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Contents

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DIALOGUE, JUSTICE AND DISPUTE RESOLUTION[1]

Mediation As a Key Pillar of Development Accountability

Dr Orsolya **SZÉKELY**
Head of the World Bank Accountability Mechanism Dispute Resolution Service.

1 Good morning. It is a privilege to be with you in Singapore and to have the honour of delivering this lecture. The Singapore Convention Week and this lecture has become an important moment in the mediation calendar, and I am grateful to be part of it this year.

2 Let me begin with thanks. My gratitude goes to the Singapore Mediation Centre, to Aequitas Law LLP, and to the Singapore Management University for their invitation and hospitality. I also extend thanks to everyone here today – mediators, judges, lawyers, academics, public officials, and students – who bring insight and experience to this conversation.

3 I would like to acknowledge someone many of you know well, my good friend Tat Lim. Tat has been a pioneer of mediation in Singapore and across the region, leading commercial dispute resolution with skill and integrity. Less visibly, he has contributed to the work of the World Bank's Dispute Resolution Service ("DRS") as one of our mediators. His professionalism and generosity have enriched the practice of many of us who work in this field.

4 Being here is significant for another reason. Singapore has placed mediation firmly on the global map. The Singapore Convention on Mediation[2] has raised the visibility of mediated settlements and given them legitimacy across borders. It has encouraged governments, businesses, and institutions to view mediation not as an optional extra but as a credible pathway to resolving disputes.

5 Singapore has shown how institutional vision, legal infrastructure, and professional excellence can move mediation from a niche practice into a central part of the international legal landscape. That achievement has

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1 This is the pre-delivered text of the Singapore Mediation Lecture 2025 given by Dr Orsolya Székely, Head of the World Bank Accountability Mechanism Dispute Resolution Service, on 28 August 2025. The delivered lecture can be seen in full at https://www.youtube.com/watch?v=LNHgw5ffFWk. The post-lecture panel discussion was transcribed by Ms Zhang Yuying (Senior Research Associate, Singapore International Dispute Resolution Academy, Singapore Management University Yong Pung How School of Law) and Ms Stephanie Heng, a LLB student at the Yong Pung How School of Law, Singapore Management University.

2 United Nations Convention on International Settlement Agreement Resulting from Mediation (New York, 2018).

inspired not only the commercial sector but also institutions like my own, working in development and public governance.

6 So, it feels appropriate to share with you the story of the World Bank Accountability Mechanism Dispute Resolution Service: what it does, the principles that guide it, what we have learned, and how our work connects to the wider mediation community – including here in Singapore. Throughout, I will speak about conflict and dispute resolution in practical terms: how we help parties move from impasse to constructive engagement, and why that matters for development outcomes.

I. Personal reflection #1 – moments of conflict

7 Before I turn to institutional matters, I would like to invite a brief reflection.

8 Think back to a moment in your professional life when you were in real conflict with another person. Perhaps it concerned obligations in a contract, or a difficult decision about resources, or a clash of responsibilities within a team. Or perhaps, outside work, it was a quarrel with a close friend or a family member.

9 You may remember the unease of that period – the tight conversations, the fatigue that followed you home, and the uncertainty about how the situation would end. Conflict has weight. It affects how we decide and how we live.

10 Now recall what it felt like when that conflict was resolved. Perhaps through dialogue, perhaps through listening, perhaps through mediation. Words replaced silence. Understanding replaced suspicion. The relationship, however fragile, began to mend, and a path forward reopened.

11 That sense of relief is more than the end of a quarrel. It is the reopening of possibility. It is the recognition that conflict need not entail rupture. Managed well, it can become a turning point.

12 There is also something universal in that experience. Even among professionals who are accustomed to advocacy, most of us recognise the personal costs of prolonged conflict. What releases the tension is not a clever argument alone; it is the sense that one has been heard accurately, that practical constraints have been acknowledged, and that commitments are being made in good faith. When that happens, energy returns to the room. People begin to think again about what they can build, rather than what they must defend.

13 When we hold that same feeling in mind as we consider larger disputes between institutions and communities, the task becomes clearer. Dispute resolution is not about winning a case; it is about restoring the

conditions in which people can work together responsibly. That is what we seek to support in our practice.

14 This transformation – from tension to co-operation, from conflict to resolution – is what the DRS seeks to support at scale, between communities, governments, companies, and institutions involved in development projects.

II. Purpose of mediation in dispute resolution

15 At its essence, mediation is not simply a mechanism for settling disagreements. It is a structured way of engaging with conflict that aims to prevent escalation, build understanding, and restore working relationships in ways that endure.

16 In the commercial sphere, mediation can preserve partnerships that might otherwise dissolve. In family contexts, it can maintain essential ties in the midst of separation. In governance, it can help citizens and public institutions find constructive paths forward when projects bring difficult trade-offs.

17 In the development context, the stakes are particularly high. Projects financed by the World Bank are intended to bring benefits: energy to fuel economies, and roads that connect communities, schools and hospitals that improve lives. Yet these projects can also have unintended consequences on communities. Land may be acquired against the wishes of local farmers; families may be displaced; livelihoods may be disrupted; and cultural and environmental resources may come under pressure.

18 Where such impacts occur, conflict often follows. Communities may feel excluded or unheard. Governments and implementing agencies may run into accusations of mismanagement or corruption. Institutions may be caught between legitimate but competing expectations. Left unresolved, these disputes can harden into mistrust and delay, impeding development goals.

19 Mediation offers an alternative path. It provides a neutral, structured space in which parties who might otherwise confront each other in protest or litigation can meet to talk. It creates conditions in which communities can express their concerns openly, decision-makers can listen to them directly, and options can be explored without prejudice to rights or responsibilities. The aim is practical: to resolve disputes before they escalate into entrenched conflict, and to do so in ways that safeguard people and support credible delivery.

20 Importantly, mediation is not a substitute for rights or a waiver of protections. Communities retain the ability to seek compliance review or judicial remedy where available. Mediation offers a voluntary, time-bound opportunity to address problems directly with those who are in a position to

act. It recognises that in complex projects the fastest path to a safer outcome is often through structured dialogue that clarifies facts, explores options, and permits commitments to be made transparently and monitored credibly.

III. Introducing World Bank Accountability Mechanism Dispute Resolution Service

21 The DRS was established by a decision of the World Bank's Board of Executive Directors in 2020.[3] Until that point the World Bank did not have a dispute resolution arm alongside its long-standing compliance function.

22 For more than three decades the World Bank's Inspection Panel has provided respected oversight, investigating whether the World Bank has followed its policies in the design and implementation of projects. The Inspection Panel remains a vital part of the accountability system. But investigation alone does not always address the immediate needs of people living with project impacts. When families are displaced or livelihoods are at risk, what is often needed is a way to be heard and a route to practical solutions. The DRS exists to create that space.

23 Our mandate is clear. We provide a neutral forum where communities affected by World Bank-financed projects can seek resolution of disputes with public authorities or implementing agencies. We complement the Inspection Panel by offering a different approach – collaborative problem-solving rather than investigative findings – and we operate under defined timelines. A dispute resolution process normally runs for 12 months, with the possibility of a six-month extension if the parties agree. The structure helps sustain momentum and encourages engagement.

24 Participation is voluntary. Communities, governments, and implementing agencies must all consent to enter the process. Once they do, mediators drawn from our roster of experienced professionals facilitate the dialogue, supported by a small team within the DRS. At the conclusion of each process, whether agreement is reached or not, the DRS issues a report to the World Bank's Board of Executive Directors, to senior management, and to the Inspection Panel, setting out the outcome. If agreement is achieved, the report reflects the commitments made by the parties. If agreement is not achieved, the Inspection Panel may proceed with an investigation by the Inspection Panel. In that way, dialogue and compliance work side by side.

