about their views. It would seem that in the Singapore context, a higher degree of mediator

<sup>8</sup> 97% of parties and 99% of lawyers rated fairness of the process as 'a great deal'.

<sup>9</sup> 96% of parties and 98% of lawyers rated mediator impartiality as 'a great deal'

<sup>10</sup> Parties and lawyers are divergent on this point as it would seem that a lower percentage of lawyers prefer the mediator to evaluate a case as compared to parties.

intervention is valued in order for parties to find mediation to be satisfactory.

## **8. Future of Commercial Mediation in Singapore**

### **8.1 Developing a Culture-Based Model for Asia**

8.1.1 Mediation as it is practiced now in Singapore is mostly institutionalized and influenced by Alternative Dispute Resolution (“ADR”) movements and practices from countries like the United States and Australia. One of the questions which this paper will address is whether the influence of western practices on today’s mediation movement is desirable.

8.1.2 Mediation in Singapore today is determined by ADR movements and practices from Western countries such as USA, Canada and Australia. This is because the mediation movement in Singapore only started approximately 10 years ago whereas the US mediation movement started in the 1970s. Singapore has been and is still looking to these countries for ideas and to learn from their experience. In particular ADR training was often conducted in association with foreign ADR organisations in order to expose Singapore ADR practitioners to foreign ADR ideologies and methodologies. However, the direct application of these Western Style mediation models, especially the facilitative mediation model poses certain challenges in the Asian context. In a speech by the Honourable the Chief Justice of Singapore, Yong Pung How,<sup>11</sup> he pointed out the following of the “facilitative model of mediation”, “there is much to commend in the facilitative model of mediation..... However, as a transplanted generic model of mediation, its use in an Asian context may benefit from an infusion of Asian perspectives.” In identifying Asian traits, the Honourable the Chief Justice highlighted the concept of “face” in that in an Asian context, the fear of losing face can be a major obstacle to the settlement of a dispute. Another useful perspective is the high value that Asian cultures place on the interests of the community. For instance, Confucianism teaches that to be a good person, one has to think of one’s country and community before oneself. This cultural emphasis on achieving collective good may be capitalised on in a mediation involving parties who belong to a defined group (such as a family, an association or a community). The third perspective has to do with intervention by the mediator in substantive matters of a case. From SMC surveys as highlighted above, it would seem that parties are more satisfied with the mediation process when there was a high degree of mediator intervention.<sup>12</sup>

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<sup>11</sup> Speech given by the Honourable the Chief Justice of Singapore Yong Pung How on 31 July 2002 at the Launch of ‘Disputemanager.com’ at the City Hall Chambers, City Hall

<sup>12</sup> Refer to paragraph 7 above for detailed discussion.

8.1.3 The SMC is currently undertaking research into this area to understand which and in how far these cultural differences and Asian Values affect the Western mediation model. This is done to develop a mediation model that takes into account the current socio-economic and culture of Singaporeans and other Asians in the region. Such a model would assist mediators in understanding and conducting effective mediation in Asia.

## 8.2 Training and Education

Apart from helping individuals and organisations to resolve disputes in an amicable manner, the SMC has also established its training arm in the fields of negotiation, mediation and conflict management in Singapore and the region. In initiating training and education, SMC aims to promote mediation and raise awareness even before conflict arises. The other main challenge awaiting the commercial mediation movement in Singapore concerns the training and education of Mediators. Lacking a national system of mediator training, regulation or accreditation, the SMC has established its own training and accreditation system for mediators, negotiators and conflict management.

### 8.2.1 Mediator Training

As already elaborated above, the SMC Panel of Principal Mediators are put through a rigorous mediation workshop. The focus is on teaching participants the process of mediation as members of the SMC Panel of Principal Mediators are likely to be experts in their respective fields. The aim of the SMC mediation workshop is thus to produce facilitative, interest-based mediators. Those assessed to be suitable for mediation and with the right temperament at the end of the workshop are accredited and appointed to the Panel. SMC mediators are also offered opportunities to improve their skills in mediation when advance courses are offered. Roundtable discussions are also held to facilitate discussion between the mediators on handling mediation cases.

### 8.2.2 Negotiation and Conflict Resolution Education

Apart from providing mediator training and education for its own Panel of Principal Mediators, the SMC also trains other entities in Negotiation and Conflict Management Skills. As part of its role in the promotion and raising of awareness of alternative dispute resolution in Singapore, SMC offers courses in alternative dispute resolution. In particular, SMC has been engaged by the Singapore Management University and the Nanyang Technological University MBA programme to offer its training courses to students. It is believed that through these

courses, students who will graduate and ultimately influence the commercial world will be able to advise and engage their businesses and corporate entities in resolving conflicts by mediation. SMC's other clients include Government Ministries and Departments, tertiary education institutions, professional and trade associations and business organisations. SMC continues to identify and target specific industry groups which have to deal with disputes and/or claims on a regular basis. These include litigation lawyers, medical practitioners facing the increasing pressure of medical negligence suits, the construction industry, the insurance industry and various other service related industries. SMC also continues to actively extend its training programmes in Asia and around the world and has conducted training in Austria, Cambodia, Indonesia, Malaysia, Malta, Mexico, Philippines, Thailand and Vietnam.

## **9. Conclusion**

In conclusion, non-court annexed mediation in Singapore has been accepted as part of the dispute resolution process. Much can be attributed to the role of the Singapore Judiciary and Government in promoting the use of mediation in resolving disputes. Further, the developments observed at SMC show that institutional commercial mediation has also come of age with the growing awareness and favourable feedback received by users of SMC services. Further with the development of its training and education arm, SMC hopes to continue to raise the standards of mediator skills and promote the use of and participation in mediation in Singapore and elsewhere.

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