

**SPEECH BY**  
**THE HONOURABLE CHIEF JUSTICE YONG PUNG HOW**  
**AT THE LAUNCH OF "DISPUTEMANAGER.COM"**

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Distinguished Guests

Ladies and Gentlemen

About five years ago, on 16 August 1997, I had the pleasure of opening the Singapore Mediation Centre in this same Chamber. I observed then that the occasion marked a new direction for the culture of dispute resolution and the development of our civil justice system. This would be through the institutionalisation of private, non-court-based mediation.

I am happy to note that the Singapore Mediation Centre has lived up to its promise as a national institution. As at 30 June 2002, 844 matters had been mediated at the Centre, with amicable settlements reached between the parties in 76.9% of these matters. 307 (or 36.4%) of these matters were referred by the courts, 411 (or 48.7%) were court-related matters that were referred by the parties' solicitors, and 126 (or 14.9%) of these matters had no related court proceedings at all. The fact that over 60% of the matters mediated were referred to the Centre at the initiative of the parties themselves or their solicitors speaks well of the Centre's efforts to promote its mediation services. The statistics also suggest that a significant number of disputants have begun to choose mediation over litigation as their preferred mechanism for dispute resolution.

The repertoire of matters mediated at the Singapore Mediation Centre reflects the full range of disputes heard by the courts, both in terms of subject matter and quantum of claims. While construction disputes and commercial disputes together account for more than 60% of the matters mediated at the Centre, the Centre has also dealt with information technology disputes and intellectual property disputes. Perhaps the most notable was the sleeper seat patent dispute between British Airways and Singapore Airlines that made headlines in 1999 and was amicably settled after just two days of mediation in February 2000. Of the matters mediated at the Centre, 23% involved claims exceeding \$1,000,000 in value while another 51% involved claims of between \$250,000 and \$1,000,000 in value. About 14.8% of the matters mediated at the Centre were international mediations involving at least one foreign party. The number of such international mediations has steadily increased from 11 in 1997 to 40 in 2001. This clearly reflects the confidence that foreign parties repose in the Centre.

Today marks yet another milestone for the Singapore Mediation Centre. It has taken the initiative to develop a comprehensive suite of online alternative dispute resolution services under its aptly named portal "DisputeManager.com" with some

financial support from the Ministry of Law and logistics and moral support from its parent, the Singapore Academy of Law. "DisputeManager.com" forms part of Singapore's national infrastructure for e-commerce. It not only harnesses technology for use in dispute management and resolution. It also provides a convenient forum for resolving disputes arising from Internet commerce.

### **Harnessing Technology for Dispute Management and Resolution**

Clergyman and orator Henry Ward Beecher once said, "A tool is but the extension of a man's hand, and a machine is but a complex tool. He that invents a machine augments the power of man and the well-being of mankind." "DisputeManager.com" is one such "complex tool" that taps on the potential of the Internet to expand the potential of mediation.

The benefits of mediation are manifold. The parties have the power to determine the terms on which they would settle the dispute. The parties and their lawyers spend much less time and effort preparing for and participating in a mediation than they would have to expend to prepare for and participate in a trial. Thus, mediation can lead to considerable savings in time and legal costs. The parties are also spared the stress of having to go through a trial. Further, as mediation is a process in which the parties work together to resolve their differences, it is less harmful to the parties' relationship as compared to adversarial processes such as litigation and arbitration. How then can technology be harnessed to add value to the mediation process? I think there are three main strategies to be explored.

First, technology can be used to facilitate and enhance long distance communication, thereby reducing the need for parties to meet physically. I am told that with "DisputeManager.com", parties who invest in the appropriate technology can "meet" through Internet video-conferencing at virtual mediation chambers without having to leave their offices or homes. The portal also allows the parties to simultaneously discuss, draw up and display for comments draft terms of settlement as if they were physically working together in the same room. This can bring about considerable savings in travelling time and costs, particularly where the parties are located in different jurisdictions. The cost of airfare and accommodation for an in-person meeting between individuals from different jurisdictions may well exceed the cost of a one-time investment in a personal computer and a web-camera, plus a subscription to broadband Internet access. I should add that currently available asynchronous forms of electronic communication, such as e-mail and facsimile transmissions, will continue to play an important role in negotiations, in that they provide convenient mechanisms for conveying proposals that the recipient requires time to consider. What needs to be emphasised is that technology can and should (whenever possible) be employed to reduce costs and increase efficiency in dispute resolution.