25 Neutrality and consent are central. We maintain a roster of mediators with experience in complex, multi-party negotiations and with the cultural and technical competence needed for development settings. Before any process begins, we work with participants to confirm informed

3 The World Bank, *Dispute Resolution Service* <https://accountability.worldbank.org/en/dispute-resolution> (accessed 30 October 2025).

consent, to agree ground rules, and to identify reasonable measures for safe participation. The typical one-year time frame is not arbitrary. It is intended to balance urgency – so that issues are not allowed to drift – with the depth of preparation that constructive dispute resolution requires.

IV. What we have done so far –portfolio of cases

26 Although the DRS is still young, we have already worked across a diverse set of geographies and sectors.

27 In Nepal, our very first case to reach conclusion concerned an electricity transmission line project. Through our process the parties negotiated a settlement. That outcome became the DRS's first concluded case and provided early proof that dialogue could deliver results.

28 In Cameroon, we supported dispute resolution in a hydroelectric project. It was the first time the DRS conducted a process in co-operation with other independent accountability mechanisms, strengthening coordination across institutions.

29 In Vietnam, communities affected by the Coastal Cities project opted to pursue dispute resolution. Mediation in that matter was led by a Singaporean mediator well known to many here today, Mr Tat Lim, whose professional insight helped the parties engage with seriousness. In Pakistan, parties involved in the Khyber Pass Economic Corridor Project have chosen to engage in dispute resolution. That process is ongoing at the time of this lecture.

30 And in Uganda, which I will describe in more detail shortly, we undertook one of our most significant cases – a dispute that helped define our role and approach. Uganda was the first case to begin under the DRS.

31 These cases illustrate both the variety and common threads that run through our work: vulnerable communities, public authorities under pressure, and the need for trust-building to enable practical solutions.

32 We do not measure success only by the presence of a signed agreement. We look for credible processes that help parties understand one another's concerns, reduce risk, and identify practical steps that improve how projects are delivered.

V. Case study: Uganda

33 I want now to describe the Uganda case in greater detail because it captures many of the challenges we face and the methods we use.

34 I want to play you a short clip reflecting the feelings of the participants, including our lead mediator on the case, as we approached this case.

[video plays]

Narrator: In June 2021, the World Bank Inspection Panel received a request for inspection from a local civil society organisation in Uganda. The request was made on behalf of community members living near the Lubigi Channel in Kampala. The community members allegedly faced a forced eviction attempt and were rushed through a threatening and coercive resettlement process during preparations for an infrastructure improvement project financed by the World Bank. The complaint was against the Kampala Capital City Authority, or KCCA, the agency responsible for implementing the project. Later that year, after the World Bank's board approved the Inspection Panel's recommendation to investigate, the parties were offered the option of dispute resolution, and they both agreed to it. This broke new ground, marking the beginning of the World Bank Accountability Mechanism's first ever dispute resolution case.

Mediator Lord Jack Mcconnell: From the beginning, it was absolutely clear that we had a big job to do.

Facilitator Grace Tukaheebwa: You come in at a time when people's moods are already on fire.

Community Member Hamisi Mbabari: KCCA had vowed not to compensate any one of us. [translation]

Human Settlement Specialist Pascal Mugisha: We started at zero.

Narrator: After 18 months of mediation, a confidential agreement was signed by both parties addressing many concerns, including involuntary resettlement and acquisition processes. The parties then requested that the DRS team stay on to monitor the implementation of the agreement.

Facilitator Grace Tukaheebwa: DRS basically provided an environment where these two parties can listen to each other and talk about their issues freely.

Executive Director of KCCA, Sharifah Buzeki: The experience we have gotten in this dispute resolution process is a good one. There is a tendency of entities to look at it and view it as a process to critique these entities. I think from my experience, it was not the case. It was an issue of amicably settling the issues so that all sides are comfortable where they are and also reminding us to do what we are obliged to do.

Human Settlement Specialist Pascal Mugisha: Maybe if the DRS had not come, some of these cases may have ended up in litigation.

Community Member Peter Kazibwe: In the event you go to court, one side will win, and the other side will lose, and you will remain enemies forever. But today, when you go to the KCCA, they are happy to see you. They will ask you, 'Where can we help?', which was never the case before. [translation]

Human Settlement Specialist Pascal Mugisha: The communities became part of government.

[video ends]

35 Over months of facilitated meetings, parties mapped issues, exchanged perspectives, and explored options. Practical steps emerged: processes for assessing and documenting losses; approaches to compensation and support; and ways of sequencing works to reduce harm. The conversations were demanding. They asked everyone involved to listen to experiences that were sometimes painful and to recognise constraints that were sometimes immovable.

36 A turning point arrived when officials and community representatives began discussing impacts face to face, not as abstractions but as lived experience. In that setting the logic for joint problem-solving became clearer. A senior minister later reflected that the process helped him "see problems first through the eyes of the local community," and that without community support, plans could not move forward credibly.

37 That insight is not rhetorical. It matters because infrastructure succeeds when people who live with it can recognise themselves in the design and in the way impacts are managed. Agreement was reached on a set of measures, including arrangements for compensation and for continuing engagement. The process did not erase every difficulty, nor could it. But it rebuilt channels of communication and provided a framework for addressing issues constructively.

38 For the DRS, the case demonstrated in practice that early, structured dialogue can transform a pattern of confrontation into a pattern of problem-solving. It also reminded us that dispute resolution in development settings is not an abstraction. It is a concrete, disciplined method for managing conflict so that projects can proceed more credibly and so that people affected by change can have a voice in shaping solutions.

VI. Personal reflection #2 – when dialogue surprises us

39 This case also reminds me of a more general truth about mediation: dialogue often surprises us.

40 Many practitioners have sat down at a table believing that the parties are too far apart, that their history is too heavy, that mistrust is too deep. And yet, when people begin to be heard with care, something shifts. A point of shared interest emerges. A practical option that seemed off the table becomes imaginable. The shift may be modest at first – a change in tone or a willingness to test an idea – but it creates momentum.

41 I have seen that dynamic in commercial matters and in public projects alike. In Uganda the shift happened when those implementing works described the constraints they faced and when residents described the consequences they were living with. Neither perspective erased the other. Instead, the combination created the space for joint problem-solving. That is where dispute resolution adds value: it does not demand agreement

about everything; it looks for enough recognition to permit responsible compromise.

42 One small example from my own experience, in a different context, illustrates this point. In a meeting that initially seemed destined to harden positions, a short caucus allowed each side to articulate a non-negotiable concern and a non-essential preference. When we reconvened, it became evident that the non-negotiables did not in fact collide, and that each side's preferences could be accommodated with modest adjustments. The solution was not dramatic; it was incremental. But it unlocked a stalemate. That is often how disputes shift, not with a single dramatic concession but through a sequence of smaller, well-designed steps that build confidence.

VII. Core principles of the Dispute Resolution Service

43 From the outset our work has been anchored in four principles: trust, independence, transparency, and accountability. Each has practical meaning.

44 **Trust.** Parties must believe that the process is fair and that participation will be respected. Building trust requires time, clarity about expectations, and attention to safety and security. It also requires cultural competence and humility. Many communities have never been part of a mechanism like this; many officials have not previously engaged in facilitated dialogue with residents. We invest in preparation so that people know what mediation is – and what it is not.

45 **Independence.** Our mediators are neutral. Participation is voluntary and informed. Independence provides the mediators with the confidence to enter the room and to speak candidly. It also protects the process from being perceived as advocacy for any side.

