Mediation and the Rule of Law

Keynote Address by the Honourable the Chief Justice Sundaresh Menon, Supreme Court of Singapore

The Law Society Mediation Forum

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Introduction

1 I am delighted to deliver the keynote address for today's forum, as we gather to mark the official launch of the Law Society Mediation Scheme. Over the last three decades, Singapore's dispute resolution landscape has witnessed an extraordinary transformation. Among the most notable aspects of this, has been the emergence of mediation as a crucial component of that landscape. Mediation challenges the conventional wisdom that "cheap" and "good" are mutually exclusive; and its allure lies in its recognition of the increasingly felt desire of disputants for a less costly and adversarial method of dispute resolution and for autonomy in resolving their disputes.[1] Recognising this reality, we have reworked our legislation and our policies and reconceived the role of our legal institutions and stakeholders in order to accommodate it.

[1] See, eg, Dorcas Quek and Seah Chi-Ling, "Finding the Appropriate Mode of Dispute Resolution: Introducing Neutral Evaluation in the Subordinate Courts", Singapore Law Gazette (November 2011) at 21, 22; Adrian Loke, "Mediation in the Singapore Family Court", (1999) 11 SAcLJ 189 at 194.

2 But as our dispute resolution framework moves away from one in which adjudication alone forms its mainstay, we must be mindful of the possible implications this might hold for our understanding of the Rule of Law. After all, at least in general terms, the adjudicative process, in publicly providing authoritative statements of what the law is, who has what rights and how those rights are to be vindicated, represents the essence of the Rule of Law.[2] Indeed, because of this, some would go so far as to contend that the informal and private nature of mediation is inconsistent with the Rule of Law.[3] In my respectful view, any perceived inconsistency between mediation and the Rule of Law may be seen fundamentally as a semantic issue,[4] which is premised on an unduly restricted conception of the Rule of Law.

3 Today I wish to identify a broader vision of the Rule of Law - one in which access to justice is an essential ingredient. The idea that access to justice is a core principle of the Rule of Law seems intuitively obvious. An inevitable consequence of the inability to access and enforce one's legal rights is that it reduces confidence in the legal system and this in turn erodes the vitality of the Rule of Law, rendering it little more than a theoretical construct.

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[2] See, eg, Lon Fuller and Kenneth Winston, "The Forms and Limits of Adjudication" (1978) 92 Harvard Law Review 353 at 372.

[3] Dame Hazel Genn, "Why the Privatisation of Civil Justice is a Rule of Law Issue" (36th F A Mann Lecture, Lincoln's Inn, 19 November 2012) at pp15-17.

[4] Jean R Sternlight, "Is Alternative Dispute Resolution Consistent with the Rule of Law? Lessons from Abroad" (2006-2007) 56 DePaul Law Review 569 at 590.

Yet the relationship between access to justice and the Rule of Law has received comparatively little attention. In my remarks today, I set out to explore this conception of the Rule of Law and reflect on the promise which mediation brings to it.

A broader vision of the Rule of Law

4 When we think of the Rule of Law, Lord Bingham's view of it is what most often comes to mind. For Lord Bingham, the core of the Rule of Law is the idea that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, prospectively promulgated and publicly administered in the courts.[5] Lord Bingham's Rule of Law therefore speaks of formal legality, in terms of how laws are to be made, published and applied; and also in terms of making the state subject to the law. Under this conception, the Rule of Law imposes a number of formal requirements, while it also stipulates certain procedural principles which together address how a community will be governed. The formal principles concern the generality, clarity, publicity, stability, and

[5] Thomas Bingham, "The Sixth Sir David Williams Lecture: The Rule of Law" (16 November 2006), Cambridge University: Centre for Public Law at 5.

prospectivity of the norms that govern a society.[6] The procedural principles concern the processes by which these norms are administered, and the institutions that their administration requires.[7]

5 But any conception of the Rule of Law must be assessed with due regard for the socio-political and historical context from which it emerged; and in this respect, the roots of Lord Bingham's Rule of Law can be found in the English political tradition.[8] The immediate inspiration behind it was not the preservation of individual liberty, but the restraint of government tyranny.[9] The preoccupation was to ensure that government should be constituted in such a manner that "power should be a check to power" in order to prevent abuse.[10] Because the judiciary was seen as the point of the most direct confrontation

[6] Jeremy Waldron, "The Rule of Law", *The Stanford Encyclopedia of Philosophy* (Fall 2016 Edition), Edward N Zalta (ed), available at: https://plato.stanford.edu/archives/fall2016/entries/rule-of-law/.

