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Mediation as a Pre-trial Process at the Tribunal for Consumer Claims, Malaysia: The Way Forward

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Abstract

The Tribunal for Consumer Claims (TCC) was established to provide an easier and a speedier mechanism for consumers to seek redress against the traders outside the court. The President of the TCC is allowed in section 107 of the Consumer Protection Act 1999 (CPA) to assist parties in negotiating their settlement. However, the non-specification of the settlement method led to the wide discretion of the President in using whatever method they felt comfortable with, whereby sometimes this practice becomes too ambiguous. In acknowledging the possibility of a lack of consumers' awareness of the noble way to settle the dispute via alternative dispute resolution (ADR), this article investigates the usage of ADR at the pre-hearing stage. This study adopts the qualitative method where the Consumer Protection Act 1999 (Act 599), the Consumer Protection (the Tribunal for Consumer Claims) Regulations 1999 and related laws on some mediation practices in Malaysian Courts are critically analysed. A comparative study is made on the practice of the Singapore Small Claims Tribunal, where the Small Claims Tribunal Act 1984 and the Small Claims Tribunals (Amendment) Act 2018 are being analysed. The article proposed that the practice of mediation in the Singapore Small Claims Tribunal is practical for TCC to emulate since it shares the same ADR element of TCC of being simple, quicker and cheaper, apart from the fact that it is also in line with the practice of existing judicial institutions in Malaysia. It is hoped that the suggested framework will lead to a better implementation of ADR at the TCC and, consequently, improve the TCC's function as a better dispute resolution mechanism for consumers and, simultaneously, empower the consumers.

Keywords: Pre-trial Process, Mediation, Conciliation, Singapore's Small Claims Tribunal, Malaysian Court-Annexed Mediation

Introduction

The Tribunal for Consumer Claims, Malaysia (hereinafter referred to as the TCC) has a limited jurisdiction to hear cases involving goods and services between the consumers and the suppliers/ manufacturers for the amount not exceeding Malaysian Ringgit 50,000 (section 98(1), Consumer Protection Act, 1999 (Act 599) and (Rohman, 2019). Comparatively, Singapore has its Small Claims Tribunal (hereinafter referred to as the SSCT) that hears a small range of civil claims not exceeding Singapore Dollar 20,000 or Singapore Dollar 30,000 if the

claimant and the respondent consent in writing (Section 2 read with section 5(4) of the Small Claims Tribunals Act, 1984 and Tan, 2021). Similar to the TCC, the SSCT is a quick and inexpensive forum for small claims disputes arising out of the sale of goods and provisions of services, as well as other types of small value claims (Tan, 2021).

The pre-trial process of the TCC is indirectly provided in Section 107 (1) of the Consumer Protection Act (Act 599). It provides that "The Tribunal shall, as regards every claim within its jurisdiction, assess whether, in all circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement about the claim." The wordings negotiate an agreed settlement' in section 107 of Act 599 indicate the feature of alternative dispute resolution (ADR) in the role of the TCC in assisting parties to negotiate in their respective disputes. Nevertheless, the said section is ambiguous. It does not indicate what sort of ADR the TCC may use to help parties negotiate. No guidelines are provided regarding how the TCC handles consumer-supplier/manufacturer negotiations. Some literature has highlighted the weaknesses of this unguided negotiating process, which are also highlighted in this article.

SSCT is a good institution for the TCC to emulate since it shares the same ADR element of being simple, quicker and cheaper (Gramcknow & Ebeid, 2016). This is consistent with the founding tagline of the TCC—simple, cheap and quick. (Singh, 2011). To support the suitability of adopting the practices of SSCT to TCC, this article also highlights some similarities of the practices at SSCT with some existing judicial institutions in Malaysia.