46 **Transparency.** Mediation encourages direct engagement, supported by advisers. It allows people to explain interests rather than only positions, to ask questions, and to test options. Transparency does not mean publicity; it means clarity among the participants about what is on the table and why, with appropriate confidentiality safeguards.

47 **Accountability.** The DRS sits within the World Bank's broader accountability architecture. Our role is to provide an avenue for constructive dispute resolution while the Inspection Panel provides compliance oversight. Accountability also has a relational dimension: ensuring the process meets the needs of participants, that commitments are recorded accurately, and that the dignity and safety of those involved are respected throughout.

48 These ideas are not abstract. Trust is built, for example, when participants see that translation is available, that meetings are scheduled at times and in places that allow participation, and that sensitive information

is managed carefully. Independence is demonstrated when mediators are selected for their neutrality and when the scope of the process is agreed openly. Transparency looks like agendas that are circulated in advance, notes that truly capture what was said and what was agreed, and a common understanding of how follow-up will occur. Accountability looks like clear documentation of commitments and, where appropriate, mechanisms identified by the parties to track implementation.

VIII. Why it matters beyond each case

49 Why does this work matter beyond the settlement of a particular dispute? Because each process models practical ways to manage conflict that can be replicated elsewhere.

50 In many places where development projects occur, access to courts can be limited or slow, and public consultations can be uneven. Mediation does not replace judicial process, nor should it. But it offers a complementary path that is collaborative, educative, and preventive. It empowers communities who might otherwise struggle to have their voices heard. It invites governments and agencies to view grievances not as threats but as opportunities to learn, to adjust, and to strengthen project outcomes.

51 The effects can endure. People who have been through a credible dispute resolution process often carry forward habits of consultation and constructive engagement. Institutions that have experienced facilitation often identify risks earlier, design mitigation more carefully, and communicate more openly. In that sense a well-run process contributes not just to the resolution of a dispute but to the wider culture of conflict management around development. Prevention is part of the story as well. When a dispute resolution process highlights a recurring issue – *eg*, how information on land acquisition is provided – that insight can be used to strengthen guidance and training across projects. Over time the feedback loop can reduce the frequency and severity of disputes. It can also demonstrate to communities that institutions are responsive, which supports confidence that engaging in dialogue is worth the effort.

52 In addition, credible processes can reduce the likelihood of escalation beyond the project context. When people experience a fair hearing and see practical responses, grievances are less likely to migrate into broader political disputes or to spill into courts as a first resort. That does not diminish the role of the Judiciary. Rather, it supports it by reserving adjudication for issues that truly require judicial determination, while enabling many operational problems to be resolved promptly and with the participation of those most directly affected.

IX. Singapore's role in global mediation

53 Singapore has played a distinctive role in advancing mediation globally. The Singapore Convention on Mediation has provided international recognition for mediated settlement agreements in cross-border commercial disputes, improving prospects for enforcement and raising confidence in the use of mediation. Its adoption has encouraged investment in professional standards and institutional frameworks.

54 Although the Convention does not directly apply to the work of independent accountability mechanisms, the example it sets is instructive. It shows how thoughtful legal design, institutional commitment, and professional excellence can mainstream mediation. The same ingredients help our field as well. They encourage parties to see dialogue as a credible path, to approach it with discipline, and to commit to outcomes with clarity.

55 Singapore's professional culture also models disciplined preparation and respect for process. The emphasis on mediator training, ethical standards, and institutional support – including the work of the Singapore Mediation Centre and the universities – has helped build a community of practice that others can learn from. For a mechanism like the DRS, that example is valuable because it shows how quality and legitimacy reinforce each other.

56 Singapore has also fostered a culture of practical problem-solving, rigorous training, and international partnership. Those features resonate strongly with our experience in the DRS and with the aspirations of many public institutions around the world.

X. Shared learning and future directions

57 For the World Bank, dispute resolution is not only about resolving cases; it is also about learning and prevention.

58 Each complaint highlights patterns and risks: how land is acquired, how resettlement support is designed, how environmental and social impacts are assessed, and how engagement with communities is conducted. Lessons from dispute resolution processes can inform policy refinement, capacity building, and project design. They can also help governments and implementing agencies identify issues earlier and address them more systematically.

59 We share insights with other institutions through the Independent Accountability Mechanisms Network, comprising 23 mechanisms linked to development finance institutions around the world. Coordination across mechanisms supports consistency of approach where multiple financiers are involved. It also strengthens the credibility of the field by encouraging rigorous practice and exchange.

60 Looking forward, the future of mediation in development will be interdisciplinary. Many of the skills refined through commercial practice – managing multi-party negotiations, structuring options and working with experts – are directly relevant. Conversely, experience from community-level processes can enrich commercial mediation with tools for participation and inclusion. There is room for more joint training, shared research, and dialogue across sectors. Learning also involves data. Without reducing human concerns to metrics, it is useful to track the kinds of issues that arise, the points in the project cycle at which they surface, and the approaches that appear to help. Sharing that information responsibly – with attention to confidentiality – can inform policy updates and help practitioners design engagement strategies that address common challenges.

61 Coordination with other accountability mechanisms is likely to deepen, particularly when projects are co-financed. That co-operation can include joint outreach to explain options to communities, shared rosters of mediators where appropriate, and exchange on methods that protect safety and integrity. The entire field benefits when high standards are visible and when institutions learn from one another's experience.

62 Finally, we aspire to work earlier in the project cycle where appropriate, supporting parties to address issues upstream before disputes harden. That does not replace formal processes; rather, it complements them by promoting a culture of constructive conflict management as part of responsible project delivery.

XI. Personal reflection #3 – what conflict resolution means

63 Let me offer a final brief reflection.

64 At the close of a process a community representative once said that, for the first time in years, he felt his neighbours' concerns had been heard with respect. The comment was simple, and it stayed with me. Respect does not substitute for remedial action, and dialogue does not remove the need for legal protections. But when managed carefully, dispute resolution can help people see that they are being taken seriously and that their experience matters.

65 There is a temptation, when discussing mechanisms and mandates, to speak only in generalities. Yet the work is always about particular people in particular places. The discipline of dispute resolution is to hold both realities at once: to design fair processes that can be applied consistently, and to attend closely to the lived experience of those affected. When we do both, the process supports not only solutions in the case at hand but also confidence in the institutions responsible for delivering public goods.

66 That recognition, paired with concrete steps, is often what enables parties to move forward. It is also what encourages institutions to learn,

to adapt, and to carry those lessons into future work. In that sense dispute resolution is not an add-on to development; it is part of doing development well.

XII. Closing remarks

67 I began by asking you to recall a moment of conflict in your own life. I would like to end by returning to that thought in the context of development. Development takes place in the real world of competing interests and scarce resources. Conflict is inevitable. What matters is how we respond to it. If disputes are left to fester, projects progress more slowly or halt altogether and trust erodes. If disputes are addressed in good faith through dialogue, with clear roles for oversight and accountability, co-operation becomes possible and outcomes improve.

68 There is a proverb from this region that says, "Peace and harmony bring fortune." In the context of dispute resolution, its meaning is practical. Constructive handling of conflict creates the conditions in which projects can proceed credibly and communities can share in the benefits. It is not a slogan; it is a reminder that responsible conflict management is integral to sound governance.

69 That is why the work of mediation – in commerce, in communities, and in public institutions – matters. It is also why collaboration between fields is so valuable. As mediators, lawyers, judges, and policymakers, you shape how conflict is managed every day. On behalf of the DRS, thank you for the work you do, and thank you for the opportunity to share our experience. My thanks to our hosts, to colleagues across the accountability community, and to practitioners here in Singapore.

