Part III. Judicial System and ADR in Asia : 13. Court-based Mediation in Singapore; How Do the Contrasting Principles of Mediation and Litigation Merge in the Asian Context?

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Court-based Mediation in Singapore: How Do the Contrasting Principles of Mediation and Litigation Merge in the Asian Context?

MIWA YAMADA

I. Introduction

In order to tackle the problems of case backlogs and delays, many judicial systems in the world have begun to use mediation[1] as a means of the dispute resolution process, instead of/in addition to the litigation process. The way mediation is designed in respective judicial systems varies among countries despite the use of the same term 'mediation.' There are a variety of terms that join courts and mediation, such as court-annexed, court-connected, and court-based mediation. They are generally referred to as judicial mediation. Although the same terminologies are used, the precise procedures and practices may differ among countries. The way in which mediation is built into the judicial system reflects judges, lawyers and people's perception of mediation, litigation and the function of courts as a whole in a country. This paper will discuss court-based mediation in which a judge serves as mediator as a part of litigation process,[2] describing mediation in the Subordinate Courts in Singapore.

When we discuss court-based mediation, we must define mediation and litigation respectively. Mediation is not easy to define. In the world, there are a variety of dispute settlement forms called 'mediation.' The following definition might be generally accepted:

> "Mediation is a process in which a third party (usually neutral and unbiased) facilitates a negotiated consensual agreement among parties to a dispute without rendering a formal decision. ... Because mediation is designed to help the parties craft their own solutions to problems, the animating ideas of mediation are voluntariness, consent, self-determination, and negotiated rather than decisional modes of resolution."[3]

Since there is no standard or model shared by the world, respective countries have created their own mediation. In contrast, litigation, which is an exclusive domain of the court, is a process in which the parties are bound by procedures and judgment regardless of the parties' voluntariness, consent and self-determination.

Under the rule of law in the modern legal methodologies, litigation originates from state enforcement through application of law. In contrast, mediation originates from the principle of private autonomy. The former is symbolized by 'enforcement,' the latter by 'agreement.'[4] On the above premises, the issue of court-based mediation, where a judge serves as a mediator arises. While in the litigation process, for which the court exists, a dispute is decided by a judge who has authority to do so. On the other hand, mediation is based on the principle of private autonomy, under which a dispute is settled by the parties' will and responsibility. Mediation, which is based on the principle of private autonomy, is not within the domain of the judiciary, which is a branch of state power.

As seen above, court-based mediation is a combination of the two contrasting principles. Judges are supposed to judge (not mediate), to apply law (not interests), to evaluate (not facilitate), to order (not accommodate) and to decide (not settle). Fundamentally, the functions of judging and mediating are mutually exclusive. Therefore, from the conventional perspective of the modern legal methodology, court-based mediation is a contradiction in terms. Court-based mediation bears two incompatible concepts: state enforcement and the principle of private autonomy.

The reality of current judicial systems in many countries, however, is that judicial mediation, including court-based mediation, in a variety of forms, is regarded as useful for providing appropriate dispute resolution processes. The question is how respective countries structure litigation and mediation in their own legal systems. In Singapore, 'Singapore Courts Mediation Model' is practiced in the Subordinate Courts, and it is categorized as court-based mediation. This paper will attempt to analyze how these two different dispute resolution processes: litigation and mediation, which are based on contrasting concepts, are merged into court-based mediation in Singapore, focusing on the role of the judge as a mediator.

II. The Singapore Courts Mediation Model

A. Learning from Australian Experience

In Singapore, the main form of dispute resolution, as is the case with most Commonwealth Countries, is adjudication through litigation. This form of dispute resolution, commonly associated with lawyers, is the most familiar and comfortable means for lawyers in Singapore.[5] There, introduction of mediation was initiated and led by the state, which had successfully dealt with case backlogs and delays and had sought a dispute resolution process alternative to litigation.

