Kluwer Mediation Blog

Encouraging Mediation – Recent Developments in Singapore

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The modern mediation movement was established in Singapore in the mid-1990s. I say modern because historically, the population of Singapore (both indigenous and migrant) practiced their own forms of mediation. With colonization came the English common law and court system that unfortunately saw the reduction, if not demise, of these local forms of mediation.

When mediation was reintroduced to Singapore, it was in a context where litigation and arbitration were the most commonly used forms of resolving legal disputes. There was much ignorance and misconceptions about what mediation was and many legal practitioners viewed mediation with some concern and doubt.

Thankfully, much has changed since then and mediation has become an undeniable part of the legal landscape. Despite the advances that mediation has made, there is sometimes still subtle resistance for legal practitioners to refer a matter to mediation. This resistance can arise as a result of adversarial legal training and misconceptions about mediation.

While education is always the long-term solution, the mediation movement in Singapore has been bolstered in the mid-term by two recent developments.

The first development requires lawyers to file what is referred to as an ADR form when taking out or responding to a summons for directions in the Subordinate Courts of Singapore. The purpose of this ADR form is to get lawyers to get into the practice of considering ADR, specifically mediation, as an option for addressing their clients' matters at a point when it was appropriate to consider ADR options.

The ADR form requires lawyers to provide salient information about the case including the nature and value of the claim and the projected length of the trial. More importantly, parties must certify on the form that their lawyers have explained to them the various ADR options and their respective benefits.

Requiring parties, through their lawyers, to fill in this form raises awareness of ADR processes and encourages lawyers and their clients to have a meaningful discussion regarding the ADR process available.

The second development relates to the court's power to impose sanctions by way of costs. When exercising its discretion as to the award of costs, the court is empowered to take into account, inter alia, "the parties' conduct in relation to any attempt at resolving the cause or matter by mediation

or any other means of dispute resolution".

This is clearly for the purposes of encouraging the parties to resolve their disputes through the use of mediation and is reminiscent of the approach adopted in the United Kingdom courts of imposing costs sanctions should a party ignore an ADR order or has unreasonably refused an offer to mediate. The difference of course is that the Rules of Court in Singapore do not make provision for the courts to make ADR orders. Hence, any attempt at mediation must come from one of the parties. Where no attempt is made, then this threat of cost sanctions simply does not operate. Sadly, this may mean that this development can be sidestepped relatively easily. Be that as it may, the writer feels that these developments represent a significant step in that direction of changing legal culture and is to be welcomed.

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