70 I look forward to discussing this further with you all.

PANEL DISCUSSION[4]

Moderator

LIM Tat
Managing Partner, Aequitas Law LLP.

Panellists

Dr Orsolya **SZÉKELY**
Head of the World Bank Accountability Mechanism Dispute Resolution Service.

Philip **JEYARETNAM**
Judge of the High Court, Supreme Court of Singapore.

Dorcas **QUEK ANDERSON**
Associate Professor, Yong Pung How School of Law, Singapore Management University.

Kevin **LEE**
Barrister, Twenty Essex.

Lim Tat ("LT"): Welcome everyone to the Singapore Mediation Lecture. This year, we want to involve everyone here and how we are going to do this is principally we are going to unpack what Dr Orsolya has talked about in her speech. There are four key themes that we want to unpack. We will do a Mentimeter poll. For every statement that is given, you will be asked whether you agree or disagree with the statement and then the panel members will respond to the answers from the audience and the discussion will evolve from there.

This would be an appropriate time for me to thank members of the panel. I have a history with each panel member which I will not go into detail. Suffice to say, the longest relationship I have had with any member of the panel is probably Justice Philip Jeyaretnam ("Jeyaretnam J"). I think more than 30 years ago, we were young officers trudging in the jungles of Tekong. The next person I have known the longest is Dorcas Quek Anderson ("DQ"). When the Primary Dispute Resolution Centre was first started in the Subordinate Courts, as it was then known, we were some of the pioneers. She was certainly a trailblazer who developed court-annexed mediations and the evolution of the mediation space where it is now so entrenched in the courts, both in the State Courts as well as in the frame in which litigation lawyers and arbitration lawyers view mediation as a way to resolve disputes. Kevin Lee ("KL") and I were practising together for a short

4 This panel discussion followed the 2025 Singapore Mediation Lecture. This is an abridged transcript of the dialogue between the panellists.

bit before a higher calling called him away to other cases. A good friend but always spending a lot more time than I think helps him in some other parts of the world. Of course, my newest friend, Dr Orsolya Székely ("OS") who, one could say, is my boss at the Dispute Resolution Service ("DRS") in the World Bank. These are my panel members, and I am very happy that they have agreed to join me.

With that, we will explore the four themes, starting with the rule of law and then going on to discussing themes relating to dialogue and accountability, and finally dispute resolution. With that, let us put up the first question on the Mentimeter for your reaction. The first question is: "Far from advancing the rule of law, mediation can be a weapon for the powerful to erode it."

There seems to be more people who voted "no" than "yes". Any comments, DQ?

DQ: This seems to suggest that some think that mediation can be a weapon for the powerful to erode the rule of law. This is perhaps reflective of the current climate internationally; some people can be quite cynical about consensual processes because without certain checks, maybe they think that mediation can sometimes be wielded by the more powerful to get an outcome that is more advantageous to the powerful compared to the weaker.

LT: Just for the benefit of the people polling, the questions are designed to force you into a "yes" or "no". Obviously, the answer, if one wants to have unpack the question, is not a "yes" or "no". One would have to spend a lot of time trying to explain why it should be a qualified "yes" or maybe a qualified "no". However, this is a provocative way in which we can then lead to the panel discussion. That does lead me to a question for you, Judge. This question refers back to a 2023 keynote address that you made at the launch of the Appropriate Dispute Resolution – The Singapore Way. You remarked, and I quote "mediation in and of itself has only an indirect relationship to justice because it focuses not purely on the rights of the parties, but also on their interests, regardless of their strict legal rights".[5] Nonetheless, you also warned in that speech that if mediation is unmoored from the legal system, it may advantage the strong over the weak. When we look at this poll where the majority of the audience seems to say no to the proposition, and in light of your earlier caution and sentiment shared, how do you see the courts, institutions and mediators working together to ensure that mediation complements rather than compromises the rule of law, particularly in situations where parties are not on equal footing?

5 Justice Philip Jeyaretnam, Supreme Court of Singapore, keynote address at the Appropriate Dispute Resolution – The Singapore Way launch event at para 5 <https://www.judiciary.gov.sg/news-and-resources/news/news-details/justice-philip-jeyaretnam-keynote-address-delivered-at-the-appropriate-dispute-resolution-the-singapore-way-launch-event> (accessed 25 October 2025).

Jeyaretnam J: Thank you, Tat. Let me start by perhaps offering an explanation for the resounding no to this question. In Singapore, mediation takes place against the backdrop of an efficient, effective and relatively affordable legal system. Mediation in Singapore is certainly not unmoored from the legal system, which was what I was talking about in that lecture. Once you situate mediation within the overall system, it is a very powerful tool, not just for achieving a good result relatively quickly, but also for achieving outcomes that you could not achieve in litigation by bringing forward interests of parties into the mix and indeed achieving more nuanced outcomes as opposed to litigation, in which typically one wins and one loses. The point that I was making in that lecture was really about situations where there is limited access to justice. It is either going to take too long to get a result in court, or it is going to be too expensive. If you are a claimant and you know that you will only be able to get a result in court, say a decade later, if at all, then your first priority will be to just get something, anything at all, to settle at a price which is far removed from what you would actually be entitled to under the law. That was the concern that I was addressing. I should just say one more thing which responds to the wonderful lecture we have just heard. I think what the DRS does and what the World Bank does is to even go beyond what we have just been talking about. When the World Bank funds a project, it is as a condition of the loan, as I understand it, putting in place this mechanism. It is creating an opportunity for compensation which would not exist otherwise. There we see mediation as part of something very positive. This positive outcome would not happen without mediation.

LT: Thank you, panel members. Any thoughts on what Jeyaretnam J has just mentioned?

OS: Yes, thank you so much for bringing in the World Bank context, because I would like to answer this question the same way. I do not see mediation as a weapon for the powerful. This was the perception before the DRS existed: How can we overcome the power imbalances that arise between a powerful government and community members who may not be well informed of their rights and what they are otherwise entitled to under judicial processes or World Bank standards? We had to make sure that the process was designed to overcome this power imbalance, and professional training was provided for community members and government officials. It is also very important to consider how power is perceived. It was interesting to hear executive agency members speak about their concern that the community is more powerful. These members mentioned how there are hundreds of them, and they are afraid to speak to them, so of course they bring the police with them because the community is viewed as having much power. We need to understand power in a neutral manner before we address it.

LT: That brings to mind the definition of power, because in some of the disputes that we see in the World Bank, moving away from disputes between governments and communities, there can be disputes between communities and funded companies. You might find that the companies are unable to get on an even keel in the mediation process because the communities are

assisted by civil society groups. Sometimes non-governmental organisations and civil society groups do offer a very powerful element of advocacy to the process. I wonder if, DQ, since you have done some work in that space training mediators from the Asian Development Bank, what do you see might be some of the trigger points leading to this imbalance of power?

DQ: I thought I would address power balances as well as something that Jeyaretnam J alluded to about how mediation should also advance a substantive just outcome. It is useful to see that justice and rule of law can mean different things to different people. Having formally worked in the Judiciary, I wrestled a lot with the relationship between mediation, justice and the rule of law. I would first like to affirm how the Judiciary sees the role of mediation in advancing justice. In Singapore, it is quite clear that the Judiciary sees mediation as one of the options alongside litigation to advance access to justice. It is not a situation where you do not have an option to go to court quickly and therefore mediation offers you a more timely option.