The Singapore judiciary obtained the idea of introducing mediation into its system from Australia. In his speech delivered at the Opening of the Legal Year 1993, Singapore's Chief Justice Yong Pung How stated as follows:

> "... Our pre-trial conference procedures have shown great initial promise, and we must consider their further development into other methods of alternative dispute resolution, such as mediation. On a recent study visit to the court systems in Sydney and Melbourne ... , I found that in Australia, they have developed some of these methods with considerable success. It would clearly be worth our while to learn as much as we can from the greater experience of the Australian courts."[6]

In Australia, the original promoters of mediation were private organizations and the Federal and certain State Governments.[7] Only later did the Courts start to make provision for what is called 'Court-annexed Mediation.' In this type of mediation, the relevant statutes or rules of court provide for the court to refer cases to mediation. For example, in New South Wales, since the enactment of the Courts Legislation (Mediation and Evaluation Act) 1994, the courts may give directions to refer cases before it for mediation. There, mediation is defined as follows:

> "... a structured negotiation process in which the mediator, as neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute."[8]

The Supreme Court, District Courts and Local Courts in Australia define mediation in the same terms. The New South Wales systems use mediators outside the court systems, and their costs are payable by the parties as agreed

or as ordered by the courts. The courts compile lists of persons considered by the courts to be suitable as mediators. The parties may agree on a mediator, or if they do not agree, the court may make an appointment.

The process of mediation and the function of mediators are generally understood in Australia to be as follows:

> "... a process in which the parties to a dispute, with the assistance of a neutral third party (the mediator) identify the disputed issues, develop options, consider alternatives and endeavor to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted." (Report to the Commonwealth Attorney-General by the National Alternative Dispute Resolution Advisory Council, entitled *"A Framework for ADR Standards, April 2001"*)

Highlighting the significant characteristic of mediation in Australia, the advent of mediation is a movement led by lawyers and citizens who are not satisfied with the time-consuming litigation system. There, mediation is basically understood as a dispute resolution process based on the principle of private autonomy. Therefore, many private organizations actively operate to provide mediation as an appropriate dispute resolution process. Compared with such private sector's activities, the courts' involvement in mediation is indirect.

B. Description of the Singapore Courts Mediation Model

Learning from Australian experience, Singapore's Chief Justice Yong Pung How promoted mediation in the judicial system in his country. The Chief Justice in his speech at the Asia-Pacific Intermediate Courts Conference in 1995 stressed the significance of mediation as follows:

> "The distinguishing feature of mediation is that the parties themselves decide the outcome of their dispute. This is on terms acceptable to both of them, as opposed to the zero-sum outcome of the adjudication process, which is premised on the adversarial model of dispute resolution where the 'winner takes all'. In the context of most Asian societies, this is particularly important as it ensures that no one should come away with the feeling that he has lost face. The third party intervener does not impose a decision but uses the structured process to assist the parties. Because mediation emphasises co-operative or what is termed as 'win-win' solutions, it is useful in civil disputes. ... But our own experience has shown that, once litigation has begun in the

> first heat of dispute, the possibility of early settlement is often precluded. This is because neither party is willing to offer to talk, lest this be thought by the other party to be a sign of weakness. *An initiative by the court* gets over this primary difficulty. This also allows settlement conference to be held at the earliest possible stage of the proceedings so as to minimize costs. But this does not mean that the participants of the mediation process should be confined to judges. The non-adjudication justice process can also involve the participation of lay people either as mediators or as counselors. ... All this mean that lawyers who traditionally function exclusively in the adversarial adjudication process will have to be trained in a range of dispute resolution techniques."[9] (Emphasis by the author)

While in Australia mediation is regarded based on the principles of private autonomy, in Singapore mediation is institutionalized by the initiative of the judiciary. Recently, a number of private, professional and trade-bodied organizations conducting mediation have been established in Singapore. In terms of numbers of cases dealt with, however, the Subordinate Courts handle the most by far.[10] It can be said that mediation in the Subordinate Courts is most popularly used by and is familiar to the people in Singapore.

