

12th AUSTRALIAN FAMILY LAWYERS CONFERENCE

10-14TH JUNE 2011
SENTOSA, SINGAPORE

ADR IN THE FAMILY COURT OF SINGAPORE

THE ROLE OF MEDIATION AND COUNSELLING & THE EXPERIENCE OF THE FAMILY RESOLUTIONS CHAMBERS

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“Family and juvenile justice affects family relationships. The justice system and processes must be sensitive to the fact that we are not dealing with cases, but with people....Towards this end, a Family Resolutions Chambers (FRC) will be established... By transforming the culture of family breakdowns from one of acrimony to one of cooperation, the FRC will serve as the front door for couples seeking help to unlock their implacable conflicts, resolve their disputes and rebuild marriages that have fallen apart.”

- The Honourable the Chief Justice of Singapore, Chan Sek Keong, at the Subordinate Courts of Singapore Workplan Speech 2006

Introduction

This paper will touch on the role the alternate dispute resolution options of mediation and counselling plays in the Family Court of Singapore (“Family Court”). More specifically, I’ll be looking at the experience of the Family Resolution Chambers in respect of the mediation and co-mediation services it provides, specifically related to divorces. I’ll also be examining a case where the seeds of harmony were re-planted in a family relationship, notwithstanding the divorce.

Mediation in the Family Court of Singapore

2. Divorce and family related matters used to be dealt with in the High Court of Singapore. In 1995, the Family Court (as part of the Subordinate Courts of Singapore) was established, and by 1996 it had taken over the handling of all these cases. Court-based mediation and counselling became a part of the overall case-flow management in the Family Court from that time, in an effort to provide a holistic framework to the resolution of cases. Instead of being a place where legal warfare was waged, the

court became a forum of cooperation. Instead of fighting through the choppy waves of litigation, the Family Court could guide the parties through those stormy seas to a place of calmer waters. It was a real shift in the paradigm.

3. The Family Court at present provides in-house mediation services through its Maintenance Mediation Chambers (“MMC”) and the Family Resolutions Chambers (“FRC”). Prior to the set up of the MMC and the FRC, mediation services were provided on an ad-hoc basis. Court-based counselling and psychological services are provided by the Family Court’s Counselling and Psychological Services (“CAPS”) department. All mediation and court counselling services provided to parties are free-of-charge

4. The MMC handles cases of pre-divorce spousal and child maintenance (i.e. monetary support), and both pre and post divorce enforcement of maintenance. CAPS serves as the social science arm of the Family Court (including the Juvenile Court), providing expertise on social and psychological issues that arise in the course of court proceedings.

5. The focus of this paper is on the FRC, with a look at the complementary role played by CAPS. The FRC deals mainly with cases of divorce, custody disputes and divorce ancillary matters. The FRC provides comprehensive and coordinated alternate dispute resolution services, which includes mediation, co-mediation with a judge-mediator and a CAPS counsellor or psychologist, and referral services for counselling and other therapeutic programmes. We’ll be examining the role the FRC and CAPS plays in trying to help families in crisis or conflict, ranging from divorce cases which involve cross border child abductions, division of multi-million dollar matrimonial assets, high public profile individuals, sensitive religious issues, family violence, juvenile and child protection issues, all the way to cases concerning canine custody, care and control.

Establishment of the Family Resolutions Chambers and the Counselling & Psychological Services

6. The Family Resolution Chambers (FRC) of the Family Court of Singapore was conceived in response to the upward trend of divorces in Singapore. In the year 2000, the Family Court received 4,144 divorce applications. As we closed out the last decade, 6,572 divorce writs were filed in 2010.¹ This is a nearly 60% increase. Unfortunately, this trend in Singapore shows no signs of abating. Or in the words of Groucho Marx: *“Marriage is the chief cause of divorce.”*

7. Recognising that matrimonial and family disputes are complex, and often not resolved by simply determining the legal issues, the Family Court established the FRC in 2006. It focuses on utilising mediation and counselling as alternate dispute resolution mechanisms to provide the opportunity for couples to resolve their disputes in a non-trial setting. An integral part of the justice framework in the Family Court, the

¹ Subordinate Courts of Singapore Annual Report 2001 and 2010

FRC can call upon a multi-disciplinary team of judge-mediators, psychologists, counsellors and administrative personnel.