[7] Jeremy Waldron, "The Rule of Law", *The Stanford Encyclopedia of Philosophy* (Fall 2016 Edition), Edward N Zalta (ed), available at: https://plato.stanford.edu/archives/fall2016/entries/rule-of-law/.

[8] See, eg, Francis Neate, "The Meaning and Importance of the Rule of Law", in Francis Neate (gen ed), *The Rule of Law: Perspectives from around the Globe* (UK: LexisNexis, 2009) 55 at 55.

[9] Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (USA: Cambridge University Press, 2004) at 115.

[10] Duncan Kennedy, "Form and Substance in Private Law Adjudication" (1976) 89 Harvard Law Review 1685 at 1685.

between the state, the law and the individual, it was thought that it, therefore, would serve as the best protection against lawless governmental actions.[11]

6 On this basis, the adjudicative process has been regarded as the preserve, and even as the very manifestation, of the Rule of Law.[12] Thus, the Rule of Law is given expression when affected citizens have their "day in court" against governmental action that is challenged as being arbitrary or unlawful.[13] The nature of rules has been of paramount significance to this Rule of Law ideal, because it is through rules, which are, at least in part, articulated through the court process that the institutional arrangements across the separate branches of government are defined and the limits of their respective powers set.[14]

7 Inevitably, the Rule of Law later came to recognise the central role of the courts in preventing the abuse of private power as well. Claimants in litigation would invoke the coercive power of the court system to protect themselves against wrongs committed by other private actors. The Rule of

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[11] Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (USA: Cambridge University Press, 2004) at 52.

[12] See, eg, Lon Fuller, "The Forms and Limits of Adjudication" (1978) 92 Harvard Law Review 353; Julian Gruin, "The rule of law, adjudication and hard cases: The effect of alternative dispute resolution on the doctrine of precedent" (2008) 19 ADRJ 206.

[13] Lon Fuller, "The Forms and Limits of Adjudication" (1978) 92 Harvard Law Review 353 at 400.

[14] See, eg, Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (USA: Cambridge University Press, 2004) at 52-53, 96-97.

Law values evolved in tandem with these changes, and the function of rules under this ideal was recast to serve as general guides of behaviour for both public and private actors in society.

8 To be sure, Lord Bingham's conception captures vital facets of the Rule of Law and it emphasises the critical role that the courts play in upholding it. Indeed, the Rule of Law as formal legality has come to be the dominant understanding among legal theorists.[15] And the adjudicative process, which exemplifies the values of formal legality, has come to be so closely identified with a legal system's legitimacy that, as one writer has observed, "[some] disputants feel that real justice is denied them unless a bewigged judge, symbolising the majesty of the law, hands down a ruling firmly based on the ruling in a past case".[16]

9 It is not my purpose to suggest that this conception of the Rule of Law has outlived its usefulness. Rather, I suggest that because the content of the Rule of Law should be understood in the light of the particular context in which it is situated, its content needs to be periodically re-evaluated against changing realities. And, more specifically, having regard to our evolving social, economic and political circumstances, we might subject the conventional

[15] See, eg, Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (USA: Cambridge University Press, 2004) at 119.

[16] Margaret Thornton, "Mediation Policy and the State" (1993) 4 ADRJ 230 at 235.

theory of the Rule of Law, which places the adjudicative process in the centre of attention, to renewed scrutiny so that the centre-stage might also be shared by other non-adjudicative processes.

10 Some might argue against the wisdom of any attempt to refine our thinking on the Rule of Law on the ground that this might open the way to abuse. But the venture might be more palatable if we recognised that, at its core, our conception of the Rule of Law offers us a means for thinking about the function of law in society.[17] Consistent with this, the long history of the Rule of Law shows that it has been held to mean different things at different times and in different contexts.[18] In the 20th century, for example, there emerged a growing recognition that the Rule of Law as an essentially procedural concept, which governed the relationship between the government, the people and the law, was deeply unsatisfying.[19] This came about in response to a number of significant historical events, the most

[17] See, eg, Justice Kenneth Hayne, "Dispute Resolution and the Rule of Law" (Sino-Australian Seminar, Beijing, 20-22 November 2002) available at: http://www.hcourt.gov.au/assets/publications/speeches/current-justices/haynej/haynej_DisputeResolutionBeijing.htm) at p2.