The 'Singapore Courts Mediation Model' was first mentioned by Chief Justice Yong Pung How in his 1997 Opening of the Legal Year speech. It was created in view of the diverse ethnic and cultural backgrounds of Singaporeans, and present day social conditions.[11] Considering that this model was first mentioned by the Chief Justice; that a significant number of cases are dealt with by this model; and that Singaporeans call this model their typical mediation, we can observe the way mediation is structured and regarded in the Singapore judicial system.

The Singapore Courts Mediation Model applies where civil cases before the District Courts and Magistrates' Courts are mediated as a part of various dispute resolution processes that the courts provide.[12] This model involves a Settlement Conference, presided over by a Settlement Judge, who acts as a mediator. The parties are deemed to have consented to participation in mediation unless they opt out by notifying the Registrar of the Subordinate Courts, in writing, of their intention to dispense with it. The parties' lawyers are required to submit their respective Opening Statements, in a form prescribed by the Subordinate Courts Practice Directions. The objectives of submitting the Opening Statements are to assist the court in understanding the facts and law involved in the case, and to clarify the issues between the parties.[13]

The role of the Settlement Judge in the Settlement Conference is an active one, and he/she serves as both mediator and neutral evaluator. The

Settlement Judge may be required to express his/her tentative views and evaluation of the relative strengths and weakness of each party's case from the materials produced and discussions at the Settlement Conference.[14] The Settlement Conference is conducted on a 'without prejudice' basis, and all communications arising out of it are treated in confidence. When the parties reach agreement, the agreement is recorded by the Settlement Judge, and the case is removed from the hearing list. In the event that the parties are unable to settle their dispute at the Settlement Conference, their case will be fixed for a hearing before a judge other than the one that conducted the Settlement Conference.

C. Comparison of Singapore and Australia

The judicial systems of the two countries stem from the same origin, i.e. common law system. Mediation in their current systems, however, develops in different ways. In Australia, based on the idea that mediation is the embodiment of the principles of private autonomy, private mediation organizations are active. Although recently by statutes court-annexed mediation is commenced in the course of the litigation procedure through referral by the court, mediation is conducted by mediators who are not judges. In Australia, the judge's role remains to adjudicate, not to mediate. On the other hand, in Singapore, court-based mediation is the most popularly used mediation. The significant feature of the Singapore Courts Mediation Model is that the District Judge serves as a mediator under the name of Settlement Judge in the Settlement Conference, though the mediation process is separated from the litigation process in terms of communication confidentiality.

III. Judge as a Mediator

A. Judge as a Mediator in Singapore

In the adversarial process, the judge is supposed to function as an umpire. In the Singapore Subordinate Courts, however, the judge is expected to serve as an umpire as well as a mediator who is able to play a directive role in mediation process. A judge who conducts the Settlement Conference does not hear the same case in the subsequent procedures. Nevertheless, he/she is expected to play two different roles in his/her professional career, sitting as a judge in some cases and as a mediator (i.e. a Settlement Judge) in others. The question arises here is how the fact that the judge plays a role as a

mediator affects the disputing parties and the mediation process. Are the disputing parties able to distinguish the judge's role in the litigation process from the mediator's role played by the judge in the mediation process? The people in Singapore, including lawyers, seem to accept such a role played by the judge. What makes Singaporean accept the judge as a mediator? And what justifies the judge as a mediator in the Singapore Subordinate Courts?

Whereas mediation is said to have its roots in the principles of private autonomy that developed in modern capitalistic societies, there is another view claiming its origin is traditions and cultures that existed in pre-modern societies.

The significance of the judge as a mediator in the Singapore Subordinate Courts is explained as follows:

> "The local culture places high regard for persons in positions of authority, such as judges. As such, it is believed that the Settlement Judge will command confidence and respect, and be able to assist effectively. The mediators are described as 'directive,' in that the Settlement Judge will play a pro-active role. He will guide the parties and offer advice and suggestions of possible solutions. ... ... The 'directive' approach has been adopted because Singaporeans are believed to be less vocal in a formal setting. As such, a greater degree of intervention is required in order to facilitate active negotiation."[15]

It is observed that what mediator is expected to be in Singapore cannot be measured by the conventional perspective of the modern legal methodologies which make a sharp contrast between mediators and judges.

