

Collaborative Practice

—A New Alternate Dispute Resolution Method

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Whether in healthcare or the commercial world, litigation is the traditional method of resolving civil disputes between parties. However, the adversarial system of litigation is often time consuming and costly, both financially and emotionally. The Singapore courts have recognised this, and have therefore been actively encouraging disputes to be resolved through alternative methods. The better known alternative dispute resolution methods in Singapore are mediation and arbitration. A new member of the alternate dispute resolution family is collaborative practice. As with mediation, collaborative practice has the potential to amicably resolve disputes between parties that could otherwise result in unpleasant fights.

Started by American lawyer Stuart G Webb in the early 1990s, collaborative practice was largely used to solve marital problems faced by couples contemplating divorce. It has been commonly used in the US, Canada, UK and Europe. However, in Asia, collaborative practice is a relatively new concept, and has just been introduced in Singapore earlier this year.

The collaborative practice process

In a collaborative practice case, parties are represented by collaborative-trained lawyers. Either party can initiate the collaborative process, either by sending the request directly or through his collaborative lawyer, to the other party. Each party will need to appoint their own collaborative lawyer, and sign a collaborative agreement in which they agree to go through the collaborative process and abide by its rules, such as entering into good faith negotiations with the other party, making full disclosure of documents and providing information for the purpose of settlement, and keeping proceedings confidential. They, together with their lawyers, will then attend a series of interest-based negotiation meetings with their solicitors to reach a settlement of the matter.

During these meetings, each party will identify their own interests or reasons for their wants, understand the other party's needs and perspective, and attempt to achieve a settlement which satisfies both sides. This process requires a few rounds of meetings that are usually held in their lawyers' office. If the parties fail to arrive at a settlement during the discussions, the collaborative lawyers will have to step down from acting for the parties if they proceed to file a lawsuit in court. The parties will then need to appoint a new set of lawyers for themselves and undertake the adversarial process of litigation.

Collaborative lawyers are usually trained in mediation or interest-based negotiation. Although collaborative lawyers are also litigation lawyers, they are the "enlightened" ones who cast away their adversarial hats to engage in this settlement process and strive to assist the disputing parties to reach a win-win conciliatory solution.



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Advantages of collaborative practice

There are several advantages for parties to engage in collaborative practice. Unlike mediation or arbitration, there is no neutral party (to assist parties during the process), so the cost of engaging one is then saved. The disputing parties own the process and the outcome they reach. Furthermore, there is virtually no adversary in this process, as the aim is to collaborate in order to reach an agreement. Each party's lawyers have to disclose all legal advice given to their clients to the other party and his solicitor, which ensures transparency in this process. The lawyers' role in the collaborative process is to assist the parties to reach an amicable settlement, so that the parties can control the process and the outcome they wish to reach, which is often not the case once a matter is heard in court before a judge. Collaborative practice maintains confidentiality, goodwill between the parties, preserves and maintains relationships, and even has the potential to enhance the relationship between the parties. In addition, parties are spared from the amount of stress caused by litigation.

Although collaborative practice has mainly been used to resolve family matters to date, this process can also resolve all forms of civil and medical disputes. The collaborative process extends the model of working with patients in their best healthcare interest into the realms of dealing with disputes that have arisen. It provides a platform to re-establish broken relationships between doctors and patients, and the absence of a communication channel that is at the heart of healthcare disputes. The process offers confidentiality, both in terms of the details of the dispute and the terms of the settlement. It preserves the reputation of the doctors and hospitals involved in the dispute, and can better uphold the integrity and public perception of the medical profession. Future relationships, including goodwill between the patients and the hospitals, are also maintained.

Therefore, in addition to mediation and arbitration, the medical profession can also adopt collaborative practice, to better and amicably resolve the majority of medical disputes in a cost-effective way. **SMA**



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Peter is a partner of Mint Medical Centre, a Family Medicine clinic located at HarbourFront. He is the Regional Medical Advisor for Syngenta Asia Pacific Pte Ltd, a multinational agribusiness, and adjunct senior lecturer at the National University of Singapore Centre for Biomedical Ethics in Yong Loo Lin School of Medicine, where he mainly teaches medical law. He had previously worked in Health Sciences Authority, dealing with regulation of drugs and clinical trials. His long-held interest in dispute resolution prompted him to train in law and ethics, but his firm conclusion is that the medical profession should better explore alternative dispute resolution, and utilise conciliatory methods. He is a Fellow of the CI Arb and SI Arb, a Fellow of the Singapore Mediation Centre, and a partner of the Resolvers Pte Ltd, a private mediation service. He is also a member of the teaching faculty of the Medical Protection Society.