[18] Gianluigi Palombella, "The Rule of Law as an Institutional Ideal," in Gianluigi Palombella and Leonardo Morlino (eds), *Rule of Law and Democracy: Internal and External Issues* (Leiden: Brill, 2010) (available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1148135) at p1; Pekka Hallberg, *Prospects of the Rule of Law* (Helsinki: Tekija ja Edita Publishing Oy, 2005) at 4.

[19] Francis Neate, "Introduction: A Brief History of the Development of the Concept of the Rule of Law", in Francis Neate (gen ed), *The Rule of Law: Perspectives from around the Globe* (UK: LexisNexis, 2009) 1 at 5-6.

prominent of which were the atrocities committed by the Nazi regime in Germany ostensibly in accordance with what was passed off for the law; and the legal institutionalisation of apartheid in South Africa.[20]

11 In this light, strict or procedural legality came to be seen as a necessary but by no means sufficient condition for the protection of human rights, and this prompted the emergence of "thicker" definitions of the Rule of Law that sought to prescribe the contents of the rules themselves.[21] I do not propose to go further into a historical analysis of these and other interpretations and transformations of the Rule of Law today. But the point I want to emphasise is that the Rule of Law's normative content is capable of multiple incarnations.[22] While the common thread which runs through the variations revolves around the ascendancy of law and of legal institutions in a system of governance,[23]

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[20] Francis Neate, "Introduction: A Brief History of the Development of the Concept of the Rule of Law", in Francis Neate (gen ed), *The Rule of Law: Perspectives from around the Globe* (UK: LexisNexis, 2009) 1 at 5-6.

[21] Francis Neate, "Introduction: A Brief History of the Development of the Concept of the Rule of Law", in Francis Neate (gen ed), *The Rule of Law: Perspectives from around the Globe* (UK: LexisNexis, 2009) 1 at 5-6.

[22] See, eg, Gianluigi Palombella, "The Rule of Law as an Institutional Ideal," in Gianluigi Palombella and Leonardo Morlino (eds), *Rule of Law and Democracy: Internal and External Issues* (Leiden: Brill, 2010) (available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1148135) at p27.

[23] Jeremy Waldron, "The Rule of Law", *The Stanford Encyclopedia of Philosophy* (Fall 2016 Edition), Edward N Zalta (ed), available at: https://plato.stanford.edu/archives/fall2016/entries/rule-of-law/.

its principles are constantly tested, evaluated, rethought and readjusted in the light of changing circumstances.[24]

12 Against that backdrop, I suggest that if we consider the range of developments which have transpired in our legal landscape, then it will become apparent that the Rule of Law notion which is rooted in a fundamentally, if not exclusively, adjudicative setting is no longer sufficient to capture the ideals of a modern system for the resolution of disputes.

13 And so, accepting this need to refine our vision of the Rule of Law in order to match the demands of today, the next question which we then confront is: How *should* the Rule of Law be reconceived? I suggest that we should start from the objectives that we would like to see accomplished.

14 In this regard, one begins with certain realities: the restricted amounts of court time, technicality of procedures, court formalities, the rising and often unaffordable cost of litigation, the professional domination of the system and the delays that often plague court proceedings are all inevitably seen as posing barriers for the individual user of the legal process.[25] In such a context,

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[24] See, eg, Gianluigi Palombella, "The Rule of Law as an Institutional Ideal," in Gianluigi Palombella and Leonardo Morlino (eds), *Rule of Law and Democracy: Internal and External Issues* (Leiden: Brill, 2010) (available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1148135) at p27.