8. Started in the mid-90s to fulfil the principle of providing holistic solutions for families in crisis or conflict, the counselling arm of the Family Court and the psychological arm of the Juvenile Court were merged in 2001. They eventually became the Counselling and Psychological Services department in 2009. CAPS provides conciliation and custody evaluation services in divorce matters, safety assessment and family conferencing (where appropriate) in family violence cases, and juvenile assessment and public education support for the Juvenile Court. CAPS also plays a major part in the Family Court's CHILD (Children's Best Interest, Less Adversarial) Programme.

9. The FRC and CAPS work closely together, in terms of case management, in the co-mediation teams, and through collaboration on projects and initiatives.

10. To create the proper environment for mediation and counselling, the FRC and CAPS occupy an entire floor of the Family Court building. Here, parties are isolated from the bustle of the "litigation" floors. We've put in softer lighting, comfortable sofas and unobtrusive relaxing music, which are all designed to calm frayed nerves and settle parties down before they start their session. Not a few have nodded off while waiting their session.

11. Partnering the Family Court in the effort to provide a variety of solutions to families is an important network of external organisations from the social work and voluntary welfare sectors. Referral services are often made to these partners, to assist the Family Court in areas such as reconciliation counselling, trauma counselling, long term therapeutic services, as well as parenting workshops and supervised access.

Aim of the Family Resolutions Chambers

12. The Women's Charter is the governing piece of legislation on marriages and divorces in Singapore. In relation to divorces, it provides that the court may give consideration to the "possibility of a harmonious resolution of the matter". For this purpose, the court could, with the consent of the parties, refer them to mediation or direct them for counselling.²

13. For parties who intend to end their marriage, the aim of the FRC is to resolve marital and family disputes in a more holistic manner within a non-adversarial environment. The FRC will try to come in as early as possible in the legal process. Parties can be referred for mediation as soon as the divorce papers are served on the other party. This is to prevent the conflict from escalating and to minimise the emotional and psychological impact of a full blown trial or hearing. The financial cost of a contested hearing can also be particularly high, and parties are usually better off

² Section 50 (1) & (2), Women's Charter, Chapter 353

saving the monies they would otherwise have had to pay their lawyers, and putting it aside for their children instead.

14. The mediation and co-mediation process assists the parties to formulate or frame a realistic, workable and practical outcome, which is consonant with the interests of the parties and their children. An adversarial outcome leaves the ultimate decision to the judge and effectively dis-empowers the father and mother as parents. Which father wants to be told he can have only three hours of access with his son, or that a mother can only meet her daughters at that “world-renowned” fast food restaurant? Aside from the fact that chicken nuggets and upsized fries aren’t exactly the healthiest food in the world, a mother and her girls would probably prefer getting their hair and nails done. With help, parties hopefully can move on with their lives, recognising that theirs is an on-going relationship after the split, and to work together to make better choices for the long term benefit of their children.

Mediation Process

15. The culture and mindset of Singapore is that the people place a high regard for persons in authority. District Judges and Magistrates were thus appointed to act judge-mediators at the FRC. These judicial officers are given training in mediation and dispute resolution. Together with the public confidence, trust and respect which they command, they make effective mediators.

16. The FRC judge-mediators, also known as Resolution Judges, and the CAPS counsellor or psychologist, work together to help the parties through their myriad of issues and turmoil. The CAPS officers provide, through counselling, the aspects of psycho-education and therapy to the parties. The Resolution Judges would, through mediation (called a Resolution Conference), reinforce and supplement the social science aspects with a legal framework, always mindful of the interests of the children. In appropriate cases, the Resolution Judge would tandem with a CAPS officer to conduct a co-mediation (called a Joint Conference) with the parties, their children and even family members. Parties who require further or more specialised help would be referred to partner agencies to follow-up.