I think the thornier question is how we understand the idea of a just outcome in the context of mediation. There are two elements when we talk about the advancement of the rule of law or a just outcome. One is the actual substance of the agreed outcome: whether it veers a lot from your legal entitlement, whether it be international law, or whether it is according to the law of the State where you are conducting your mediation. The other is the impact of power imbalances. We assume in mediation that people have autonomy to ask for what they need. When there is no full autonomy, in a sense that one feels intimidated or a party is more powerful, that is where power imbalances can affect the substantive outcome. When we are talking about justice as a mediation outcome, you cannot simply use the rule of law as a yardstick. You are not comparing apples to apples when juxtaposing both adjudication and mediation in terms of their substantive outcomes. Yesterday, Andre Maniam J gave an apt story in the Singapore International Dispute Resolution Academy (SIDRA) forum about this. He remembers representing a client being sued by his friend. From the legal standpoint, it looked like there would be no resolution because of the amount being claimed. When they went for mediation, it was surprising that they could resolve their dispute as the outcome addressed the friend's interest: acknowledgment of the wrong done. There was an apology together with nominal payment. That is an apt example of justice within mediation. Some people have written about "justice from below" in a mediation. You are not talking about legal entitlements but about real concerns. Sometimes your real concerns might correspond with your legal entitlement, and sometimes they might not because you could be more concerned about acknowledgment rather than the money.

Regarding managing power imbalances, mediators could swing towards two extremes. One extreme is where we leave it to the parties to pursue whatever they want. Based on many mediation codes of ethics, we are actually bound as mediators to exercise a gatekeeping role in preventing

illegal or unconscionable outcomes.[6] This means that mediators cannot be totally "hands off" in terms of the substantive outcome. If not, the substantive outcome may clearly infringe certain norms, not necessarily legal norms but perhaps general norms or international norms. My view is that mediators have a role in preventing this, especially when there is no informed consent, that is, the parties are not aware of their legal rights before they agree to a certain outcome. There is the concept of mediating or negotiating in the "shadow of the law".[7] The reality is that a lot of the mediations, at least those that are convened when there is a pending case in court, are conducted in the shadow of the law because you need legal advice on what you would get if you go to court. The law cannot be totally ignored, especially when the mediator senses that there is no informed consent. If you have not been advised on your legal rights – say you could get 50% in trial – and then on that premise, you agree to 20%, that is an issue. I think that mediators must talk more about how to manage such power imbalances.

LT: It is important for all of us to appreciate that in the mediation, one looks at the case and we understand, of course, that if one wants to launch into an evaluative form of mediation, you examine the merits of parties' respective positions, usually from the perspective of their respective legal case theories. However, more often than not now, as I explain to the lawyers, that perhaps today is a negotiation based strictly on game theory. When you launch into a discussion on game theory, it has absolutely nothing to do with the merits of the case. It has to do with the psychology of how parties are prepared to land on a number that they can live with. Once they get to that number and they can live at that number, they settle and move on. Nobody ever revisits the legal merits of the case. Something I think in that piece segues to those thoughts that both of you have mentioned.

KL: I thought I would share an interesting reflection on that. If we switch our hats to consider sovereign litigation, I think in some of the sovereign litigation matters that I have been in, it is the litigation system that has power imbalances that may not otherwise be visible in the usual private context. That makes mediation much more suitable. Just to give you an example, one is the repeat player problem. When private parties are in dispute, you often have different parties for different disputes. But when you are faced with sovereign litigation, what we do not often see in this country, because there is not much of it, is that in bigger jurisdictions like the US or UK, each sovereign can be facing upwards of 20 or 30 pieces of litigation. What that means is that you could have very good merits as a sovereign in a case, but because of discovery proceedings that are mandatory in litigation, you end up suffering the pain of litigation of potentially compromising issues

6 See, *eg*, Singapore International Mediation Institute, SIMI Code of Professional Conduct for SIMI Mediators (Version 2.0, 10 November 2023) at para 6.1 <https://www.simi.org.sg/What-We-Offer/Mediators/Code-of-Professional-Conduct> (accessed 24 October 2025).

7 Rober H Mnookin & Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce" (1979) 88(5) *Yale Law Journal* 950.

of national security that you otherwise would not want to happen. In those instances, I often advise or try to get parties to say: "Hey, can we go to mediation instead?" Oddly, in that context, we do not want a facilitative mediation. We want an evaluative mediation, just without the pressures of game tactics and game theory, like you mentioned, that we otherwise have to suffer in the mandatory discovery process of litigation across multiple fronts. I think that is an interesting reflection that makes you switch hats and think about how traditionalist principles of litigation actually end up causing a power imbalance in favour of the weaker party in litigation (on the merits) that could otherwise lend itself towards a better (dispute resolution) process through mediation.

LT: Thanks for that. We will go on to the second Mentimeter question: "Confidentiality within mediation undermines the mediator's accountability to the disputants and the public. Do you agree?"

So far, "no" is the more popular answer, interesting. As the answers come in, again I look at my panel members and say that this is very unrepresentative of the voting we had internally. Any thoughts from anyone on why you think it is going this direction?

KL: It is interesting, because the key takeaway from the last two slides for me is that actually, as a system in Singapore, we have developed a lot of public trust for mediation.

LT: In our internal voting, we had to discuss what the keywords in the statement were, and some of us focused on the words "accountability to the public", which triggered us to react and respond in a certain way. Perhaps I can pose a question to you, KL, and this question relates to the question of confidentiality. Tapping on your experience in investor-state dispute settlements where questions of legitimacy, transparency, public interest are especially sharp. As you explain, how do you view the tension between confidentiality, which is of course, as we all agree, a cornerstone of mediation, and the need for accountability in the processes involving public entities or state actors?

KL: To me, I feel like I would agree with this if we kept the thesis statement to private parties. However, here there is the element of the "public", and I feel the assessment changes when one starts to consider matters of public interest. There are two sort of tensions in my mind that I think require some qualified consideration of the thesis. The first is the whole exclusionary process of mediation. It is not just confidential, it is private. If I could give you an example, and we were just talking about this before the break about a documentary called "The Tribunal". It was about a Canadian mining company and its investor-state arbitration against Ecuador. Part of the issue there, and the documentary focuses on this, is the inadequacies

of arbitration.[8] You have the Canadian mining company that was granted licences to mine in Ecuador and as a result of executing its mining licence legally, had displaced domestic communities outside of the area which was being mined, and had caused immense environmental harm in those areas as well. What happens is that the State then terminates the licence in order to eradicate that sort of harm and to try and move communities back in, only to be met with a claimant mining company launching an investment treaty arbitration against Ecuador and winning.

Theoretically, there is a legal right to mine and at the same time it had been unlawfully terminated prematurely. The dissatisfaction is that at the arbitration level you can account for the views of both disputing parties, but there are very limited areas in which victims can appear in the arbitration process. These days there is an *amicus* process, but it requires usually the consent of both disputing parties as well. You have a dissatisfactory outcome where the award grants money to the company that was exercising its mining licence, but to a great detriment to the public. That reflects the fallback value that you credit (to the investors) in the result of the award, but nothing is going to the victims. That is one context in which I think mediation suffers from some deficiencies of accountability as well. We perhaps may need to think about more flexible ways to involve victims such as victim impact statements and the ability for people to participate in proceedings to contribute to the ultimate justice of the issue at hand.

Now, in the International Court of Justice, there is something called the Monetary Gold Principle, which is, loosely speaking – if the subject matter rightfully affects the interests of an indispensable third party, the court cannot exercise jurisdiction over the issue without the third party's consent. Some of those justice considerations, I feel, do lend weight to considering how we can make mediation more flexible. The second point is publicity relating to outcomes. One of the key issues is if, for example, in one of the sovereign mediations that I did, maritime boundary delimitation grossly affects multiple States within the area. If you end up having a mediated settlement that is not public, there is some thinking there that consideration should be given to the public needing to know. That is why many times now in sovereign litigation where we do have a settlement, we think very hard about making the settlement public because we want there to be a message that nothing under the table was being done. This is all in aid of public justice. These are my two reflections.

