

SMC MEDIATOR'S APPRECIATION LUNCH 2019

EXECUTIVE DIRECTOR'S SPEECH

4 SEPTEMBER 2019, WEDNESDAY

Some years ago, a friend of mine called me in the middle of the night. Her husband had gone off for a dinner with friends that evening. It was past midnight and he wasn't home yet. He hadn't called or texted her. In fact, his mobile phone was off. She feared the worst and asked for help to try to locate him.

I rushed over to her house, and spent the next few hours with her while she called everybody she could think of. One of the friends who had been at the dinner told her that her husband had gotten very drunk that night, but had nonetheless insisted on giving one of the other guys a lift home. And now, neither that person nor her husband was answering their phones. Nobody knew if they had reached their destination safely. That made her even more upset and fearful. As it was, their marriage was already a tumultuous one.

Thankfully, not long after that, her husband called back. He confessed that he had been too drunk to drive for long, and ended up trying to sleep it off a little at his friend's place before coming home.

He finally made his way back, still heavily intoxicated. He pulled into the carpark of the condo they lived in, and unsteadily climbed out of his car. My friend, seething with anger, immediately slapped him across the face and stormed back into the house.

What followed was several hours of the wife ranting and screaming in the living room, while the husband slouched over the toilet bowl, attempting to defend himself while simultaneously puking his dinner out.

Harsh words were exchanged, past grievances aired, accusations made. The cracks in their marriage were being laid bare, the sins of the past brought back to the surface. And there I was, in the middle of it all, trying to calm them down and speak reason in the midst of the flying barbs. It was a tense and difficult mediation, involving two people close to me.

After that night, their marriage continued to have its ups and downs. Today, they are still together, proud parents of three children. Would things have turned out differently if not for what I did that night? Who knows? But I firmly believe the mediation helped prevent greater damage to the marriage. Mediation may not always solve the problem at hand. But if it can help keep relationships from deteriorating any further, that might just be enough.

Good evening, Judges, Judicial Commissioners, distinguished guests, friends. Welcome to the Singapore Mediation Centre's annual appreciation lunch. There are more than 400 of us gathered here today, and from up here, it is quite a sight. It is heartwarming that there are so many of you willing to make time to come here in support of SMC. Or perhaps it is just out of morbid curiosity about what the new Executive Director is going to say.

As you know, I have been on board for less than three months. Not long enough to cause irreparable damage to the place, but long enough to see that I have inherited a top-notch team from my predecessor. Let me say a few words about him, first.

Everyone here knows Seng Onn. He had been with SMC from its inception, working hard as a staff officer from the very first day, eventually rising up to helm the ship. He guided SMC through calm and stormy waters alike, growing it to what it is today. He laid a firm foundation upon which I now have the incredible privilege and honour of building upon. To paraphrase Sir Isaac

Newton, “If I one day succeed here at SMC, it is by standing on the shoulders of giants.” I am grateful for all that Seng Onn has done here.

He himself is unable to join us today, but nonetheless, to appreciate his contribution over the past two decades, I ask that we give him a round of applause. To Seng Onn.

And while we are applauding, may I also shamelessly ask that we appreciate the hardworking team at SMC, who make all your mediation cases and training workshops run smoothly.

I am also grateful for such a supportive and experienced board of directors. In particular, I would like to appreciate our Chairperson, Justice Belinda Ang, who is energetic and forward looking and a joy to work with. She is constantly thinking about how to bring SMC forward, to the extent that she says she sometimes feels like she is the CEO. Judge, I wish that were true, then I wouldn't have to stand up here delivering this speech. But thank you, for caring so much about this organisation.

Under Justice Ang's leadership, SMC has grown from strength to strength. Just in the past year alone, SMC has mediated or adjudicated 965 matters. That is almost 1000, in one year. And they are not small cases, either. The total quantum in dispute for all our cases amounted to almost \$2.6 billion dollars. The largest dispute that was successfully mediated was a \$110m shipping dispute. This shows a growing willingness among parties to use mediation for commercial disputes.