17. A Resolution Conference is usually conducted when the issues in dispute are legal or financial. As a Resolution Judge, I would clarify the facts and the figures, and focus on the issues of the case. For example, if the parties disagree over the reasons for the divorce (which in the Singapore context could be fault-based), I could help them by suggesting various options like the modification or amendments of the pleaded particulars. Where parties had not gone through any counselling sessions with the CAPS, I would give parties the opportunity to also express their emotional issues. I usually won’t spend a significant amount of time on this. If appropriate or required, I could refer parties to the CAPS for counselling. If parties had already gone through counselling, I would build on the work of the CAPS officers and try to structure an agreeable and practical outcome.

18. A Joint Conference is usually conducted when there are deep seated or complex emotional issues between the parties, or between parent and child, in addition to the legal and financial issues. More time is usually allocated for a Joint Conference than a Resolution Conference. There is a stronger element of therapeutic content in a Joint Conference, although it is not usually to the same level of that of counselling.

19. If an agreement is reached after mediation or a Joint Conference, the Resolution Judge can record and make the agreement into a binding court order.

20. In one particularly disturbing case, a child refused to allow her father to visit her. Finally, the court ordered supervised access for the father, to take place at an external supervised access family centre in the presence of a social worker. When the child came to meet the father, she claimed to need to use the restroom and clung on tightly to her teddy bear. When the child did not appear from the restroom after awhile, the social worker broke down the door. She stopped the girl just in time from cutting her wrist with a knife. She had hidden the knife in her teddy bear and had intended to harm herself if she was forced to see her dad. The FRC swiftly convened a Joint Conference to manage the case. A CAPS psychologist and I worked as a team to try to address the issues between the father, mother and the child. External social workers were also actively involved. The girl was referred for and is still undergoing therapy. The judge subsequently rescinded the supervised access, and eventually the father agreed not to insist on his access rights, and to allow his daughter the time and space to recover.

Code of Conduct and Code of Ethics

21. All judge-mediators (including volunteer mediators) in the Family Court of Singapore are bound by the Subordinate Court Code of Ethics for Mediators and the Family Resolution Chambers Code of Ethics. CAPS officers who conduct co-mediations with a judge mediator are similarly bound. These Codes govern our conduct, especially in the areas of impartiality, neutrality, confidentiality, the consent process and promptness of case management.

22. In relation to confidentiality, the judge who mediated a particular case will not be assigned to hear that case if it went to trial or hearing. The mediation notes are also removed from the case file prior to any trial or hearing so the judge will not have sight of them.

23. Mediation is conducted on a without prejudice basis. All communications made during the mediation are treated with the strictest of confidence and will not be admissible in any court. This helps the parties be more at ease, and allows them to be open and forthcoming with the judge. We also encourage parties to speak directly to one another during a session, so it is important that these communications not find their way into affidavits at a later stage should the mediation break down.

Resolution of Mediated Cases at the Family Resolution Chambers

24. While the FRC focuses on providing mediation services for divorce cases, it also handles guardianship of infant cases, maintenance applications and cases of non-compliance with Singapore Syariah Court orders. Though the Family Court is able to make orders in the divorce, guardianship and maintenance cases if parties reach an agreement, it is only able to help Muslim parties achieve a private settlement. Muslim parties still have to approach the Singapore Syariah Court in order to vary any of its orders.

25. Between 2007 (the first full year of FRC operations) and 2009, the FRC saw a 30% increase in the cases it mediated. Even with such a large increase in caseload over the years, the FRC has managed to maintain its average settlement rate at around a respectable 87% for the period. This compares with a 44% settlement rate in the period before the establishment of the FRC³.

<u>Year</u>	<u>Cases Mediated</u>	<u>Cases Resolved (Percentage)</u>	
2007	1403	1210	86.2%
2008	1701	1506	88.5%
2009	1825	1577	86.4%

26. Mediation in the Family Court is now a well established and widely accepted process. The FRC has slowly but surely built its reputation for providing a high standard of mediation, with easy and cost effective access to mediation services. Lawyers and parties now frequently request for mediation at the FRC. The FRC also has on board several lawyers who are volunteer mediators, and who regularly assist the judge-mediators with the mediation caseload. The FRC recently collaborated with the Singapore Mediation Centre (SMC) to run an accreditation programme for lawyers from the Singapore family bar who were interested in becoming an accredited SMC associate mediator.

