

Mediation in Penang: Avoiding Justice Being Delayed

By *Justice Dato' Lim Chong Fong* (Guest writer)*

Executive Summary

- The workload in Malaysian Courts has been increasing unrelentingly for a long time, apart from a brief period during the Covid-19 pandemic. This heavy burden on the courts is also a worrying sign that the resolution of civil disputes in Malaysia are delayed.
- To ease the situation, the Malaysian judiciary has been undertaking the promotion and expansion of mediation as an alternative means of dispute resolution.
- In Penang, Justices of the Peace have been encouraged to train themselves to be mediators, and this has had significant success. JPs are suitable for this task since disputing parties are likely to consider them to be persons of standing. This helps in the longer term to enhance trust and confidence in the mediation process.
- The initiative by Peace Mediation Bureau of Penang, apart from assisting the Penang Courts in court-annexed mediation, is now providing pro bono pre-action mediation services, especially in relation to community disputes.
- Much work remains to be done across the board to further strengthen and promote the culture of mediation in Malaysia. Through mediation, parties are able to resolve disputes in a more amicable, efficient and harmonious manner.

¹ Justice Dato' Lim Chong Fong is Court of Appeal Judge serving in the Palace of Justice Putrajaya since 2023. A Penang boy, he was Judicial Commissioner from 2014 in Penang's High Court until elevated to Judge in 2017. He is also chairman of the Court Annexed Mediation Committee of the Malaysian Judiciary and a member representing the Malaysian Judiciary in the International Judicial Dispute Resolution Network.

This article is based on the keynote address given at the seminar "Mediation in Penang: A decade and Beyond" held in Penang on 14 May. It was organized by The Justices of the Peace Mediation Bureau Penang and the Society of JP Community Mediators Penang.

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Introduction

Over the past two decades, the Malaysian Courts have witnessed a significant and continuous increase in the number of cases filed. Save perhaps for a brief period during the COVID-19 pandemic, the courts have never truly experienced a decline in workload. The inevitable consequence of this growing volume of litigation is delay in the resolution of disputes. Put simply, our courts are heavily burdened with cases.

Faced with this challenge, the Malaysian Judiciary has taken, and continues to take, proactive measures to manage the increasing caseload. One of the most important and effective initiatives is the promotion and expansion of mediation as an alternative means of dispute resolution.

Broadly speaking, there are two forms of mediation: pre-action mediation and court-annexed mediation. Pre-action mediation refers to mediation conducted before legal proceedings are commenced, whereas court-annexed mediation takes place after a case has already been filed in court. At the 2026 Annual Malaysian Judges' Conference held here in Penang on 9-11 May, it became evident that the Malaysian Judiciary is firmly committed to intensifying the use of court-annexed mediation, whilst also exploring the possibility of making pre-action mediation a mandatory step before certain cases may be commenced in court.

Both forms of mediation naturally require capable and committed mediators. Since the introduction of formal court-annexed mediation through the Rules of Court 2012, mediation has largely been undertaken by judges and judicial officers. However, there are obvious practical limitations. Judges and judicial officers already shoulder the demanding responsibility of hearing and determining cases, which remains their primary judicial function.

JPs as Mediators

In this regard, Justices of the Peace are particularly well placed to contribute meaningfully to the mediation process. Pursuant to sections 79, 81, 82, 98 and 99 of the Subordinate Courts Act 1948, Justices of the Peace perform judicial functions, and are fit and proper persons to undertake court-annexed mediation.

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I understand that the State of Penang ceased appointing Justices of the Peace after 1990, principally because there appeared to be no continuing role for them once legally qualified persons were required to be appointed as Magistrates to hear and determine court cases.

However, during my tenure as a High Court Judge in Penang from 2015 to 2018, I noticed that mediations were only sporadically done in the courts by a judicial officer. By supplementation, I had the privilege of appointing several Justices of the Peace to conduct pro bono court-annexed mediation in the Penang courts. I am pleased to say that they proved highly effective in assisting parties to resolve their disputes amicably.

The immediate challenge, however, was the limited number of available Justices of the Peace, many of whom were already advanced in age.

Simply put, there is a pressing need for new blood to continue and strengthen this important service to the community. For the avoidance of doubt, the appointment of a Justice of the Peace is fundamentally different from the conferment of a state honour. While state honours recognise past contributions and achievements, the appointment of a Justice of the Peace carries with it an expectation of continued public service on a pro bono basis. Such services undoubtedly include mediation for the benefit of the community.

In my view, a Justice of the Peace acting as mediator occupies a uniquely suitable position because disputing parties are likely to regard the mediator as a person of standing who carries the confidence and backing of the State Authority. This enhances public trust and confidence in the mediation process.

I am also aware that the Council of the Justices of the Peace in Selangor, for example, has trained its members in mediation and has recently approached the Malaysian Judiciary with a view to participating in court-annexed mediation as well. This is certainly a positive and encouraging development.

I am particularly heartened that the Justices of the Peace Mediation Bureau Penang, apart from assisting the Penang Courts in court-annexed mediation, is now taking the further initiative of providing pro bono pre-action mediation services, especially in relation to community disputes. This development augurs well not only for the community but also for the administration of justice as a whole, because every successful pre-action mediation means one less case entering the court system.

Pro-bono Mediation in Penang

In recent times the Malaysian Bar including the Penang Bar has volunteered to carry out pro-bono court-annexed mediation for family cases. This is most encouraging.

Much work remains to be done to further strengthen and promote the culture of mediation in Malaysia. Through mediation, we not only ease the burden on the courts, but more importantly, we help parties resolve disputes in a more amicable, efficient and harmonious manner.

Managing Editor:
Ooi Kee Beng

Editorial Team:
Tan Lee Ooi and Nur Fitriah (designer)

PENANG
INSTITUTE
making ideas work

10 Brown Road
10350 George Town
Penang, Malaysia

Tel : (604) 228 3306
Web : penanginstitute.org
Email : issues@penanginstitute.org

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