But this is not just the work of SMC. This is a collective effort by the wider mediation community. This is *your* success, as much as it is ours. This lunch is to appreciate all of you. Without you, so much would not have been possible. Thank you again, for your passion, your commitment and dedication, your

contributions, to mediation in Singapore. Please give yourselves a round of applause!

The crowning achievement of all your efforts down the years is that there is now an international convention named after Singapore.

In August this year, we witnessed a historic event, the signing of the Singapore Convention on Mediation, by more than 45 countries. The entire week was a huge mediation festival, starting with an international mediation competition over the weekend, followed by several days of conferences and dinners. Over 1500 foreign delegates from over 70 countries came by for this. It was a stunning achievement, ably orchestrated by the brilliant team at Minlaw.

Here is a tip. If you're going to start working at a mediation centre, don't join right before the craziest week in the history of the Singapore mediation scene. For me, personally, taking over at SMC just one month before the convention was like stepping onto a treadmill that was already spinning at 100 km/h. I could barely catch my breath the entire time.

But it was such a watershed moment. The convention signing gave a huge boost to the mediation scene in Singapore, and gives us great momentum to do even bigger things.

The collective effort required from all the mediation players in Singapore to put this together was simply astounding, and I salute all of you for that. We at SMC are excited by the buzz generated in the wake of those events.

Speaking of SMC, people have been asking me what our priorities are, moving forward from here. Three things are at the top of my list.

Firstly, we want to grow the pie for mediation work in Singapore. Secondly, we want to develop online dispute resolution as a core part of our business. Thirdly, we want to see the professionalization of mediation.

None of these ideas are new. We have spoken about them before. We do, however, have more *clarity* now about how we intend to move forward in each of these three areas. Let me elaborate.

Growing the pie. The obvious and immediate priority is to grow SMC's business. Both in dispute resolution services and as well as training services. As mentioned earlier, we have handled almost a thousand matters last year, and the trajectory is upwards. Nonetheless, we will not take things for granted. We are constantly looking for new ways to expand the business.

A key area has always been our strong partnerships with government agencies. We are already working with several of these, such as MOH Holdings, National Arts Council, IMDA, TADM, PDPC, Singapore Medical Council, Committee for Private Education, to name a few.

We are adding more, though I cannot give details now. And the nature of our collaboration is also varied and interesting. As an example, we will be helping a government agency drive a public education campaign about dispute resolution. Another example is our ongoing discussion with a hospital to help them build their internal conflict resolution processes and teams. These partnerships will ensure SMC remains at the forefront of dispute resolution in the public sphere.

With private sector entities as well, we are making headway in having SMC clauses introduced into commercial contracts. One international oil and gas company recently invited us to speak with their legal department to talk about

putting SMC clauses into international deals. And there are many other open doors of this sort.

So, we are confident that SMC's caseload will remain healthy for years to come.

On the training front, we are expanding our offering of training workshops and materials to reach a wide range of potential customers. Besides training and accrediting mediators, our customized programs help equip organisations with dispute resolution skills for frontline staff who deal with consumers or members of the public, and for managerial or HR staff who have to handle internal conflicts.

Moving forward, we will be introducing a new element to our training, something which no other mediation training provider in Singapore can offer. Just like in a hospital, where a portion of the training for doctors and nurses takes place on the job, we will be creating opportunities for those completing our mediation courses to co-mediate in a few small cases right after they are accredited. For a brand-new mediator, the first few cases are always the hardest to come by, and newly acquired skills, if not quickly put into practice, can be easily forgotten. By putting new mediators through some small cases immediately, it helps to lock in what they have learnt and speed up their development.

There will be feedback channels for these training cases, where SMC staff will observe the performance of these new mediators to provide feedback and learning points. We will also be developing a mentoring program to help new mediators learn from more experienced ones.