OS: When we were building the DRS, this was one of the major critiques from the public and civil society organisations ("CSOs"). If you do have confidential agreements, how do we make sure that the agreement is accountable and that the bank and borrower is accountable for whatever

8 Columbia Center on Sustainable Investment, "The Tribunal - A Film by Malcolm Rogge in Partnership with CCSI" <https://ccsi.columbia.edu/thetribunal> (accessed 24 October 2025).

harm they were doing? I think it is a balance to ensure you do have processes that make sure that whatever happens is accountable. For example, in our case, we had to build in policies that in my role, I would be overseeing agreements and making sure that they are not illegal, that they meet the bank standards and that they are in line with whatever the bank would otherwise aspire to achieve, in terms of its commitments to the standards. At the same time, it is about making something public, even if the agreement is confidential. We had to develop my report of the matter to the Board, which as a public document, does include enough information of what happened but not too much information, to protect confidentiality. Thus, it is about balance. I look at it as an opportunity to learn, because if we do make some elements public in terms of what happened, especially in the public sector, that is an opportunity to learn for other countries and governments. I think in some ways it is a challenge. I do not think anyone wants to hide anything, but it is also extremely important that the safe space is protected and that confidentiality is protected for the mediation to take place.

LT: I want to press the panel members to maybe answer a slightly nuanced question than the one we posed. Are mediators, in your view, accountable to the public? And I will start with KL, and then we will work our way across the panel.

KL: This is such a tricky question, in so far as there might be public interest issues, I feel like innately the answer is "yes". To do complete justice, you inevitably have to take into account views of the public if they are being affected. This is especially if you do not involve third parties that may otherwise be affected. The dispute between, shall we say, the applicant and respondent is intractable to begin with. In fact, we have seen this in some of the work we have done together where you have, let us say, upwards of four parties and only two of them want to come to the mediating table. What then do you do with the remainder? If the liability is joint or several, it causes all sorts of complications that way as well. To me, you have to take into account the interests of third parties if they are relevant.

LT: In private disputes where clearly there are only a limited number of parties, say a two-party dispute, would a mediator be accountable to the wider audience of the public, if the public should even be considered as an audience to the mediation?

KL: I think no with the asterisk, which is that I do not think, for example, you can try and mediate away criminal behaviour. I think there is a big asterisk there.

LT: That is a great answer, DQ?

DQ: I have two points regarding whether the mediator is accountable to the public. First, I take the view that if the mediator is operating under the auspices of an institution – be it a mediation centre or within the context of the courts – there is accountability in the sense that the institution would

want to maintain public confidence. The reality is that public confidence, even though it is high, can in one moment decline just by a bad experience within mediation. I think mediation providers have accountability to maintain that confidence in the process and the public and anywhere that it has impact. Like OS pointed out, accountability affects whether people may consider mediation in the future and are confident about the desired outcome. As OS and KL pointed out, there is a tension between accountability and confidentiality. There is some information that if published might directly pierce confidentiality, but there are some exceptions where we can let the public know what is going on. The attraction to mediation is precisely its confidentiality. Once there are too many exceptions to confidentiality, you undermine its attraction. Nancy Welsh has written a lot about procedural justice, fairness and accountability. She argues that for institutions, aggregated information can be reported.[9] Aggregated data does not reveal specific details of each case and will not necessarily breach confidentiality. Even though things are done well in mediation, people tend to be suspicious if everything is confidential, but if you put aggregated data out there to provide public assurance, it can make a great difference.

Another point is that there is some element of public accountability. There is an Ethics Committee in International Mediation Institute ("IMI") which LT and I are part of, and we also have Ivana Nincic Osterle, who is the Executive Director of IMI, here. We had a lot of conversations within the committee on all the principles that should govern mediation. I just want to highlight one aspect that is quite unique in the draft code, which is now open for public consultation: the principle of professional integrity. It says that professional integrity requires a mediator to act within the confines of the mediator's role and congruent with the mediation process. It highlighted four components under professional integrity: mediator decision-making and independence in the exercise of professional discretion; separation of professional roles and services; consideration of appropriateness of a case for mediation; and more importantly, *the prevention of process abuse or substantial defects in the process*.[10] Some of these defects have been defined, like the use of conduct that exhibits bad faith or is inconsistent with the purpose of mediation, undue pressure, exploitation, duress, or if it seems the agreement will *severely jeopardise the standing of public trust in mediation*.[11] Confidentiality within mediation may seem antithetical to the principle of

9 Nancy A Welsh, "Bringing Transparency and Accountability (with a Dash of Competition to Court-Connected Dispute Resolution" (2020) 88(6) *Fordham Law Review* 2449; Nancy A Welsh, "But Is It Good: The Need to Measure, Assess, and Report on Court-Connected ADR" (2021) 22 *Cardozo Journal of Conflict Resolution* 427.

10 International Mediation Institute, "Introducing the Board Sub-Committee on the IMI Draft Code of Conduct: Advancing Global Standards for Mediators' Ethics" (28 August 2025) <https://imimediation.org/2025/08/28/introducing-the-board-sub-committee-on-the-imi-draft-code-of-conduct-advancing-global-standards-for-mediators-ethics/> (accessed 25 October 2025), IMI Draft Code of Conduct at para 8.5.2.

11 International Mediation Institute, "Introducing the Board Sub-Committee on the IMI Draft Code of Conduct: Advancing Global Standards for Mediators' Ethics" (28 August 2025) <https://imimediation.org/2025/08/28/introducing-the-board-sub-committee-

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open justice in adjudication. The reality is when mediation is confidential, we as mediators can do many things wrongly that endanger the standing of public trust in mediation. If no one tells us, we will continue to do it. It is just natural human nature. It is important therefore that there is some kind of feedback mechanism, in the form of party's feedback, or at least institutional oversight. I personally believe accountability is very important to the public.

LT: Thank you. Jeyaretnam J and then OS.

Jeyaretnam J: My short answer is of course that confidentiality is contrary to accountability. It is precisely because of confidentiality that many parties will choose mediation because the party that is perhaps the defendant, is seeking to avoid public scrutiny. It is an incentive to settle quietly in mediation, so of course these two things are in tension. You cannot just throw out confidentiality because then mediation will become substantially less popular and would not have that incentive of avoiding the public glare. I thought it might be worth just mentioning one other situation which has not been highlighted and illustrated. The case of *Federal Republic of Nigeria v Process & Industrial Developments Ltd*,[12] which is where an arbitration award was obtained against the Nigerian Government in circumstances where there was corruption, including corruption of the Government's defence team. You had this flow of information going from the defence team to the claimant's team and you had an arbitration award which was divorced from the real facts of the case. It was set aside in the London Commercial Court. It was only in court that you had the scrutiny that enabled something like that to be caught and dealt with. A similar issue no doubt can arise in mediation, where the mediator is, in effect, being made use of. That is where one really has to think about what the mediator's duties are, not just to the immediate parties but also ethical duties regarding wider cause of justice and indeed the public.

LT: Thank you. OS?

OS: I would like to mention maybe two things. I would like to mention the opposite. Confidentiality is an element that is preventing you probably also from being accountable. What if there are accusations out there against the mediator that you have done something this or that way, which is not true, but you cannot defend it, without compromising the confidentiality of the process. I think that is another layer of challenge that many mediators struggle with. Another difficulty is how one would present the results or the outcomes, or the good lessons learnt from the process. However, I noticed in the context of the World Bank and the public sector, they often want this public knowledge out there, not only because of accountability of the

on-the-imi-draft-code-of-conduct-advancing-global-standards-for-mediators-ethics/> (accessed 25 October 2025), IMI Draft Code of Conduct at para 8.