Literature Review

As for the TCC, the literature of eleven years, from 2010 to 2021, highlighted the same issue of the weaknesses in the negotiation process conducted in the TCC. A chapter in a local book by Amin and Abu Bakar in 2010 examined the TCC's shortcomings and suggested solutions. Their discussion covered the vagueness of the ADR provision and the uncertainty of the negotiating process within the scope of section 107 of Act 599 (Amin & Abu Bakar, 2010). In another study published nine years later, in 2019, Ismail and Osman emphasised the shortcomings of the TCC's negotiating process and proposed mediation as an alternative to negotiation. They also supplied TCC data from 2013 to 2017, demonstrating a small proportion of cases resolved via negotiating (Ismail & Osman, 2019). Safei, in 2022, shared a more recent statistic on TCC. According to her, from 2018 to 2021, the TCC's case data showed a constant trend of fewer cases being reported as Award by Consent (Form 9) as opposed to Award after Hearing (Form 10). This established that the parties' negotiation process, performed without the supervision of the TCC President, failed to achieve a mutually acceptable settlement, which would be converted into an Award by Consent (Form 9) (Safei, 2022). In addition, Handayani and two other writers, in another research published in 2021, compared the TCC with Indonesia's Consumer Dispute Resolution Agency as one of their analogies for managing consumer issues. Interestingly, it took into account negotiations between parties that take place without the aid of a third party. It briefly outlined the TCC negotiating process' shortcomings, which included the customers' power imbalance, lack of knowledge of the law, and ignorance of consumer rights, along with the manufacturers' or suppliers' greater dominance (Handayani et al., 2021).

According to Gramckow and Ebeid, in 2016, small claims courts are seen as an ADR mechanism since they provide litigants an avenue and the chance to settle their issues in court in a way that is easier, faster, and less expensive. The authors defined a small claims court as a specialised court established by statute with particular responsibilities and authority to

decide on and settle small-value financial disputes. They highlighted that in Singapore, the Small Claims Tribunals Act created Singapore's small claims courts. The writers emphasised that the foundation of the courts is the application of simple rules that are simpler for litigants to follow; they are less formal and sometimes do not require that attorneys represent parties. They include simplified procedures that facilitate speedier dispute resolution (time limits are specified for serving defendants, responding to petitions, and scheduling hearings, for example) while lowering related court expenses (Gramckow & Ebeid, 2016). In a 2019 article, Fakriah and Afriana drew analogies to a few international countries having Small Claims Courts, such as the SSCT in Singapore. They highlighted the two processes used in SSCT: mediation and adjudication, which are done by "referees" or judges. They also noted the speed of the SSCT's procedures, claiming that consultations are performed within seven days for consumers and between ten and fourteen days for company claims. If no agreement is achieved, hearings are convened within seven days after the final day of consultation. Additionally, the writers addressed the informal way of settlement at SSCT. The clerk will help parties reach an agreement after the claim is lodged. If no agreement is achieved during consultation, the clerk or an assistant court clerk will conduct a mandatory mediation. If parties cannot reach an agreement during mediation, the clerk sets a date for the claim to be adjudicated by a referee. The writers emphasised the clerk's practice is the same as what the referee does in this matter (Fakriah & Afriana, 2019).

Concerning court-annexed mediation in Malaysia, Rahmah and Zamani, in their article in 2019, described court-annexed mediation by referring to the case of *Alex and Wickrama*, which further clarified the Practice Direction No 5 of 2010 (PD 2010) in that there are two types of civil action mediation: judge-led mediation and non-judge mediator chosen by the court. If the mediation is successful, the parties will write a settlement or consent order outlining the details of their agreement. If the mediation fails, the matter will be reheard before the court, and any document or evidence submitted during the mediation process would be inadmissible (Ismail & Osman, 2019). In another article published in 2021, Huat examined recent changes in mediation in Malaysia, including the implementation of the Practice Direction on Mediation 4/2016 (PD 2016), which intended to encourage disputing parties to select pre-action mediation or seek an amicable solution before trial or appeal. During pre-trial civil case management, the judge or magistrate directs this court-annexed mediation (Huat, 2021). It should be noted that this PD 2016 revoked the earlier PD 2010. On the other hand, Justice Kiat, a Malaysian Federal Court judge, agreed on compulsory mediation in his article in 2020 and stated that court-annexed mediation would be crucial in helping parties overcome their preconceptions or lack of understanding. According to him, studies showed that even when parties involved in mediation involuntarily, they gained from the process. Consequently, court-annexed mediation is essential as an expedient since parties do not utilise mediation willingly and should therefore be allowed to profit from it (Ong, 2020).

In the absence of a comprehensive discussion on the pre-trial process at the Tribunal for Consumer Claims in Malaysia and Singapore, the discussion in this article is to fill the gap.