B. Asian Value

In introducing a mediation system in Singapore, Singapore's Chief Justice Yong Pung How mentioned that, with the increase in economic activities and societal affluence, certain aspects of Singapore's Asian culture were being gradually eroded by a 'fault-based' culture. He noted a rising number of lawsuits, including those involving family disputes, and that litigation was becoming increasingly the 'usual' mode of dispute resolution. There was, he observed, a shift towards emphasis on rights and entitlements, and away from compassion, duty and regard for relationships. He cautioned that Singapore should arrest this trend and do enough to contribute to the building of a congenial society for future generations. After all, Singapore society and its economy have been built on a network of strong social and business relationships, and it is therefore beneficial for Singaporeans to

build upon and develop long term relationships that can survive disputes.[16] The use of mediation by the courts brought on the mediation movement of the1990s. The movement took, as its main theme, encouragement of a return to the traditional attitude towards dispute resolution, and a reversal of the trend towards invoking a formal process like litigation.[17] Further, in Chief Justice Yong's keynote address at the International Mediation Conference in 1997, he noted:

> "The Singapore judiciary has taken the lead and set the pace for the use of mediation as a dispute resolution process. Unlike some other jurisdictions where it had its genesis as a diversionary measure to deal with backlogs and delays, our motivation was different as these problems were absent. Rather, we saw an opportunity to reintroduce into our culture a process to which it was not stranger. In fact, Singapore's own mediation roots can be traced back to the early 19th century."[18]

In institutionalizing mediation into its judicial system, Singapore has been looking to common law countries like Australia, the United States, Canada, the United Kingdom and New Zealand and to their systems for ideas and to learn from their experience. However, what distinguishes Singapore from the above-mentioned countries is that the justification for institutionalizing mediation is attributed to a revival of 'Asian value.' It is not clear, from Chief Justice Yong's address, what aspects of local culture and value or past practices Chief Justice Yong referred to as being the roots of mediation that can be traced back to Singapore's Asian culture and tradition. The character of Singapore's population, however, can be generally explained as follows.[19] Most of the Chinese, who make up about 77% of Singapore's population, are descendants of immigrants from China, where people observe the basic tenets concerning social relations attributable to Confucianism. It is said that mediation reflects many important values of the Chinese, with its emphasis on preserving harmony and relationships, while de-emphasizing the rights or wrongs of the matter in dispute. The privacy and face-saving potential of the process also offers what is deemed important to the Chinese. Therefore, mediation is an integral part of Chinese culture. Also, a significant number of Chinese Singaporeans practice Buddhism, which has basic tenets of forgiveness and compromise. As to Malays, the second largest group in Singapore's population, Muslims observe Islamic principles including consultations in decision-making. Also, great emphasis is placed on *adat*. Malays in Singapore have customarily resolved their disputes informally by mediation, in which *Kampong Ketua* or a village

headman acted as mediator. Also, anecdotal evidence suggests that mediation has similarly been taking place informally within the Indian community in Singapore. As a whole, it is said that the respective societies in Singapore have traditions and cultures of mediation.

It is pointed out that in societies with strong community norms and cultural imperatives, mediators were usually persons of influence and prestige.[20] In the light of the societal need to limit the disruption caused by conflict, mediation could involve a high degree of coercion, or moral persuasion and serve to reproduce all that system's hierarchies, inequalities and power imbalances. The mediators were often regarded as 'representatives' of the community, who performed a didactic role. On the other hand, the modern legal methodology regards mediation as the embodiment of the principle of private autonomy, which is a concept developed in the Western modern legal system. Modern mediation lays claims to values such as disputing parties' voluntariness, consensuality and self-determination, which are not all evident in community-based systems of managing conflict.[21]

In mediation in present Singapore, we find certain characteristics of mediation that existed prior to transplantation of the modern legal system. Against a background of mediation in a strongly bonded society predating the modern legal system, it seems a usual practice that mediators take directive approach and play a paternalistic role in the mediation process. It could be inferred that such view allows the judge to play a directive and paternalistic role in mediation in Singapore. What is justified in the name of name of 'Asian Value' could be the paternalistic role of a mediator apparent in traditional societies, and the same role is replayed by the judge in the Singapore Courts Mediation Model at present.