12 [2023] EWHC 2638 (Comm).

process itself, but because they are concerned with how the agreement is going to be implemented. If the outcomes of the agreements are not known, how can the public, or how can CSOs and other outside actors make sure that it is actually going to be implemented? It is a very valid question. That is why we built in the monitoring of the process in our framework, because we wanted to make sure that implementation does happen, and on our end, we can report on the outcomes of the monitoring once the agreement is implemented. That is another opportunity to go back to the parties and ask them if they would consent to publishing the agreement itself. It would be another opportunity to learn.

LT: Right in the Singapore space for all of us who live here and practise mediation, there is at least one case where the mediator's conduct was scrutinised by the High Court. The case involved a party who settled a case and subsequently filed an application to set aside the mediated settlement agreement. I know about that case because the co-mediators were Dr Joseph H H Sheares and myself.[13] It appeared the case went before Tan Siong Thye J, who was asked to examine whether the mediators had applied undue pressure on a party that forced her to sign a settlement agreement. At the end, he said, well, all these things that you are complaining about speaks of reality testing, which is exactly what the mediators are supposed to do. What you said does speak of that degree of accountability that when you practise and even in your private caucus, secret and private things could explode that way. As a trained and experienced mediator, you better be sure that you are doing the right thing.

DQ: Could I have a quick comment on both of your points? I just thought it is quite timely to say that there are currently checks on mediators' conduct. For example, there can be disciplinary action against a mediator. I recall Mr Kevin Kwek from the Singapore Mediation Centre, telling me that the centre makes great effort to deal with complaints and a disciplinary mechanism is activated. We know in Singapore, the Singapore International Mediation Institute ("SIMI") is chaired by Prof Joel Lee. For mediators who are SIMI certified, people can complain against you and then the disciplinary mechanism is activated.[14] I was also speaking to Chern Yang on the Law Society mediation scheme, and they are also looking at ways to ensure accountability. There is also accountability according to the law. Linking our conversation to the Singapore Convention on Mediation,[15] we know when there is a serious breach of mediation standards, that can be a ground for non-enforcement of the mediated settlement agreement.[16]

13 *Chan Gek Yong v Violet Netto* [2019] 3 SLR 1218.

14 See, *eg*, Singapore International Mediation Institute, SIMI Code of Professional Conduct for SIMI Mediators (Version 2.0, 10 November 2023) <https://www.simi.org.sg/What-We-Offer/Mediators/Code-of-Professional-Conduct> (accessed 24 October 2025).

15 United Nations Convention on International Settlement Agreement Resulting from Mediation (New York, 2018).

16 United Nations Convention on International Settlement Agreement Resulting from Mediation (New York, 2018) Art 5.

A similar ground of non-enforcement is provided by s 12 of our Singapore Mediation Act 2017[17] as the court can refuse to record it as a judgment if there are certain well known contractual grounds for vitiation, including breach of public policy.[18]

LT: On to our next theme, accountability and dialogue. The question which the audience is asked to answer is: "Rather than enabling genuine dialogue, mediation mechanisms often exclude those most affected. Do you agree?"

Maybe on that note, let me throw the question to DQ in this case? You did some research and you wrote a paper in 2017 where you observed that the alternative dispute resolution (ADR) processes, including mediation, are increasingly used to, in your words, "increase access to justice and to mitigate the limitations of the formal adjudicatory system", offering a more informal justice that is, in your words, "more empowering and participatory", while also "less alienating and costly".[19] So maybe speaking on your view, what features or safeguards do you think must be present to ensure that mediation genuinely includes and empowers all the participants, including those who might be less vocal, less resourced, or perhaps more vulnerable to the dispute?

DQ: I think, OS, you alluded a little bit to that when you said in your lecture that sometimes mediation preparation takes a long while, involving identifying the people we need to talk to. The same preparatory steps are also important for mediation in the private context. One way to make this real is to give a personal example. I deal with some cases where there are a lot of repeat players who might know how mediation works. However, some parties may be participating in mediation for the first time and have no idea about mediation and negotiation and how they work. If you do not know the norms of the negotiation process, you might give your best offer during the first round of offers and you have no room to move anymore. The other side might the misunderstand that you are negotiating in bad faith, resulting in a lot more misunderstandings. Some of the sources of power imbalances may just simply relate to parties not having the knowledge of how the mediation process works. This point was brought home to me in one mediation. I already talked to each side prior to the mediation, but when I talked to one party on the day of mediation, I could sense he was very, very nervous. He commented that he did not know how mediation would work while everyone else seemed to know. I then realised that the lack of knowledge of the process can create a sense of alienation which I as mediator may not know unless I actively put myself in the shoes of the person.

17 2020 Rev Ed.

18 Mediation Act 2017 (2020 Rev Ed) s 12.

19 Dorcas Quek Anderson, "Evaluating the Impact of Judicial Mediation on Access to Justice: Perspectives From the Singapore State Courts' Judicial Mediation System" (2017) 5(2) *Journal of Arbitration and Mediation* 27.

Some safeguards can be easily put in place when we actively put ourselves in a person's shoes, trying to understand how each person would feel. In this regard, one should not assume that the typical "weaker party" is actually weak. Sometimes they might be the stronger one and the one that appears strong is actually vulnerable. Some measures include looking at the details of the mediation setting, and adequately explaining the mediation process to each party prior to the mediation. Another thing mediators should do is involve the parties in designing the process. Although mediation has a standard procedure, we should try to know their needs. For instance, someone might need frequent breaks simply to compose their emotions. A report written by the Office of the Compliance Advisor/Ombudsman ("CAO"). suggested other ways to contextualise the process to the parties, such as making it culturally appropriate.[20] Not everyone may be comfortable speaking around a table; it could have an alienating effect for people from certain cultures. I remember talking to our good mediator, Linda. She mentioned that in the matter of deciding on the venue, she and her co-mediator decided to use a certain party's religious institution as the mediation venue because in a prior mediation conducted elsewhere, many of the key spokespersons were not present, which affected the mediation. Once we put ourselves in a person's shoes and have those conversations that involve them, some of these power imbalances can be pre-empted.

LT: I want to turn to you, OS, because the World Bank DRS has done a lot of work in ensuring that effective dialogue takes place and ensuring that the mediation mechanisms do not exclude those who are most affected. Maybe you could speak a bit about that?

OS: There were multi-layer efforts to do that which will need to be unpacked partly because a compliance investigation starts out with any two requests submitting a complaint, which is a very powerful way to approach a mechanism and usually assisted by civil society advocacy actors. However, when it comes to dispute resolution, you have to pay attention to all people who are affected by that potential harm. There is a question of how you shift from focusing on these too loud voices to having everyone represented. This includes hundreds or thousands of people in a process and not delaying the process by having so many people present. We invested several efforts to doing that. One way is to do training for communities and people affected by the harm but who are detached from the mediation team. It is very important they should be allowed to express their questions and their learnings outside the mediation process. They do not feel weakened in their positions when they are engaged in the mediation and discussions. We also help them formulate the true representative structure of their issues because what may be an advocacy representative structure may not be the representative structure in mediation. This representative structure may also change. Those who are present at the start of the mediation may or may

20 Office of the Compliance Advisor/Ombudsman, *CAO Mediator Toolkit* (10 September 2023).

not be the ones who are capable of finalising an agreement. It is important to pay attention to these nuances all along in the process.