Methodology

This article employs qualitative research since it involves doctrinal legal research techniques and a content analysis approach that necessitates the examination of several documents. The article is mainly based on library research on the primary and secondary sources of the relevant Malaysian laws regulating the TCC and court-annexed mediation, as

well as the practices of the SSCT. The Act 599, as the primary statute governing the TCC, the Consumer Protection (the Tribunal for Consumer Claims) Regulations 1999 (hereinafter referred to as the TCC Regulations) and related laws on some mediation practices in Malaysia, namely the Rules of Court 2012, the Practice Direction No 5 of 2010, Practice Direction on Mediation, the Practice Direction No.4 of 2016, Practice Direction on Mediation, and the Mediation Act 2012, are critically analysed. The applicable legislations in Singapore are the Small Claims Tribunal Act 1984 and the Small Claims Tribunals (Amendment) Act 2018. Among the secondary materials cited are books and journal articles. Internet searches were also used to find more recent sources, i.e., ResearchGate, Google Scholar, Lexis Nexis and HeinOnline. In addition, information was acquired through unpublished reading materials such as seminar articles, conference papers , theses and various other relevant reading materials.

Pre-Trial Process and Hearing at The Tcc

In Malaysia, it is a good practice that an aggrieved consumer encountering unfair practices must first approach the seller with supporting documents, such as receipts, to explain the issue of his concern and try to negotiate a satisfactory outcome. If that does not work, the aggrieved consumer can file a complaint and seek remedies through the TCC. In all circumstances, at the beginning of the trial, it is a practice that the President of the TCC would enquire whether the parties had tried to settle their dispute, hence, indicating the stand of the TCC in upholding the concept of ADR even at the pre-trial process. In the event where the parties answered to the contrary, the President would give a few minutes for the parties to try to settle their dispute outside of the TCC hearing room. This is a kind of an unassisted ADR, but the idea of ADR is upheld by the President and it can be seen as a 'loose assistance' by the President. When the President asked the parties again the result of their settlement after the time allocated for them ends, in the event that the parties can reach a settlement, the President would then assist the parties in recording their settlement agreed upon by the parties. These as a whole are illustrative of section 107(1) of Act 599, where the President of the TCC is permitted to assist the parties in negotiating an agreed settlement concerning the claims and section 107(3), where the TCC shall approve and record the settlement and the settlement shall then take effect as if it is an award of the TCC. If the parties could not agree to a settlement during the period allocated for them outside the TCC hearing room, the case would be proceeded to a trial by the President of the TCC. In assisting the parties to reach a settlement during the trial, as per section 107(1) of Act 599, the statute does not indicate what ADR the TCC may use to help parties negotiate. There is an absence of guidelines regarding the method of settlement to be used by the President of the TCC to handle the disputes.

Pre-trial Process at the Small Claims Court, Singapore

Pre-trial Filling Assessment in SSCT

The SSCT has a pre-filing assessment to determine whether the matter falls within its jurisdiction. The pre-filling assessment may be completed online by filling out the Pre-filling assessment form. The Pre-Filing Assessment online form contains questions designed to aid the claimant in submitting a claim. It must be filled out prior to submitting a claim. The form assists the claimant in determining which documents may be required to make a claim. The claimant may need approximately 10 minutes to complete the form. After completing the evaluation, the claimant would be required to submit the claim or save the pre-filing ID to file the claim within seven days. After seven days, any drafts stored in the claimant's account will

be removed. There are required fields to fill. All essential field information will be forwarded to the claim form (State Courts, 2020).

The pre-filling assessment might also take place during the SSCT's consultation stage. Following the filing of a claim, a consultation date will be set for parties to appear in court before the Registrar. At the consultation stage, the Registrar will do the following; determine whether a claim falls within the SSCT's jurisdiction; provide parties with an opportunity to discuss their cases in order to resolve their dispute amicably, and, if parties are unable to settle a matter, schedule a hearing before an SSCT's Magistrate or make such other orders as it deems appropriate (State Courts, 2020; Tan, 2021).

Mediation and Conciliation As A Pre-Trial Process At Ssct

The SSCT implements mediation. The Small Claims Tribunals (Amendment) Act 2018 was amended in 2018 to provide the Registrar of the court or the Small Claims Tribunals the power to refer a claim to a Community Mediation Centre or any other person for mediation, with or without the parties' approval (Section 18A of the Small Claims Tribunals (Amendment) Act, 2018). Section 24 of the Small Claims Tribunal (Amendment) Act of 2018 has been revised to permit the use of both mediation and conciliation in its procedures. This is achievable either on the initiative of the Tribunal or at the request of any party to the proceedings (Section 24 of the Small Claims Tribunal (Amendment) Act, 2018).