It is necessary to examine whether this view is shared in other Asian countries and can be regarded as an Asian value. Next, let us look at court-based mediation in Japan and Thailand

IV. Court-based Mediation in Asian Countries

A. Japan

The most popular mediation in Japan is '*Minji Chotei*,' a form of court-based mediation. *Minji Chotei* is translated into civil conciliation officially by the Ministry of Justice. In Japanese *Minji* means civil case and *Chotei* means mediation or conciliation.[22] According to 1999 data, the number of

civil cases filed for litigation in courts was 523,000 in total, whereas 264,000 civil cases[23] were filed for conciliation in courts. The number of civil cases filed for court-based conciliation is equivalent to more than half of all civil cases filed for litigation.

Whereas in Singapore's Subordinate Courts any case before the courts are commenced as a litigation and mediation is conducted in the course of litigation, in Japan's *Minji Chotei* a party is able to bring a case to the court requesting the conciliation procedures.[24] *Minji Chotei* is explained as follows in accordance with the 'Law concerning Civil Conciliation (*Minji Chotei Ho*)'. The significance of *Minji Chotei* is to resolve a dispute in a reasonable and practical way with the parties' mutual compromise (Article 2). *Minji Chotei* is conducted and operated by a conciliation panel, consisting of a judge and two laypersons (Article 5 and 6).[25] An agreement between the parties in *Minji Chotei* has the same legal effect as settlement in litigation (Article 16). When the parties do not reach an agreement, the court may render a decision, if it is deemed necessary for resolving the dispute. If no party objects to the decision within two weeks from its notification, the decision will also have the same effect as settlement in litigation (Article 17).

Both in Singapore and Japan, mediation (conciliation in Japan) is conducted by a judge other than the one who hears the case in the litigation process. However, it is observed that both judicial systems seek consistency in mediation (conciliation in Japan) and the litigation process.

In Singapore, when the parties are unable to settle their dispute at the Settlement Conference, their case will be fixed for hearing based on the opening statements already submitted. It is pointed out that mediations conducted according to the specifications of the opening statements enjoy an increased measure of certainty and consistency. However, the benefits that can be derived from informality and flexibility may be lost. Further, the format of the prescribed opening statements may cause the parties to present the dispute in a legalistic manner and focus too much on evidential issues. Therefore, the parties' problem-solving and decision-making ability may be restricted. The requirement of such a document does not encourage the parties to voice their interests and concerns and find commercial or relational solutions.[26]

In the Tokyo District Court, when a litigation case is referred by the court for conciliation, a judge in charge of the litigation makes a memorandum describing an outline and issues of the case and other matters that will help the conciliation panel to understand the case. Subsequently the conciliation panel will begin the conciliation, looking at the memorandum.[27] On the other hand, when the parties are unable to settle their dispute in the conciliation

and the case is referred back to the litigation process, there are no proceedings to make a memorandum describing what resulted from the conciliation process such as the issues clarified and the conciliation panel's opinion thereabout in the conciliation. It is said that a reason the court renders a decision at the end of conciliation when the parties do not reach an agreement, is to express and record the conciliation panel's opinion as information for the judge who hears the case subsequently.[28] It is clear that the Tokyo District Court intends to maintain consistency between conciliation and litigation proceedings.

The two different dispute resolution processes: litigation and mediation (conciliation in Japan), which are based on contrasting concepts, are merged in Singapore and Japan in their own respective ways. What we can find in common between the two systems are, first, a judge, who is a member of the state organization, namely the courts, serves as a mediator in so-called mediation, and second, they seek consistency in litigation and mediation proceedings. Thus, mediation (conciliation in Japan) is conducted under the shadow of the judicial process. Further, these court-based mediations are most popularly used and are said to fit their people's characteristics.[29]

B. Thailand

In Thailand, there is a system called court-annexed conciliation.[30] When a case enters court proceedings and the person in charge of the court's affairs deems it appropriate, he/she may appoint a judge who is not active in the quorum, an officer in the court or any person to be a conciliator.