[25] See, eg, Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [6.15].

the legitimacy of the legal system and of the Rule of Law ideal becomes intimately connected with access to justice. Disputants desire a more "user-friendly" framework of dispute resolution which facilitates greater autonomy over the process and is cheaper, less formal, procedurally simpler, less convoluted by technical language and available with minimal delay.[26]

15 For access to justice to be seen as a necessary complement to the traditional underpinnings of the Rule of Law, we must engage with the conceptual basis for this extension and I suggest that it is tied to the needs, rights and interests of the disputant. In this conception, the disputant is at the centre of our consideration. What follows from this is the realisation that we need to overlay a more user-centric approach on top of the institutional values which have defined the ideals of our legal system. Building on these considerations, which have since inspired access to justice initiatives in our system, I wish to draw out the core attributes of such a user-centric approach that are essential to maintaining the robustness of the Rule of Law ideal today. These may be broadly crystallised into five, sometimes overlapping, ideals surrounding the legal process. These are: affordability, efficiency, accessibility, flexibility and effectiveness.

[26] See, eg, Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [6.15].

The role of mediation in promoting the Rule of Law

16 I turn to consider how far mediation meets these ideals and whether it succeeds in promoting this broader vision of the Rule of Law. By appreciating the attributes which mediation brings to dispute resolution, and for this, I am grateful to the work of Laurence Boulle, whose writings I have cited in this connection, I suggest we will see that mediation has proved its great value in helping to address access to justice considerations, but yet in a way that is compatible with and supportive of the traditional Rule of Law values associated with adjudication.

Affordability

17 Having risen to prominence as a response to "access to justice" concerns in the 1990s,[27] mediation as a method of dispute resolution exemplifies many of the ideals of a user-centric approach. Prime among these is the fact that mediation has the great benefit of being much more cost-effective and affordable than most other modes of dispute resolution. The transaction costs of mediation, in terms of expenditures on preparation,

[27] See, eg, Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [6.15]. See also Jean R Sternlight, "Is Alternative Dispute Resolution Consistent with the Rule of Law? Lessons from Abroad" (2006-2007) 56 DePaul Law Review 569 at 570.

lawyers, experts and other outgoings, are generally much lower than those for litigation.[28] Mediation is not burdened with the procedural formalities in litigation which can protract the resolution of a case. It is also relatively easy to set up and conduct mediation within short periods of time. With the opportunity to resolve their dispute in a manner which is sensitive to the particularities of their own case, parties are also more likely to accept the outcome of the dispute. They will generally achieve closure much more quickly than in litigation, which can take years to reach the highest appellate court and achieve finality. The much quicker turnaround for cases which settle in mediation means that disputants pay less money over a shorter period of time.[29]

Efficiency

18 The reductions in the time, financial outlays, professional charges and opportunity costs for parties in dealing with their disputes are also tied to mediation's efficiency objectives. While I have spoken of efficiency from the user's standpoint, efficiency can also be viewed from other perspectives.[30]

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[28] See, eg, Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [3.53].

[29] See, eg, Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [3.51].

[30] Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [3.53].

From the perspective of courts and tribunals providing dispute resolution services, efficiency relates to the cost-effective use of finite public resources, the timely management of case loads and a proportional allocation of resources to different disputes, with the devolution of some of the service costs to users.[31] And from the community's perspective, efficiency relates to societal allocations of financial and human resources in cost-effective ways. From that vantage point, there is much to be said for minimising the economic and social disruptions caused by disputes and increasing the ability of citizens to manage conflicts themselves.[32]

19 In this light, I suggest that the value that mediation brings to our legal system lies not just in making a more diversified range of dispute resolution options available, but more importantly in helping actors at different levels achieve a spectrum of efficiency objectives.

[31] Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [3.53].

[32] Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [3.53].

Accessibility

20 The third point that I wish to touch on is accessibility. In comparison with competing systems, mediation has the advantage of providing an accessible dispute resolution service. Whereas there are financial, procedural and structural obstacles for individuals seeking their "day in court", mediation provides relative ease of access with few technical or legalistic requirements that might otherwise restrict the parties from participating in the system.[33] Mediation is also a much more accessible system in terms of the individual disputants' abilities to understand the process and even to represent themselves in the procedure.[34] It is relatively devoid of formality, technicality and jargon, and disputants can participate in it with ease. Furthermore, by shifting the dispute resolution process from one of assuming adversarial positions to one which is focused on problem-solving and the needs and interests of the parties, mediation is widely recognised for its capacity to provide a much less alienating experience.[35]

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[33] Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [3.51].

[34] Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [3.51].

[35] Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [3.51].