A judge from the State Courts Centre for Dispute Resolution conducts the conciliation. The judge will help parties in their talks at the conciliation session. He will provide recommendations, produce appropriate alternatives, and guide both sides to a mutually agreeable resolution. The parties will next make choices on the judge's suggestions. The following are the steps of a typical conciliation: First, a preliminary meeting will be held. The lawyers generally brief the judge presiding over the conciliation conference on the facts of the dispute and the matters to be resolved. Neither party to the dispute need to be present in the judge's chambers at this time. Second, all parties and their lawyers will be present for a joint meeting. The judge will welcome the parties to the conciliation process and establish any ground rules for the session. Each side will have an opportunity to talk about their dispute. The judge will moderate the conversation, express his opinions, and advise the parties on alternative remedies. Third, separate meetings will be held. If required, the judge will have separate meetings with either or both parties and their respective lawyer. This is an opportunity for each party to address further issues and raise concerns with the judge, who will provide ideas for potential settlements and change them depending on the parties' feedback. Depending on the circumstances of each dispute, there may be multiple such sessions. The step of Conciliation Conclusion is last but not least. If both parties reach an agreement, everyone will meet with the judge and their lawyers to go through and approve the details of the settlement. These terms of the agreement will be documented and recorded before the judge. If neither party can reach an agreement, conciliation terminates and the matter goes to trial. (State Courts, 2020). It should be noted that the procedures from the "preliminary meeting," "joint meeting," and "separate meetings" are all practices used in facilitative mediation. However, when the judge/conciliator makes settlement proposals to the parties in separate sessions, this departs from the elements of facilitative mediation and transforms into an evaluative mediation.

Conciliation at SSCT allows both parties to settle their dispute without going to court for a trial. The judge will provide insightful views or recommendations on how the parties might settle their dispute amicably. The judge's opinions and suggestions are open for consideration

by the parties, even though they are free to reject them. The decision to settle or not is entirely up to the parties in each instance. Additionally, the topics addressed and the suggestions and opinions made by the judge to reach a settlement are kept private and confidential (State Courts, 2020)

At SSCT, if both parties cannot settle conciliation, the judge may propose using different conflict resolution techniques, such as neutral evaluation. As part of the case management procedure, the judge may also order the parties to complete particular actions within specific timeframes so that the case may continue to trial (e.g., filing affidavits of evidence-in-chief). Such a trial will take place in the civil courts before a judge. The judge who presided over the case as a conciliator will not preside over the trial. The information addressed during the conciliation procedure will be kept secret and not disclosed to the trial judge (States Court, 2020).

Conciliation is distinct from mediation, which the Singapore States Court also administers. The first distinction concerns the function. In conciliation, the judge/conciliator actively proposes potential resolutions and guides how to settle the issue. In contrast, the judge or mediator's primary role in mediation is to foster discussion and transmit the parties' views. The second distinction is the conduct of the session. In conciliation, the judge/conciliator will provide his opinions and observations based on his expertise and experience of the issue. In mediation, the judge/mediator allows the parties to conduct conversations and negotiations and assists them in arriving at their own solution. The third distinction is the settlement decision. In conciliation, the judge/conciliator may construct his own resolution plan. The parties may then approve or reject the proposal. In mediation, the parties independently find solutions to the conflict and choose the parameters of the settlement. The last distinction is whether a case is suitable for conciliation or mediation. Conciliation is appropriate for parties that need further advice and direction from the judge throughout the settlement and negotiating process. While mediation is appropriate for parties that choose a more autonomous approach to judicial conflict settlement (States Court, 2020; Tan, 2021).

It should be noted here that a mediator in purely facilitative mediation differs from a judge or conciliator in that they provide insight or recommendations on how the parties might settle their dispute. A facilitative mediator will not offer parties any suggestions for potential solutions. However, a mediator who uses an evaluative approach would provide details on the merits of each party's case (Low, 2010; Jan, 2010), just as the judge or conciliator at the SSCT does.