We have started to teach mediation advocacy in Part B of the Bar course, and we intend to expand this to reach practicing lawyers. SMC's focus has

traditionally been on training mediators and neutrals; this marks a major step towards equipping counsel for their part in the mediation process, notably the preparation stage, the lawyer's role during the mediation proper, and the drafting of settlement agreements. We have begun the conversation with the Law Society to move forward on this, and we already have one large law firm that has indicated interest in sending its dispute lawyers for the very first class. So, we know that there is demand on the ground for this.

The Singapore Convention on Mediation has generated a lot of buzz and interest from overseas parties. As a result of this, we are exploring opportunities that have arisen for us to train foreign governments and courts, to prepare them for what happens after their countries sign and ratify the convention. The question on the lips of many of these parties is, "are we mediation ready?" SMC's answer is, "yes, with our help, you can be."

There is a lot of other new content that we intend to incorporate into our training materials. Practical skills for assessing when a dispute is ripe for mediation. Basic civil procedure, to be able to handle court-annexed mediations. Cultural nuances, to better connect with parties of different ethnicities and backgrounds. Psychology, for knowing more about one's own mediation and communication styles, as well as that of the parties. Specialised training for handling complex multi-party disputes. Industry specific content, such as mediating investment disputes. And so much more. The next few years will be exciting.

Moving on to ODR. There is no denying that the digital economy is upon us. SMC has to embrace it and find our space within it, or perish. Bigger and stronger organisations have failed to react to changing circumstances, and have paid the price for it. If we at SMC are complacent, we will likewise end up

consigned to the scrap heap of history. I am so convinced of this fact, I am willing to bet my Nokia phone on it.

Technological advancement has been a boon and a bane to every generation. Whenever something new comes along, some people will embrace it, while others fear it and oppose it. During the industrial revolution, the Luddites in England felt so threatened by the introduction of textile machines, that they would regularly sabotage them in order to preserve their livelihood.

For us today, it is similarly easy to dismiss online dispute resolution. Privacy and confidentiality concerns. The lack of a human touch. The worry about hidden coaches or coercive figures present in the room behind the camera. The uncertainty surrounding the legal status of online communications and correspondence in some jurisdictions. The stability and reliability of technological solutions. The list goes on.

But, we must not let that deter us. Today, the degree to which technology has permeated our society is astounding. We order our food online, book our taxis online, conduct commerce and financial transactions online. We play games online, dispense medicine and legal advice online, start romantic relationships online. In some homes, your microwave oven even talks to your refrigerator for no other reason than the fact that it can.

So, it is only a matter of time before dispute resolution moves online. Of course, there will always be certain situations where physical meetings will still be the ideal form. Just like people still write paper letters, or “snail mail”, to one another, and others still listen to music on vinyl records, there will always be a place for dispute resolution in this current form. But, mark my words, eventually the vast majority of dispute resolution cases will be online, regardless of the quantum of the dispute or the complexity of the case. The convenience, cost

savings and powerful capabilities of an online platform will far outweigh the downsides.

Where will SMC be in this new world? At the forefront of it, that is our aim. We are not content to just ride the wave of ODR change - we intend to be part of the forces that drive it.

For a start, we are collaborating with other organisations to produce, sometime in the not too distant future, a truly nationwide online dispute resolution platform that can cover a whole spectrum of dispute resolution needs across many industries, both domestically and internationally. From small consumer disputes, to large, cross-border cases. We will lean heavily on automation and machine learning to create a system which will be simple to use, speedy and efficient, and affordable. With satisfactory outcomes for all the parties involved.

We all have a vested interest in seeing this project come to fruition. Someday, any one of us in this room might be involved in a dispute, and become users of such a system. As we move forward in this, we will be providing regular updates. Watch this space.

Finally, to the professionalisation of mediation. Recently, a top international mediator was sharing with us how he was in the middle of a \$2 billion mediation. The quantum in dispute was \$2b! Earlier, I reported that SMC handled almost 1000 matters last year, with a total dispute quantum of \$2.6b. And here, in just one case, the parties were disputing over \$2b. After a week of mediation, he had gotten them to just \$100m apart, and he was confident that they would soon settle. His point in sharing this was that no case is too big to mediate.