Flexibility

21 The accessibility of the mediation process is closely linked to another of its key advantages, which is flexibility. Mediation enables the parties to explore a multitude of issues and concerns arising out of a transaction or a relationship, without regard to formal constraints such as those imposed by the rules of pleading and even without being limited to matters that might strictly be considered legal in nature. The flat structure of mediation, with a neutral facilitator rather than an adjudicator, is also conducive to the parties settling their disputes privately and amicably. The process allows them to directly interact with each other in the effort to find a mutually acceptable solution, and importantly, it enables them to determine the outcomes of their dispute instead of having a tribunal do so.

Effectiveness

22 These characteristics bear on the final value I have spoken of, which is the effectiveness of mediation as a method of dispute resolution. Indeed the statistics paint an encouraging picture of mediation's success in our legal system. Since the establishment of the Singapore Mediation Centre, which deals primarily with private commercial matters, more than 2,300 matters have

been mediated with an overall settlement rate of 75%.[36] In the Supreme Court, the rate of settlement for cases which proceeded to mediation in recent years has ranged between 66% and 81%.[37] Even at the Court of Appeal level, cases which have been referred to the Singapore Mediation Centre for mediation have enjoyed settlement rates in excess of 50%.[38] It also bears noting that settlement in these cases was achieved within a year of the referral.[39] This is particularly impressive because there is often less impetus for parties to an appeal to reach a settlement since one party would have already "won" on the merits at first instance.

Critiques and Responses

23 The benefits of mediation, which I have outlined, combine to provide a method of dispute resolution which is very much "user-centred", and one which is rightly recognised as being among the more successful methods of bridging access to justice gaps. The growth of mediation has, however, sparked some critiques by those concerned with the privatisation and

[36] Statistical information provided by the Singapore Mediation Centre.

[37] Statistical information provided by the Singapore Mediation Centre.

[38] Statistical information provided by the Singapore Mediation Centre.

[39] Statistical information provided by the Singapore Mediation Centre.

informalisation of dispute resolution,[40] and who see mediation as heralding the "loss of law".[41] This refers to the loss of precedents and the absence of the public, norm-setting functions both of which are inherent in the nature of mediation.[42] I note parenthetically that the same could equally be, but is less frequently, said about arbitration.

24 But aside from this, and with great respect, I suggest that such a view rests on the fallacy that mediation necessarily exists in competition with adjudication. Instead of viewing mediation and adjudication as diametrically opposed systems, perhaps the better view is that the two are complementary methods of dispute resolution that go together in our justice system. Court-connected mediation, for example, currently exists as an adjunct to the adjudicatory system. Judges can order disputes in litigation to be mediated and failing a settlement, those disputes will return to the courts for adjudication.

25 On top of this, the emergence of mediation may even be said to have a "revitalising effect"[43] on the adjudicatory process, and to this extent to

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[40] Jean R Sternlight, "Is Alternative Dispute Resolution Consistent with the Rule of Law? Lessons from Abroad" (2006-2007) 56 DePaul Law Review 569 at 570.

[41] See Bryan Clark, *Lawyers and Mediation* (Springer, 2012) at Ch 5.

[42] See Bryan Clark, *Lawyers and Mediation* (Springer, 2012) at Ch 5.

[43] Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [6.7].

complement the traditional Rule of Law values which the latter espouses. It simply does not follow from the growth of mediation, that the role of the courts in developing the law must diminish; nor, for that matter, will the value of established legal norms be undermined by the growth of mediation. In fact, parties in mediation inevitably operate with some understanding of their established legal rights and obligations and with an expectation of how the dispute might otherwise be resolved through adjudication.[44]

26 More importantly, with recourse to different methods of dispute resolution, the great benefit is that parties may now consider the strengths and weaknesses of each approach in order to determine the *appropriate* mode of dispute resolution that is best-suited to their needs. Developing a more diversified suite of dispute resolution options therefore enhances the ability of the legal system to deliver justice that is customised to the particularities of each case and has the effect of reinforcing the overall legitimacy of the dispute resolution framework. This, in turn, has the potential to foster stronger respect for the norms set within the adjudicative process.