Second, technology can be used to facilitate the transmission, storage and retrieval of documentary information, and help significantly to eliminate the proliferation of paper documents. This was one of the underlying themes behind the commissioning of

the Judiciary's Electronic Filing System. I am therefore happy to note that "DisputeManager.com" also allows parties to make direct online submissions of documents of up to 5 megabytes of memory and online retrievals of such documents to and from, a secure virtual registry. They can do so from anywhere around the world and at any time of the day. There is thus no danger of bundles of paper documents being lost in transit or reaching the Singapore Mediation Centre only after office hours have ended. This "electronic courier" is thus not only cheaper and more convenient than conventional despatch services. It also offers faster service and is more reliable.

Third, technology can be harnessed to streamline and simplify manual processes such as the registration of the parties' particulars and the coordination of mediation sessions, thereby reducing the time and human resources that have to be expended on such activities. I understand that this aspect has also been incorporated in the design of "DisputeManager.com". The online registration facilities guide an applicant to provide the particulars that the Singapore Mediation Centre requires to register a case and invite other parties to consider the use of mediation. The system also facilitates the allocation of the earliest dates on which all parties are available for mediation with minimal human intervention. The system therefore frees staff from these time-consuming tasks and allows them to do more value-added work instead.

"DisputeManager.com" goes beyond capitalising on the synergy that can be achieved from adapting technology to facilitate institutionalised mediation. In addition to extending its facilities to two other services offered by the Singapore Mediation Centre, namely, neutral evaluation and the Singapore Domain Name Dispute Resolution Service, it also features e-Settlement, the first automated ADR process to be offered in Singapore and possibly in Asia.

The Singapore Mediation Centre's development of "DisputeManager.com" is congruent with Singapore's plans to become an e-commerce hub. Apart from the development of the requisite info-communications technology infrastructure and the administrative and legal systems to support e-commerce, it is also necessary to put in place effective, efficient and reasonably priced mechanisms for resolving disputes that may arise from e-commerce transactions. The prevalence of cross-border e-commerce transactions makes it a priority to develop cost-effective dispute resolution mechanisms that obviate the need for parties to expend large amounts of time and resources to pursue their claims. "DisputeManager.com" is a step in the right direction. Having said that, there are limitations to what technology can achieve. For instance, no computer, however advanced, can serve as a substitute for a trained mediator. "DisputeManager.com" and its facilities are but tools to complement the work of the Singapore Mediation Centre. Face-to-face human interaction adds a different dimension to mediation that cannot be replicated through the use of technology. It humanises the process and helps the parties to see each other as people who are not unlike themselves. So traditional face-to-face mediation should be encouraged whenever possible, in particular, where there are no disincentives or barriers to an in-person meeting in terms of time, cost or inconvenience.

It is this human aspect of mediation to which I now turn my attention.

## **Developing an Asian Model of Mediation**

Mediation is very much a part of Asian culture. Earlier in Singapore's history, community leaders (such as leaders of Chinese clan associations, the penghulu or headman of a Malay kampung, or the panchayat or community council in an Indian community) were often called upon to help resolve disputes within their respective communities in a mediator-like capacity. Over time, such indigenous forms of mediation became less significant in the context of dispute resolution, with more Singaporeans embracing litigation in the courts. The factors that contributed to this change included the dispersal of traditional communities by urbanisation and the Singaporeans' increased awareness of their rights.

In the 1990s, the courts led a revival of interest in mediation with the establishment of court-based mediation. This movement was based largely on the mediation experience, practice and direction in countries such as the United States of America and Australia. The irony was that, in a sense, we had to relearn mediation from the West.

When the Singapore Mediation Centre was first established to provide commercial mediation services and to complement the courts in dispute resolution, it based its mediation practice on Western ideas and methods, in particular, the concept of principled negotiation and its focus on the interests of the parties. This was no doubt due to the fact that the Centre's first mediators were trained by academics and practitioners from Canada, the United States of America and Australia.

The brand of mediation that the Singapore Mediation Centre adopted was the facilitative model of mediation. In this model, the role of the mediator was defined as that of a process manager who facilitated negotiations between the parties but refrained from expressing his own views on the substance of the dispute.

There is much to commend in the facilitative model of mediation. It has certainly worked well in the last five years. However, as a transplanted generic model of mediation, its use in an Asian context may benefit from an infusion of Asian perspectives.