How Mediation Helped To Restore Family Harmony – A Case Study

27. The FRC sees the worst of the cases. To get a flavour of the type of matters the FRC judge-mediators handle on a regular basis, a Canadian judge summed it up recently when he described a divorcing couple in his judgement as follows:

“Here, a husband and wife have been marinating in a mutual hatred so intense as to surely amount to a personality disorder requiring treatment. The source

³ Inter se, July-August 2006, *The Establishment of a Family Relations Centre*, pg 12

of difficulties is hatred: a hardened, harmful, high-octane hatred.” J.W.Quinn, J in Bruni v Bruni, 2010 ONSC 6568 (CanLII) [2]

28. In the following case study, perhaps it was fortunate that matters were not as explosive, and that the couple were willing to be helped.

a. Singapore is a multi-cultural, multi-racial society. Marriages between persons of different cultures, race and religion are not uncommon. Such marriages are celebrated for the richness of diverse cultures and beliefs the couple can receive, and for each of their families to experience. When the marriage does not go well however, the diversities turn into major divisive issues.

b. In this case, a couple from different races and beliefs got married and later had two children. The children grew up in both the homes of the paternal and maternal grandmothers. The grandmothers also got on fairly well, each on talking terms with one another even though both spoke different languages. So the children were exposed to two different cultures, religions and practices.

c. When the couple decided to divorce, each accused the other of being insensitive to the other’s religion and dietary practices. Each also objected to their children being brought to the other person’s place of worship. Matters got so bad that the grandmothers also fell out with one another, took the sides and became embroiled in the conflict.

d. The couple was referred to the FRC for mediation on their divorce and ancillary issues. There was a serious contention about where the children should live. The mother and father both seemed reasonable and level headed people. They wanted the best for their children. However, there were severe accusations over sensitive issues like food each household fed the children, where the children were brought to worship, the worship practices, and how the grandmothers seemed insensitive to the other’s religious beliefs and practices. The couple also could not agree on which school their children should attend after the divorce.

d. Over a period of about ten months (including a three month period for the preparation of a social welfare report), senior CAPS counsellors and I held a total of seven sessions with the parties and family. During the course of the early sessions, it became clear that many of accusations and much of the suspicions emanated from the grandmothers. The grandmothers were the primary caregivers, and were more affected by the divorce than the couple. Subsequently, we invited the grandmothers to participate in the mediation process, along with their grandchildren, and other significant family members.

e. Some of the sessions were joint conferences where a senior counsellor and I worked together with the couple and their family. Other sessions were counselling sessions with just the counsellor, or mediation sessions with

myself. The lawyers representing each party would usually be present during the mediation sessions.

f. We were able to focus the couple on their children's upbringing and future, instead of their fight over which school they should attend and what food they could or could not eat. The grandmothers were reminded of their unique ability to communicate with one another in two completely different languages yet manage to understand each other, giving their grandchildren an experience very few people would ever witness.

g. Letting parties and grandmothers speak of their concerns, then having the other party acknowledge the other's concern allowed us to address their worries and insecurities in turn. One by one, the issues fell by the wayside, until one of the grandmothers provoked a laugh from the other grandmother, then all the pieces fell together.

h. Both the grandmothers and the couple eventually acknowledged that the two boys were really of two races at the same time, and that it was truly a privilege for them to be part of such a rich heritage from the two cultures.

29. This case took longer than the usual timeframe to complete, and more sessions were required due to the exceptional and sensitive factors of religion and involvement of the grandmothers. The resolution of this case demonstrates the close working relation between the FRC judge-mediator and the CAPS counsellors in the Family Court. Each of us professionals brought our individual expertise to the table, and given the necessary time, we were both able to help a broken family come together once again.

The Road Ahead For Family Court ADR

30. The family is the cornerstone of society. Family and matrimonial conflict erodes the stone's strength. If the conflict is left unchecked, and strife, bitterness and hatred rule the day, then the price to be paid by our future generations will be a high one. I often tell parties that I would not want to see the day their children sit in the same seat as them, involved in a divorce mediation session facilitated by my son.