My next thought was, how on earth do we get our local mediators to the level of this man, where he is the mediator in the middle of a two billion dollar dispute? Unfortunately, this same mediator explained to us that beyond a certain point, it is entirely in the hands of the individual. The involvement of institutions will be tenuous at best.

Why is this so? At the very highest level of this kind of work, parties want only the most eminent international mediators. But in such cases, why would parties need the help of an institution to appoint these individuals when they can appoint them directly? Why would these top mediators need the services of an institution when they have their own setups which can handle secretariat work? Why would they need the marketing reach of an institution when they, arguably, are even more well-known than many institutions?

For international mediation, parties do not need the governing law of any particular jurisdiction. They do not need the legal framework or curial support. Enforcement of a settlement agreement under the Singapore Convention on Mediation does not require the involvement of any institution. There really is very little a mediation centre can do for mediators operating at the very top of the international market.

In other words, if SMC were to help to develop local mediators into top international mediators, we will essentially be making ourselves increasingly irrelevant to them. Our business success, in one sense, will eventually put us out of business, in that one arena, at least.

And yet, we must do this. Helping to build a body of top international mediators in Singapore can only be good for mediation in general. It will raise Singapore's profile in this space and give us many more good people we can tap on for training and marketing. It will be a sign of the maturity of the mediation

industry in Singapore, a marker to say that this is a place you can bring your international disputes to, where every type of mechanism is available to resolve them.

How then can SMC help develop this group, at least for part of their journey to the summit? We are looking at three things. Equipping, experience, exposure. I have already touched earlier on equipping. The training we give to mediators, to develop their expertise, is the very first step. Not just at the beginning of their careers, but along the way as well, to help them continue to grow and improve.

Experience comes from doing as many cases as possible. SMC's growing caseload will give us the opportunity to provide the volume of work that mediators need in order to gain experience.

And finally, exposure, where we help to create platforms and forums where mediators can showcase themselves, speaking and teaching and making connections with parties who might appoint them for future cases.

We hope that by doing all these, a body of top mediators will eventually arise from our midst, sitting in the biggest international cases from around the world. Of course, the individuals themselves need to pursue this career path with diligence and passion. But, from what I have seen, many of you here have both in abundance.

In fact, in my short time at SMC, what struck me most is how passionate mediators are, about what you do. There is genuine warmth in how you conduct mediations, genuine concern and empathy in relating to parties. And this is what makes parties willing to lower their guard and reach out to one another. They respond to this warmth. They respond to this empathy. And when they finally settle, you can often see the weight lifted right off their shoulders.

We have stories of parties being so relieved and grateful about the settlement, they went over and hugged the mediator. I don't know about you, but it has been awhile since I gave a hug to a High Court judge, so you can tell how much the outcome means to the parties. It is for this very reason that many of you keep coming back every year, faithfully serving. Mediators have told me that the satisfaction of seeing a successful settlement far outweighs anything they experience in an arbitration hearing or court case. Why?

Because parties leave a successful mediation with their dignity intact, their relationships preserved, their heads held high. What can compare to that? Sometimes people forget, these are not just nameless, faceless entities. These are not just companies and balance sheets. They are people. They are families. Their feelings matter. Their interests matter. And therefore, what you, the mediation community does, matters.

They say that the legal profession is a noble profession. If that is true, may I respectfully suggest that mediation is an even nobler one.

Looking out at this room, I am profoundly humbled by what I see. I stand here grateful to have been given an opportunity to give to this community, that has given so much to our society. You are all peacemakers. You may have heard it said before, "Blessed, are the peacemakers." All of you, part of this community of peacemakers, are greatly blessed, and are also a great blessing to society.

Once again, thank you, and have a wonderful time at lunch today!