One such perspective is the concept of "face". Chinese author Lin Yutang describes "face" as a "psychological image that can be granted, lost, fought for and presented as a gift". In an Asian context, the fear of losing face can be a major obstacle to the settlement of a dispute. In the context of mediation, "face" can be a powerful tool. For instance, if a mediator senses that the parties are prepared to take certain courses of action that will lead to an amicable resolution of the dispute, he may appeal to them to take those courses of action to give him face. The mediator's appeal gives the parties face, as each party is now able to maintain that it will take the suggested course of action solely to give face to the mediator, and not because it is conceding. If one party acts as suggested, the mediator may follow-up by persuading the other party to take the suggested course of action to give face not only to the mediator but also to the first party. The underlying

premise here is that the use of "face" allows the parties to do what they were prepared to do in the first place, but for fear of losing face.

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). To begin with, the parties may value the maintenance of a harmonious relationship and therefore prefer to avoid further conflict if that is possible. Thus, a mediator who is familiar with the background to the dispute and who is respected by the parties may very persuasively appeal to the parties to consider the impact of a protraction of the dispute on the group. The interests of the group may sometimes provide a strong incentive for the parties to resolve the dispute amicably.

A third Asian perspective concerns the parties' expectations of a mediator. I am told that parties attending mediations at the Singapore Mediation Centre often request that their mediators provide input on substantive matters. In fact, in a study based on statistics compiled from a survey administered by the Centre, of the parties who found the mediation process satisfactory enough to recommend it, 88% opined that they had mediators who suggested possible options for settlement, 87% opined that they had mediators who assisted in the evaluation of the case and 80% opined that they had mediators who actually evaluated the merits of the case. These responses suggest that the parties concerned formed the impression that their mediators had offered some guidance on substantive matters. It further suggests that the parties concerned appreciated such guidance, whether actual or perceived. If so, it may be time to reconsider the current paradigm on the role of the mediator and to address the question whether, in an Asian context, a mediator should assume a more interventionist role than that of a facilitator.

These are but three examples of how cultural perspectives may have a bearing on the conduct of mediation. With the experience gained from over 700 domestic mediations in the last five years, the Singapore Mediation Centre is in a unique position to study such perspectives and articulate how they may be applied to its existing model of mediation. With time, I hope to see the Centre develop an Asian model of mediation that tailors interest-based facilitative mediation to suit a predominantly Asian society like that of Singapore. This will provide the Centre with a unique product that it can export to the region, and that will set it apart as a leading ADR institution in Asia, both as a provider of ADR services and in terms of thought-leadership.

### **Training and Consultancy**

Speaking of thought-leadership, I note with interest the growth in the Singapore Mediation Centre's training commitments. Its local trainers now regularly conduct courses in negotiation, mediation and conflict resolution both for institutional clients and interested members of the public. This year, it began conducting undergraduate courses for the Singapore Management University. The Centre's reputation as an ADR training

institution extends beyond Singapore. Since 1999, the Singapore Mediation Centre has conducted three executive programmes in negotiation and mediation for delegates from around the world under the Ministry of Foreign Affairs' Singapore Cooperation Programme. The Centre has also been paid to conduct training in Cambodia, Malaysia, and the Philippines and as far afield as Austria and Malta.

While such training activities impart conflict management skills to individual participants, it seems to me that the conflict management know-how built up by the Singapore Mediation Centre can also be put to good use at an organisational level. Organisations are made up of people and often exist to serve the needs of other people. Internal differences and conflicts, if not properly managed, may have repercussions on working relationships, morale and productivity within the organisation. Likewise, complaints from the people serviced by an organisation need to be attended to and properly managed if the escalation of a complaint into a full-fledged dispute with the organisation is to be avoided. The designing of conflict management systems for organisations is one niche consulting service that the Singapore Mediation Centre is equipped to undertake and should actively explore. The Centre can conduct a conflict audit for an interested organisation to identify the conflict management needs of the organisation, the stakeholders involved and the issues to be addressed. Thereafter, the Centre can make recommendations for putting in place within the organisation a conflict management framework and, if necessary, assist in training the organisation's officers to equip them with the requisite skills to implement that framework. With a conflict management framework in place, an organisation should be able to reduce the costs of resolving conflicts and may even develop a more conducive work environment.

### **New Directions**

Developing "DisputeManager.com", articulating an Asian model of mediation and promoting a consulting service in the design of conflict management systems are new directions in which the Singapore Mediation Centre should head if it wishes to remain relevant and at the forefront of the ADR movement in Singapore. As Oliver Cromwell once said, "He who stops being better stops being good." It is my hope that the Singapore Mediation Centre will continue to improve itself and thereby grow from strength to strength.

Thank you.