As in the Singapore system, Thai court-annexed conciliation makes a clear line between the litigation process and the conciliation process in terms of confidentiality of communication and information. A judge who presides in litigation does not serve as a conciliator in the conciliation process involving the same matter. However, judges are expected to play a role as conciliator as part of their professional capacity. An interesting study showed that judges, as conciliator, are regarded best by lawyers.[31] In the study, 27% of lawyers answered 'persons experienced in the field' as most suitable as a conciliator, whereas 43.5% answered that judges are the best to secure fairness of the conciliation. Further, 76.5% of judges and 65.7% of lawyers deem that conciliation is more suitable than litigation for Thai society. It is also said that Thai is a paternalistic society and conciliation has been a manifestation of such paternalism, which can be traced back to the king in medieval times.[32]

V. Conclusion

There is criticism against the paternalistic role of the judge played in the Singapore Courts Mediation Model. As the judge serves a mediator, the parties may feel pressure to settle. It is also said that the District Judges are competing for high settlement rates in the Settlement Conference, in which they serve as the Settlement Judges. Some Singaporean legal scholars argue that what is practiced in the Settlement Conference in the Subordinate Courts should not be categorized as mediation. It is also pointed out that the reason Singaporeans are inclined to be non-confrontational in formal settings is not because of their traditional mentality, rather, their practical thinking to seek the most realistic and effective solution.[33] Also, as to Japan's *Minji Chotei*, there is criticism that the parties are heavily influenced by the judge's control in both process and outcomes and such control makes difficult for the parties to reach purely voluntary agreement.[34] From such criticism, however, it cannot be concluded that the judge should not play a role as a mediator, or that the judge is not able to be a mediator. The point is whether impartiality of the mediator is maintained. When the judge serves as a mediator, impartiality not only means that the mediator maintains the same fairness and attitude towards both parties, avoiding an imbalance between them, it also means that the judge, as a mediator, does not cause any pressure or undue imbalance of power between the mediator and the parties.

Based on the premises that mediation is a domain of private autonomy, mediation should be conducted outside the state's governance, and it is not acceptable that the judge serves as a mediator. However, the way in which mediation is perceived and defined differs among cultures and societies. It cannot be concluded that court-based mediation, in which judges conduct directive and paternalistic roles, deviates from 'real' mediation. Looking at the reality that mediation is institutionalized by the state in its judicial system, it might be said that such institutionalization reflects the relationship of the state and nationals in the country. It could be said that the state justifies its policy by labeling the people in its desired way, which might be called Asian values or whatever. Also, it could be inferred that the reason the parties accept the judge as a mediator is they are undetermined whether to seek agreement on their own or to desire a judgment by a third party. The question of if the general acceptance of a judge as a mediator is attributable to Asian values needs further study.

