

2ND ASIAN MEDIATION ASSOCIATION CONFERENCE
OPENING ADDRESS BY YAA TUN DATO' SERI ZAKI BIN TUN
AZMI
CHIEF JUSTICE, MALAYSIA

Assalamualaikum and a very good morning

1. It gives me great pleasure to be here this morning and I wish to thank the Bar Council for inviting me to present the Opening Address for this Conference.

2. This mediation conference is the first of its kind in Malaysia and is a unique effort by the member countries of the Asian Mediation Association (AMA) to gather collectively to promote the use of mediation in this region. The topics to be discussed at this Conference cover a broad range of areas in which mediation can be used to resolve disputes in Malaysia and other AMA member countries. I am certain that the renowned speakers at this Conference both local and foreign will contribute to spreading the growth of mediation in the Asian region by imparting their knowledge and sharing their experiences on the use of mediation in resolving disputes in the various fields in which they will be speaking on at this Conference. I take this opportunity in thanking all the speakers who have come from near and far for participating in this Conference.

Ladies and Gentlemen,

3. Mediation is nothing new in our country. The pace at which mediation will succeed in this country will depend on the acceptance of the mediation process by the public at large, members of the legal profession and other professionals. To achieve inroads on the public accepting mediation as a means of resolving dispute will require the understanding of mediation and appreciating its advantages and consequently public education in this field. To this end, teaching mediation to the young at the secondary school level, to the undergraduates in all universities and conducting mediation training programmes to members of the business community and especially lawyers would mean enhancing the understanding of the mediation process. The members of the legal profession have an extremely important role to play in promoting mediation. I am of the view that lawyers have a duty to advise their clients about using mediation as a means of resolving their disputes.

4. Although the benefits of mediation have been appreciated in Malaysia and we are making progress in promoting mediation, nevertheless it has a long way to go. We have to focus on developing mediation at a faster pace whilst not compromising on the quality of mediators. The quality of mediators is extremely important to the success of promoting mediation. The training and accreditation of mediators will ensure a higher success rate in resolving disputes via mediation and consequently the acceptance of the use of mediation by

members of the public, members of the legal profession and the judiciary. There is a need to develop a common benchmark in this country and region for accreditation of mediators. There should be a consensus between private mediators, court officials and judges conducting mediation on minimum qualifications and standards. I urge the member countries of AMA to co-operate to develop this benchmark which should be of high quality and comparable to countries where mediation is matured.

Ladies and Gentlemen,

5. The Malaysian Judiciary has also played a role in promoting mediation in this country since last year. Judge Wallace, who is here today, had been invited to speak to a group of judges and judicial officers in March and November last year. After the seminar, judicial-led mediation has become a new phenomenon in Malaysia and the Judiciary has been actively promoting the use of judicial-led mediation at the Subordinate Courts, High Courts and even at the Appellate Courts level. A practice direction has been issued to judges at all levels for suitable cases to be referred to mediation before trial is commenced.
6. I noticed that judge-led mediation or sometimes called as court-assisted mediation seems to be more successful because parties are more confident when judges become their mediators. It also offers many other advantages.

Some of the benefits are that the court officials and or judges can control and supervise the timing of the disputes, the speedy resolution of the dispute in a less adversarial manner and the reduction of the caseload of cases in the courts. In the event the dispute is not resolved the same lawyers can continue to represent their client with the same briefs. By the courts offering mediation services, it will be viewed as being complimentary to the court system and a new opportunity to resolve disputes within the existing court system without litigating the dispute. The mediation process will also be more readily acceptable as the members of the public view the courts as the parental institution for resolving disputes.

7. We have moved forward by having mediation via video conferencing recently at the Court of Appeal in one controversial case which involved parties from overseas, though in the end it was failed because parties were not cooperative to settle their disputes. In some other courts, we have also tried mediation by using telephone without parties having to come to court. When I visited San Francisco with CJM and other judges last year, Judge Wallace had arranged for us to watch mediation via audio conferencing and that was where we got the idea to implement the same thing in Malaysia.
8. The MMC should also look into having this at their centre to better promote mediation, where parties can remain at the

comfort of their office or wherever they are to discuss terms of settlement.

Ladies and Gentlemen,

9. As at December last year (2010) since mediation was introduced, the percentage of cases disposed by mediation is relatively high. At the High Court 38 percents of cases fixed for mediation were successfully mediated while the Sessions Courts achieve more successful rate i.e. 51 percent. At the appellate court where mediation is currently conducted by Justice Dato' Low Hop Bing of Court of Appeal, the percentage of successful cases mediated is 38 percent as at December 2010.

10. Judicial-led mediation has successfully ameliorated systematic problems in many jurisdictions around the world. Judicial-led-mediation is popular in many countries like Canada, United States, Australia and New Zealand. The AMA member countries should also follow suit in introducing judicial-led mediation in their respective countries if they have not already done so.

11. The traditional role of a judge is to make a decision based on legal rights and duties. However the role of a judicial mediator is that of a neutral and impartial facilitator who attempts to facilitate communication and negotiation between the parties and encourage them to reach a settlement. No legal

advice or legal opinion should be expressed by the judicial mediator during the mediation process if the facilitative model of mediation is used by the courts.

12. This entails the need for the judicial mediator to be trained to acquire the skills of a mediator in order to carry out mediation competently and successfully in the courts. If judges are unfamiliar with the mediation process, they may conduct mediation ineffectively and this may turn the public away from using the process to resolve their disputes.

Ladies and Gentlemen

13. I believe that in the interests of the public, mediation is the way forward. I would like to take this opportunity to give the commitment of the Judiciary to develop and promote mediation in this country. On this note, I would like to add that the Judiciary may have to foster a working relationship with the MMC and KLRCA to expand the horizons of conducting court annexed mediation in this country. This could be achieved by using the services of trained and accredited mediators of the MMC and KLRCA in the courts. These trained mediators would be able to assist the courts in clearing the backlog of cases which are suitable to be mediated, whilst leaving the judges to concentrate on disputes which need to be litigated.

This will benefit all stakeholders including the judges. The judges' workload can be shared without compromising the

importance of providing a speedy, just and cost effective solution to the people's legal problems.

14. Members of the AMA are well placed to cooperate to make mediation a more acceptable means of resolving disputes in this region. By networking, renewing ties and exchanging ideas members of the AMA countries can work on how to develop mediation to new heights in the near future. I note that the theme of this conference is "Rediscovering Mediation in the 21st century". I am sure with the wide range of topics to be discussed at this Conference you will be able to achieve the desired results.

15. Let me conclude by congratulating the MMC for hosting this Conference. I wish to extend my best wishes to all of you for being here today to make this Conference a success and I hope you have a fruitful discussion on the interesting topics which have been lined up for the next two days.

Thank You.

DATED: 24 FEBRUARY 2011

**ZAKI TUN AZMI
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