31. The Family Court has long acknowledged that the better way to resolve family dispute is not through a pure legal process, but by providing holistic, legal, relational and therapeutic solutions to divorcing couples. This would be especially critical in cases where the couples have children. The negative impact of a divorce on a child is undeniable. I have been to a wedding where the father of the groom was seated far away from the main table, and was completely ignored when the groom gave his speech where he only spoke gratefully of his mother. Using that experience, I ask parties if they would like to be there when their child gets married. I especially ask fathers if they would like to be the ones to give away their daughters on their wedding day.

32. To this end, and working in conjunction with the Singapore Ministry of Community Development, Youth and Sport, the Women's Charter was amended in January 2011 to enable the Family Court to mandate counselling and mediation for all couples who have children, and who intend to divorce in Singapore. The amendments are intended to assist couples who have filed for divorce, but are unable to come to an agreement on the issues regarding their children. As children are the most vulnerable parties in a divorce, it is hoped that by referring the couple to counselling and mediation at an early stage of the divorce process, it would help them understand the effect of the divorce on their children and what they can do to minimise the impact.

33. This major legislative change is not meant to instruct parents on how to parent. Instead, it is also hoped that the couple would focus their minds on the well being and welfare of their children, instead of being fixated on their marital conflict and letting those emotions dictate their choices. Once negative emotions overwhelm an individual, poor decisions and a spiral into the adversarial process are the unfortunate next step. The court would also have the powers to dispense with counselling or mediation where it may not be in the interest of the parties or the children, e.g. where family violence may be involved.

34. For the Family Court, this is a significant step forward in the use of court-based ADR. It would mean a major expansion of the mediation and counselling services it provides. The FRC and CAPS would see a significant increase its workload. As such, the Family Court is rapidly ramping up its resources, training and capacity in response.

The Challenges

35. One of the largest challenges in using mediation and counselling to help resolve disputes is how parties, and some lawyers, perceive these "softer", non-adversarial approaches. A lawyer, after a heated exchange, actually once told an unrepresented litigant to step outside if he wanted a fight. I had calm the lawyer down, and explain to him that when the litigant said he wanted to "fight", he did not mean that literally. Peacemaking is not a popular notion, especially in court. People come to court to fight because they want to win, or they do all they can to prevent the other side from winning.

36. The glory of battle is the hope of emerging victorious: winning the child, getting more access time, walking away with more money and so on. However, in a battle, there will always, always be a loser. In family cases, there may be many other losers amongst the rubble of a broken marriage. Children and grandparents are sad examples. A party may think he or she has won the battle after the divorce is over, but it usually just means the war has just begun. The children will continue to link the parties, and child access often becomes the next battlefield, then maintenance payments will trickle to a stop, then enforcement or contempt of court proceedings will roll around, and so on and on.

37. The glory of making peace on the other hand, especially in human familial relationships, is that it may produce many winners. The case study above is an example of how the court helped restore some semblance of harmony in that relationship, to produce these “winners”. We hope such outcomes come around more often though. It is about changing mindsets to a positive glass-is-half-full way of thinking. Once there is a renewed mindset, the wind usually dies down and eventually there will be calmer waters ahead.

38. Another challenge is the readiness and openness of a party to resolve the matter. Some people take a longer time to reach the stage where they are willing to accept help in coming to a compromise. Some people will never reach that place. We recognise this and try our best to give the necessary time. However, there will always be some who need or will want their day in court. I believe that there is no point in shoving *help* down a person’s throat.

Conclusion

39. The Family Court encourages the making of peace where there is acrimony, cooperation in the milieu of hatred, and healing in the battlefield of bitterness. It is committed to finding a better way to resolve divorce and other family disputes.

40. Mediation, together with counselling, can help divorcing couples who are open to being helped. These ADR services of the Family Court can plant that seed of hope and forgiveness in them. Hopefully in time, those seeds, and not the seeds of bitterness and hatred, will grow. If that can happen, the man, the woman and their children can look forward to the promise of fresh beginning.