Comparable Practices of SSCT to Some Judicial Institutions in Malaysia

In Malaysia, conciliation procedures at the SSCT are comparable to mediation techniques in several institutions. First, it is comparable to the court-annexed mediation in Malaysian civil courts. Based on the fact that the judge/conciliator at SSCT facilitates the discussion between the parties, the judge/mediator at the court-annexed mediation facilitates the settlement between the parties via the use of mediation in the pre-trial process or also known as the pre-trial case management. (Order 34, rule 2(2)(a) of Rules of Court, 2012; Paragraph 1 of the Practice Direction No. 4 of 2016 Practice Direction on Mediation). Similar to the practice of the judge/conciliator at SSCT, the judge/mediator in the Malaysian court-annexed mediation can also provide settlement suggestions to the parties (Paragraph 5.2 of the Practice Direction No. 4 of 2016 Practice Direction on Mediation). The SSCT's practice of not having the judge who had become the conciliator be the trial judge when

conciliation fails is a similar practice at the Malaysian court-annexed mediation (Annexure A of the Practice Direction No. 4 of 2016 Practice Direction on Mediation). The information discussed during the conciliation process at SSCT to remain confidential and will not be revealed to the trial judge is another identical process at the Malaysian court-annexed mediation (Paragraph 6.2 of the Practice Direction No. 4 of 2016 Practice Direction on Mediation). In addition, the practice of SSCT's judge/conciliator to record the terms of settlement of parties is also a common practice at the Malaysian court-annexed mediation in Malaysia (Annexure A, paragraph 4 of the Practice Direction No. 4 of 2016 Practice Direction on Mediation). The requirement of recording the parties' settlement in court applies not only to the first form of court-annexed mediation, judge-led mediation (in which judges serve as court mediators) but also to the second type of court-annexed mediation, non-judge-led mediation (where non-judges become mediators). In Malaysia, according to the Practice Direction on Mediation 2016, as mentioned above, the non-judge-led mediation consists of mediators from the Asian International Arbitration Centre (AIAC) (Annexure B of the Practice Direction No. 4 of 2016 Practice Direction on Mediation) and mediators from the Malaysian Mediation Centre (MMC) of the Bar Council (Annexure C of the Practice Direction No. 4 of 2016 Practice Direction on Mediation).

Secondly, the Malaysian court-annexed mediation in the Syariah court (also known as "*Majlis Sulh*") and mediation procedures at the Bar Council's Malaysian mediation are the other two institutions in Malaysia that share similarities with SSCT in terms of the facilitative model of mediation adopted and the same processes conducted during the mediation/conciliation session (from setting the ground rules to having joint meetings and separate meetings) (Safei, 2009).

Last but not least, the Malaysian Mediation Act 2012 has the same provisions regarding joint meetings and separate meetings (Section 11 (1) of the Mediation Act 2012). The mediator has a role in the record of the parties' settlement agreement where he or she is required to authenticate such settlement agreement and provide a copy to the parties (Section 13 (3) of the Mediation Act 2012). A further similarity between SSCT and the Mediation Act 2012 is that the mediator's primary responsibility is to facilitate a mediation between the parties (section 9(1) of the Mediation Act 2012), but the mediator may also propose options for the settlement (section 9(2) of the Mediation Act, 2012).

Nevertheless, there are also a few differences between the practices of SSCT and those in Malaysia, such as court-annexed mediation. Firstly, unlike the SSCT, which has a pre-filling assessment in its pre-trial process, among others, to determine the parameter of its jurisdiction, the Malaysian court-annexed mediation does not have a similar practice. This is because the Malaysian court does not have limitations of jurisdiction in terms of its subject matter, in contrast to limited jurisdiction of SSCT in Singapore and TCC in Malaysia. Secondly, unlike the SSCT, which can conduct mediation/ conciliation either with or without the parties' approval, parties in the Malaysian court-annexed mediation cannot be coerced to mediate. The parties are encouraged to choose either to have a judge-led mediation (where the judges conduct a mediation in court) or a non-judge mediation (where parties can refer to institutions outside the courts such as AIAC or MMC to conduct mediation) (Paragraphs 2.1, 3 and 5.1 of the Practice Direction No. 4 of 2016 Practice Direction on Mediation).

Recommendations and Conclusion

There are problems with the unguided negotiation process between the consumer and the trader (the manufacturer or the supplier) at the pre-trial process at the TCC, which lower the chance of achieving a mutually acceptable settlement between parties. The similarities between the TCC and the SSCT, which makes the SSCT a good model for the TCC to follow, include the speedier resolution at the two institutions and the small nature of claims they handle. Nevertheless, the SSCT has a better system for the TCC to adopt, especially during its pre-trial process, where a pre-filling assessment is conducted and a specific ADR is practised.