27 In this regard, while there is an absence of direct studies on the precise relationship between mediation and adjudication, evidence from some other

[44] Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [6.6].

jurisdictions suggests that the use of mediation processes has increased satisfaction with adjudication[45] and this is broadly supportive of these observations. Locally, the continuing improvement in the State Courts' user satisfaction rates since the presumption of alternative dispute resolution ("ADR") was introduced, from 92% in 2013 to 96% in 2015,[46] is in keeping with these trends. Rather than necessarily undermining the system of adjudication and the traditional Rule of Law values it exemplifies, mediation is therefore more accurately seen as an essential element in our dispute resolution toolkit, which helps maintain and support the Rule of Law and which brings our justice system a step closer to delivering fair and appropriate outcomes for its disputants.

Family Justice in Singapore: A Case Study

28 The family justice system in Singapore provides a notable illustration of this, in that it offers a practical example of how mediation may be combined with adjudication in optimal ways to avail *appropriate* dispute resolution models that meet our society's evolving needs. In response to the rising number of divorce cases, many of which involve parties who are self-

[45] Tania Sourdin and Tania Matruglio, "Evaluating Mediation – NSW Settlement Scheme 2002" (2002) 61-64, cited in Laurence Boulle, *Mediation: Principles, Process, Practice* (Australia: LexisNexis Butterworths, 3rd ed, 2011) at [6.7].

[46] State Courts' Bi-annual Court-Users Survey 2015.

represented, as well as the need in family cases to preserve relationships which must endure beyond the court process, we have for many years sought to redesign family court proceedings from a structure that was fundamentally adversarial in nature to one that embraces a more conciliatory architecture. Perhaps the most dramatic moves in this direction can be traced to 2014. Amongst other reforms, mediation became mandatory as part of divorce proceedings for parties with children under the age of 21, and judges of the Family Justice Courts were empowered to order mediation as part of the court process.

29 Since then, mediation has proved to be an invaluable part of the toolkit for the Family Justice Courts. By offering a safe and supportive environment in which parties can communicate openly and explore mutually acceptable solutions, it has provided a powerful means of encouraging parties in family proceedings to compromise and of promoting adherence to settlements that have been reached by consensus. In this context, mediation is emerging as an essential tool in helping disputants exit the court proceedings without further deterioration in their relationships. I see the continuing growth of like-minded initiatives in family justice as evidence of mediation's attractiveness as a vital complementary method of dispute resolution.

Promoting access to justice under the Rule of Law: the evolving field of mediation in Singapore

30 Continuing efforts to enhance Singapore's network of mediation services will thus only serve to strengthen our dispute resolution "eco-system" and benefit disputants, and it is heartening to observe the significant advances we have already made. Since the 1990s, we have seen the introduction of mediation in the State Courts as a parallel process to court litigation, the development of Community Mediation Centres to help relatives and neighbours resolve community disputes, and the emergence of the Singapore Mediation Centre which not only provides commercial mediation services but also serves as a leading training body for mediators. The success of mediation in the context of civil claims has led to its extension in other significant areas and we have been able to nurture a pool of trained and experienced mediators in tandem with these developments.

Recent Trends

31 Today, our stakeholders continue to work tirelessly to introduce a slew of initiatives that contribute to the continued development of mediation so as to ensure that it is responsive to the needs of its users. Recently, this led us to two major developments: (i) the establishment of the Singapore International Mediation Centre ("SIMC"), which caters to the dispute resolution

needs of international businesses; and (ii) the Singapore International Mediation Institute ("SIMI"), which accredits and regulates mediators in an effort to develop and promote a recognised and regulated profession marked by a commitment to high standards.

32 In addition to building strong mediation institutions, Singapore has sought to develop a rules-based framework to strengthen and entrench mediation in our dispute resolution landscape. I touched on the presumption of ADR earlier, which was introduced in the State Courts for all civil disputes in 2012. 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 Scheme – unless the parties choose to opt out of the ADR process.[47] And in January this year, the Mediation Act was passed to establish a sound legislative framework for mediation. The Act will strengthen the enforceability of mediated settlements and provide greater clarity and certainty for parties on issues such as the confidentiality of communications in mediation.[48]

33 This combination of efforts on the part of diverse stakeholders has contributed to a robust network of mediation programmes in Singapore, and

[47] State Courts Practice Directions, paragraph 25.

