Mediation in Malaysia: Resistance and (Maybe) Change

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Malaysian Mediation Positives

- Traditional and community mediation
- Employment law
- Family law
- Legal Aid
- Housing Tribunal
- Racial relations
Malaysian Mediation Negatives

- Malaysian Mediation Centre – 300 mediators; 132 cases 2000-2007
- Lawyers “stumbling blocks” to mediation
- Civil procedure rules do not mention mediation
- Contrast - Singapore Mediation Centre – 1300 cases to 2007

Theories of Change (and Resistance) in Legal Professions

- Individual or institutional focus:
  - Legal education
  - Legal culture
- Endogenous or exogenous focus:
  - Demographics (individual and professional)
  - Client expectations
Factors in Malaysian Mediation: 1. Demographics

• Most lawyers practice in small firms (5 or less practitioners)
• Most lawyers are new to the profession (young)
• Most practices concentrate on litigation

Factors in Malaysian Mediation: 2. Culture

Three contending cultures:
• Legal – litigious; competing
• Social - directive intervention; compromising
• ADR - facilitative intervention; cooperating
Factors in Malaysian Mediation: 3. Professional Relationships

Tension between lawyers and judges:
- Judicial and Legal Services Commission
- Historic disruption
- Huge backlog of cases
- KPIs for judges

The Future of Malaysian Mediation

- Civil procedure rules mandating mediation
- Judicial Appointment Commission
- Foreign firms
Pilot Study

Malaysian lawyers appear to be knowledgeable about mediation; uncertain about whether it fits their professional identity; and concerned that it promotes compromise of legal principles.

To be further investigated!

Thank you!