Kluwer Mediation Blog

Moving Amicable Dispute Resolution Forward

Joel Lee (National University of Singapore, Faculty of Law) · Sunday, October 14th, 2012

Singapore was the location of an ADR conference over 4-5 October 2012. The conference was entitled “The 5Cs of ADR: Collaboration-Communication-Consensus-Cooperation-Conclusion” and was jointly organized by the Subordinate Courts of Singapore, the Singapore Mediation Centre, the Law Society of Singapore, the Supreme Court of Singapore, the Singapore Academy of Law, the Ministry of Law and the Community Mediation Centres. The conference saw a gathering of academics, practitioners and service providers from, *inter alia*, Singapore, Malaysia, Indonesia, Thailand, Australia, the United States, the United Kingdom, the Maldives and Fiji to share developments about ADR and to discuss ways to move the field ahead.

Apart from the opportunity to catch up with overseas friends like Nadja Alexander (Director, The International Institute for Conflict Engagement and Resolution and Editor for the Kluwer Mediation Blog), Michael Leathes (Honorary Chair of the International Mediation Institute) and Shirli Kirschner (Mediator and Trainer, Resolve Advisors, Australia) and to make some new ones, participating in the various plenaries and seminars gave me quite some food for thought regarding how to move ADR forward in Singapore and quite possibly in the larger context of the region and the world. I would like to share three of these ideas in this blog entry, each of which applies to a very specific sector.

The first idea relates to developing the field of mediation. Michael Leathes, in his opening plenary speech, talked about the importance of professionalising the field of mediation. Rather than mediation being an *ad hoc* activity which is sometimes done as a labour of love and for very little remuneration, professionalising the field would mean ensuring the long time viability for mediators as well as mediation. Of course, different jurisdictions will be at different stages in this journey to professionalization. It would not be unfair to say that for Singapore, the professionalization of mediation is in its infancy and there are quite a number of obstacles that have to be overcome including continuing the change in the mindset of lawyers towards mediation and to raise user awareness so that there is an increased demand for mediation for those who would seek to make mediation a profession.

The second idea relates to the legal profession. Catherine Gale in her plenary and workshop introduced the notion and practice of collaborative lawyering. Put simply, a collaborative lawyer commits to resolving a client’s problem only through collaborative means. This concept is a lovely idea and would certainly appeal to those with non-litigious mindsets. It will also certainly contribute to a more harmonious environment which some would say is a key value in many asian countries. Of course, hard-core litigators would dismiss the idea of collaborative law as “rubbish”

and the realm of “namby pampy idealists”. I think this is one of those things that “for those who believe, no proof is necessary and for those who do not believe, no proof is sufficient”. It will take sometime to see if collaborative law will take root in Singapore. It is sufficient to note that the seeds have been planted and that the ground is, by many accounts, fertile.

The third idea relates to legal education. Patrick Cavanagh, in a very provocative talk that lambasted practitioners, academics and law schools, made some very important points about legal education and how it relates to negotiation practice. I had three takeaways from his session. One: it is important to teach negotiation skills in law school and that it is not enough to simply teach it as an elective. If we accept the position that negotiation skills are crucial to a legal practitioner, then effective negotiation training should be an integral part of any law school curriculum. Two: that it is insufficient to teach negotiation “academically” and theoretically. Those teaching negotiation should have practical experience. Three: law schools should teach the soft skills that will mean the difference between someone who is just competent in the law and a lawyer who can work with people to resolve problems.

In closing, I would like to make two final observations. First, there was the explicit use of the acronym “ADR” to mean more than just “Alternative Dispute Resolution”. At various points in the conference, ADR was taken to refer to “Appropriate Dispute Resolution” and “Amicable Dispute Resolution”. This is heartening. The term Alternative Dispute Resolution was appropriate for its time when the processes of Arbitration, Mediation and Negotiation were alternatives to litigation as a form of dispute resolution. The field has come a long way since. Arbitration is now considered mainstream and ironically is sometimes more expensive and drawn out than litigation. The reference to Appropriate Dispute Resolution focuses legal service providers on identifying the appropriate way to solve a client’s problem without stacking the deck in favor of any one process. Related to this, the reference to Amicable Dispute Resolution is an acknowledgement that of the forms of dispute resolution available, some are adversarial and others amicable. Legal service providers have a responsibility to assist their clients in choosing wisely and that there are consequences to that choice.

Secondly, the conference was a true collaboration of many sectors of the government, judiciary and legal profession in promoting ADR. There was no sign of the fragmentation and competition that sometimes surfaces in the field, whether in Singapore or in other jurisdictions. This is significant because I believe that in order for ADR to truly succeed and thrive, we must practice what we preach and approach the development of the field in a collaborative way. There is hope indeed.