As previously stated, the SSCT uses mediation or conciliation in its pre-trial process. Malaysian courts employ mediation in their pre-trial procedure as well. Disputing parties in Malaysian courts can choose between judge-led mediation, in which judges act as their mediators for free, or non-judge-led mediation, in which mediators from institutions other than courts, such as the Asian International Arbitration Centre and the Bar Council's Malaysian Mediation Centre, act as their mediators for a fee. In addition to the mediation as practised in the Malaysian courts, mediation is also practised in the Malaysian Syariah Courts in their "*Majlis Sulh*" and some similar provisions on mediation are covered in the Malaysian Mediation Act 2012.

Acknowledging that there is the absence of specific ADR in the pre-trial process and during trial in the TCC as discussed above, and as such, the parties may not be able to benefit from the said ADR, TCC should seriously consider incorporating ADR into its system. Choices must be made between encouraging parties to utilise ADR and allowing them to choose whether or not to use such ADR. This is the practice in Malaysian court-annexed mediation. Another possibility is to mandate parties to utilise ADR without giving them a choice to skip such ADR steps. They are required to attend the ADR sessions under this option, even though they are free to settle or otherwise. This is what is done at the SSCT.

A specific ADR must be selected, which may help to improve the TCC's present situation of not having a specific ADR, as provided in section 107 of Act 599. A decision must be made between using consensual ADR, such as mediation or non-consensual ADR, such as arbitration. For example, a facilitative ADR such as mediation or conciliation is preferred to a binding ADR such as arbitration, which is considered redundant with the adjudicative role of TCC that would be performed if parties fail to achieve a negotiated solution, as noted by section 107 of the CPA.

It is suggested that section 107 of Act 599 need not be altered since doing so would need extra time and processes before the issue could be brought before Parliament. As permitted by section 122 of Act 599, the Minister may use his authority to introduce to the current TCC Regulations a particular alternative or choices of ADR to be practised by the President of TCC in enabling disputing parties to achieve a mutually acceptable settlement as required by section 107 of Act 599.

It is advised that the claimant's initiation procedure at the TCC remains unchanged, with the claimant filing his or her case at the TCC using Form 1 Statement of Claim (Sub-regulation 5(1)(2), TCC Regulations). Once the TCC receives Form 1 from the claimant, either by filling out a case over the counter or via its online system, an officer-in-charge at the TCC may begin the pre-trial procedure. The officer as mentioned above will determine whether the matter falls within the jurisdiction of the TCC or otherwise by following the practice of the pre-trial process at the SSCT in Singapore. This is similar to the SSCT pre-filling assessment. The TCC needs to adopt the pre-filling assessment to determine whether the claim made is within its jurisdiction or otherwise; hence it will avoid possible future challenges in the ordinary court

for hearing cases that the TCC has no jurisdiction. If the matter is not within the TCC's jurisdiction, the officer will notify the claimant and remove the case from the list of cases to be handled by the TCC. Nonetheless, if the matter falls withinthe jurisdiction of the TCC, the officer will classify it as one of two types, either: (i) a simple case without disputable issues or (ii) a case with disputable issues. Any case that falls under the first category will go to trial without ADR (mediation). The matter will be heard briefly and decided by an award after the hearing (Form 10) (Sub-regulation 23(5), TCC Regulations). In contrast, any case which falls under the second category will proceed to trial. Without the necessity for a full hearing, the President will perform mediation before determining if a mutually acceptable solution is achievable or otherwise between conflicting parties.

The Head of Section for the TCC at each branch of the TCC in all Malaysian states is the most qualified candidate to be the officer-in-charge for the above-suggested pre-trial process. This is because he or she handles administrative matters at the TCC instead of hearing cases like the President. Consequently, he or she may play a role at the TCC in the first phase of proceedings before the President commences hearings. In addition, the proposed pre-trial process would speed the resolution of straightforward cases and give the President more time to address cases with contentious issues. It will guarantee that the spirit of the TCC, which is to provide simple, quick, and affordable procedures, is carried out.

Last but not least, it is proposed that the suggested pre-trial process be tested in a pilot study as part of the future research to be developed from this article. One TCC branch may be selected to begin the pilot study. It is suggested that the TCC branch with the most cases, namely TCC Shah Alam, be chosen to begin with the pilot study. Currently, TCC Shah Alam hears between 20 and 25 cases from Monday to Thursday, as opposed to the previous practice of only hearing cases on Tuesday and Thursday (Safei, 2022). If the pilot project is successful, it may be implemented at more TCC branches throughout Malaysia.

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