Notes

1 There are insufficient differences between mediation and conciliation to justify distinct definition. The terms are used interchangeably in this paper. The precise definition of each term is not the purpose of this paper.
2 Please note that court-based mediation is distinguished from settlement in litigation. The former is conducted in the course of litigation but is mediated by a judge other than the presiding judge in the hearing. The latter is conducted by the presiding judge in litigation process. Settlement in litigation is widely used in courts in many countries but some criticize it for vague procedures. Court-based mediation and settlement in litigation share some issues and problems; however, the latter is out of the scope of this paper.
3 Carrie Menkel-Medow, "Mediation," in Herbert M. Kritzer (ed.), *Legal Systems of the World: A Political, and Cultural Encyclopedia*, ABC-CLIO Inc., 2002.
4 Takahisa Hirota, "Funso kaiketsu shudan toshite no ADR: Sosho to no hikaku wo tsujite" [in Japanese] (ADR as Dispute Resolution Methods, Compared with Litigation), *Jurist*, No. 1207, 2001, pp. 19–25.
5 Joel Lee Tye Beng, "The ADR Movement in Singapore," in Kevin YL Tan (ed.), *The Singapore Legal System*, Singapore University Press, 1999, p. 415.
6 Hoo Sheau Peng et al. (eds.), *Speeches and Judgments of Chief Justice Yong Pung How*, FT Law & Tax Asia Pacific, 1996, p. 74.
7 Description of the Australian experience owes to "Alternative Dispute Resolution in Australia," Presentation Paper by Gerald Raftesath at the International Symposium on Civil and Commercial Law: ADR in Asian Pacific countries — now and in the future —, February 15, 2002, Osaka, Japan, sponsored by ICCLC.
8 According to the Act, alternatively the court may refer the case for neutral evaluation. Neutral evaluation is clearly distinguished from mediation and is defined as follows: "... a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The evaluator's role includes assessing the relative strengths and weakness of each party's case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages."
9 See note 6 above, p. 168.
10 According to the Subordinate Courts' Annual Report 2001, the number of cases mediated in the Subordinate Courts was 5,651 in 2000. On the other hand, in the Singapore Mediation Centre, the most known private organization for mediation, on average, 150–200 cases are mediated per year.
11 Laurence Boulle & Teh Hwee Hwee, *Mediation: Principles, Process, Practice*, Butterworth Asia, 2000, p. 221.
12 *Ibid.*
13 *Ibid.*, p. 219.
14 See note 5 above, p. 432.
15 See note 11 above, p. 221.
16 Speech of Chief Justice Yong, delivered on 16 August 1997, at the launch of the Singapore Mediation Centre.
17 See note 11 above, p. 195.
18 *Ibid.*, p. 193.
19 *Ibid.*, p. 191.

20 *Ibid.*, p. 33.
21 *Ibid.*
22 As mentioned in note 1 above, there is no precise distinction between mediation and conciliation. Rather than to seek their definitions in abstract terminology, the purpose of this paper is to look at the procedures and practice taken place in each country, regardless of whether they are called mediation or conciliation. Hereinafter, in accordance with the official translation, conciliation is used for mediation in discussing Japan's court-based mediation.
23 This number excludes family cases. *Shiho tokei nenpo (1999)* [in Japanese] (Annual Report of Judicial Statistics).
24 When deemed appropriate, the court may refer a litigation case for conciliation with the parties' consent (Article 20).
25 In *Minji Chotei*, a judge sits with two mediators appointed from among non-judges. The qualifications of mediators are (1) to be an attorney, (2) to be able to provide useful and well-versed knowledge and experience in resolving civil disputes, or (3) to possess valuable life experience, and be aged more than 40 and less than 70 (*Minji Chotei Ho* (Code of Civil Mediation Law), *Minji-Chotei-Iin Kisoku* (Rules of Civil Mediation Members)).
26 See note 11 above, p. 219.
27 Masako Ishiguri, "Tokyo-chiho-saibansho ni okeru chotei no jitsujyo to kadai" [in Japanese] (Present Situation and Challenges of Conciliation in the Tokyo District Court), *Jurist*, No. 1207, 2001, pp. 72–75.
28 *Ibid.*
29 It is said that conciliation has a long history in Japan and that resolving a dispute in a reasonable way is suitable to Japanese characteristics. Takeshi Kojima, *Saiban-gai funso shori to ho no shihai* [in Japanese] (ADR and the Rule of Law), Yuhikaku, 2000.
30 Regulation of Judicial Administration Commission Governing Conciliation B.E. 2544 of August 23, 2001.
31 Central Intellectual Property and International Trade Court, *Alternative Dispute Resolution in Thailand*, IDE Asian Law Series No. 19, IDE-JETRO, 2002, p. 124.
32 *Ibid.*, p. 7.
33 Based on the author's interview with members of Law Faculty, National University of Singapore, in March 2002.
34 Takahisa Hirota, *Minji chotei seido kaikaku-ron* [in Japanese] (Reforming Civil Conciliation System), Shinzan-sha, 2001, p. 63.