[48] Office of Public Affairs, "Mediation Moves: A Note from Indranee Rajah, SC, Senior Minister of State for Law" (31 January 2017).

one that continues to evolve with the needs of our users. The spike in mediation in recent years, with the number of mediation cases filed in the Singapore Mediation Centre hitting a record high last year,[49] bears testament to the attractiveness of mediation as a dispute resolution option and the rising demand for mediation services in Singapore today.

The Law Society Mediation Scheme

34 The establishment of the Law Society Mediation Scheme (LSMS) is thus a welcome step towards addressing the growing demand for mediation services in Singapore, and a worthwhile initiative that will help realise the aspirational ideals of mediation and yield tangible results in time.

35 With mediation gaining traction, the low-cost scheme which the LSMS seeks to provide will have the salutary effect of significantly widening the reach of dispute resolution services in Singapore. A notable feature of the LSMS is that its mediation services are available for all types of civil disputes and do not impose a monetary limit on the value of a dispute before the scheme may apply.[50] Further, members of the public need not be legally represented for mediation under the scheme.

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[49] KC Vijayan, "Number of mediation cases filed hits record high", *Straits Times* (Singapore), January 28, 2017.

[50] The Law Society Mediation Scheme Handbook 2017 at p29.

36 Consistent with mediation's objectives to provide a much more flexible and efficient method of dispute resolution, the LSMS seeks to make it convenient for parties to submit to mediation. Under the Law Society Mediation Rules ("the Rules"), the system of mediation is structured in a manner which is quick and user-friendly. The procedures for parties to commence the mediation process (whether or not they have a prior agreement to mediate) are simple[51] and highly accessible to the individual disputant. The LSMS also complements the existing Law Society Arbitration Scheme (LSAS) by providing parties with the option of having disputes referred to mediation before or after LSAS proceedings have been commenced.[52]

37 In addition, the way in which mediation is envisaged under the Rules reflects a desire to strike an appropriate balance between flexibility on the one hand and the need to narrow down issues of contention on the other, in order to bring about productive communications about the dispute at hand. The default position under the Rules, for example, requires parties to provide the mediator a brief written statement of their case defining the issues to be resolved.[53] However, the parties are free to opt out of this arrangement and to

[51] See The Law Society Mediation Rules Articles 2 and 3.

[52] The Law Society Mediation Scheme Handbook 2017 at p1.

[53] The Law Society Mediation Rules Article 5.2.

agree on the precise form in which they will present their case to the mediator.[54]

38 Similarly, the mediator operates with a high degree of flexibility.[55] The ability of the mediator to tailor his approach to the distinctive facts of each case will afford the latitude to cut through irrelevant issues and unproductive tactics, and focus on matters of real concern to the parties. Should the mediation appear to be no longer justified in cost-benefit terms, the mediator may also rely on his professional judgment to terminate the process.[56] Parties are then at liberty to initiate or continue judicial or arbitral proceedings.[57]

39 Last but not least, the high professional standards to which the LSMS holds its mediators under the programme will not only promote and sustain the quality of the mediation services on offer, but will also go towards strengthening public trust and confidence in the practice of mediation. In this regard, those seeking to be appointed to the LSMS Panel of Mediators must be experienced practitioners who have met the criteria of mediator accreditation and experience set by the Law Society.[58] Furthermore, the

[54] The Law Society Mediation Rules Article 5.1.

[55] See The Law Society Mediation Rules Article 6.3.

[56] See The Law Society Mediation Rules Article 8(c).

[57] See The Law Society Mediation Rules Article 10.

[58] The Law Society Mediation Scheme Handbook 2017 at p28.

LSMS also prescribes a rigorous Code of Conduct ("the Code") for its mediators which I see as serving at least two functions: (i) from the practitioners' perspective, the Code will help guide them as they develop a sense of their basic commitments and responsibilities; and (ii) from the users' perspective, the Code can foster an understanding of the principles and standards which guide the practice of mediation, thereby creating realistic expectations of the mediators and developing public confidence in the mediation process.

Conclusion

40 Let me conclude by commending the Law Society for an initiative which promises to contribute to Singapore's rich tapestry of dispute resolution services in significant ways. I am confident that, with the ongoing support of key stakeholders in the industry, the continuing development of our dispute resolution framework will advance us further towards the ideal system of justice that can accommodate the constantly evolving needs of our society and deliver fair outcomes for its disputants.

41 Thank you.