We also do training with CSOs, which is another very important factor we came to learn. If the people cannot be assisted by qualified, equipped CSOs, then in doing mediation, not advocacy, which is a different role, it makes our task a lot more difficult. As you have mentioned, Jeyaretnam J, it may not be that they get at the end what is right or what is according to law but what they actually want. Formulating those things can very much be detached from a CSO who is more interested in promoting a rights-based approach to trying to basically have a more generic approach to a given case. I think it is also important to pay attention really to the most vulnerable who are invisible. Those who cannot access a site because of disability, those who are excluded from the society because they are considered non-existent non-actors, and we know that this unfortunately still exists, or those who simply because of traditional decision-making structures, are not involved in decision-making. Very often, women are a part of this group. We have to make sure that when we enter a dispute resolution process, we do not take for granted what is given.

LT: I think that is all very useful. One of the learnings that I have had in the maybe now almost eight years I have been involved in the CAO and the World Bank DRS is how much effort goes into for the media to develop a rapport with the CSOs, with the NGOs. This trust building is not just with the parties, but also with the extraneous parties, the parties who represent interest groups and building capacity. Often, we call it capacity building from all fronts, but that helps to create that rapport and ensure that the mechanisms do not exclude those most affected.

Now we move to our last point. This is the fourth question which has now been polled: "In disputes involving governments, corporations and communities, true neutrality by mediators is impossible."

OS: You like asking provocative questions.

LT: Well, to be fair, a lot of these questions were crafted with the assistance of one of us in the team. Well at the moment it looks fairly even. OS, you spoke today about mediation as the foundational mechanism of the development accountability, one that cultivates dialogue, ensures just outcomes, and empowers communities. I think what perhaps you can help us understand a bit better is that given this inherent tensions and power imbalances in such disputes, where state interests often overshadow community voices, what institutional designs, mediators' attributes or procedural safeguards do you think are essential to at least allowing genuine neutrality or perhaps sufficient procedural impartiality in development-related mediations?

OS: I think it starts out from the beginning. When we designed the DRS, this was essential. Neutrality of a mediator is key to developing trust by all sides. How do you make sure that this is established from the start? For example,

we do not choose mediators for the process. We offer mediators based on their expertise, but it has to be the parties who choose them. It did happen in one case that one of the sides said, no, this is not the right mediator. It was revealed in the discussions that he was good friends in school with the president. I mean, we can have mishaps in proposing mediators, and that is why it is so powerful that the parties can say this is the person whom we trust to work with. That is from the start.

When you enter a process, you make sure that there are procedural guarantees such as the mediator doing any evaluation, and which matters should be addressed by compliance investigation staff instead of the mediator. There can be questions asked directly from the inspection panel in our case. There can be matters explained by management, if they are part of the process, as observers such as the management action plan on the outcome of investigation regarding what than do and cannot do. It is not for us to evaluate and not for us or for the mediator to say what you would end up with at the end of another kind of process. If you truly want to have neutrality, that does not mean you are blind to power imbalances. It is important to make sure that you deliberately choose to be neutral when you propose certain measures to bring the discussions to an equal footing. For instance, you could suggest capacity training, have a separate community discussion, or create a safer space where parties feel comfortable to have the discussions. All these elements have to be considered by the mediator to make sure there is neutrality. I think it is again important to understand the words which we use to describe what neutrality means. Neutrality means that you are not directing the process out of self-interest, nor accepting anything that promotes you to gain any advantage over parties. You do not take sides in the dispute. You accept it if there is no agreement, which is a very important element of neutrality. We are not doing this to promote an agreement.

LT: Very good. First of all, thank you to all the audience for having polled your answers. I think they have enriched our discussions; 34 to 35 responses are very much in line with what we were suggesting for the outcome. It leaves me now to raise a last question for each individual panel member to cast our eyes on the future. The question I have for each of you is to provide your final words on one insight, challenge or imperative that you believe the mediation community must take seriously if mediation is to remain a credible and constructive force in advancing justice and the rule of law over the next decade? We will take this in this order: KL, DQ, OS and of course Jeyaretnam J always has the last word.

KL: I had originally written down one answer for this question, but I think I am going to change it. Originally, I wrote down cross-cultural expectations because I think we are only going to get more globalised. I think maybe a more nuanced idea is that as we get more globalised, the nub of the issue is that increasingly public interest matters are more likely to be amenable to mediation going forward. If I trace the history in the arbitration space, about 12 or 13 years ago, the Permanent Court of Arbitration started

developing optional rules for some of these more public interest matters like investor-state arbitration and then environmental harm and so on and so forth. I just wondered if maybe that is an initiative which we can think about, such as optional rules for mediation for public interest type issues. To my knowledge, public interest matters typically are handled by a formal organisation for dispute resolution. If not, all the available rules are private in nature and do not often cater to some of these public interest aspects. I will leave that with you.

DQ: I thought what OS mentioned resonated with me: humility and continual learning from both our successes as well as our failures will keep us engaging in such important discussions. I think if we are at a stage where there is a lot of awareness of mediation skills, it is a chance and apt opportunity to go deep, reflect very deeply and talk to one another about our mediation experiences and difficult issues. These issues include whether we have managed power imbalances well or how we can design the mediation process better so that truly we deliver on the promise of mediation in advancing access to justice.

OS: I would say balancing cross-disciplinary learning. These days it is very easy to get information. We all tend to know something about something, and I think it is necessary because we need to be aware of the larger context but also learn from each other. I did go back to study quite late in my career because I realised, we talk about the same thing in the public sector and the private sector but just in different languages. We need to be able to understand each other, to be able to learn from each other. At the same time, it is extremely important not to dilute the expertise that is our out there. That is my bigger concern when I look at for example just the future of the of the World Bank where they are discussing potential merger between the two accountability mechanisms, the private and the public sector. There lies expertise which is very specific in the public sector, and I would not want to dilute that because it then can just flip the success of the process if you do that. I would like to encourage for the future ahead, a good balance of both.

Jeyaretnam J: Well, I think over the next 10 to 15 years, we are going to see more and more use of technology. The challenge that I foresee is, how do we avoid getting too distracted by technology, too drawn into it? At the heart of every dispute, it is a human drama. The best mediators are fully attentive to all of that and to finding a solution that works for humans.

LT: Yes, excellent. On that note, I first of all, want to thank all of you for your time and for all your wisdom. Can we all give a round of applause to the panel members? Thank you.

FROM SURFACE TO CORE

A Trauma-Informed Toolbox for Navigating Mediation Impasses

Trauma is not only a clinical concept; it is a relational and systemic reality that can show up subtly or overtly in mediation. Mediators may encounter impasse, not solely due to positional rigidity, but because of unspoken histories, ruptured attachment patterns, or dysregulated nervous systems. This article explores how integrating a trauma-informed perspective can support deeper, more sustainable shifts in conflict resolution. Rather than presenting a singular framework, the article offers a series of interrelated approaches, each grounded in neurobiology, attachment theory, and restorative practice. Each part of the article stands as a self-contained framework, offering insight into different facets of trauma-responsive practice such as nervous system regulation, attachment patterns, co-regulation, narrative coherence, and the importance of pacing and presence. Collectively, these approaches expand the mediator's capacity to move beyond surface settlement towards deeper human attunement, particularly in emotionally charged or complex disputes. The hope is that, in offering these fragments of practice, from regulation and co-regulation to meaning-making and narrative repair, mediators find grounding, insight, and space for reflection.

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I. Introduction

1 Mediation and counselling have traditionally been distinguished by their different goals and processes. As early as 1983, Kelly cautioned against conflating mediation with psychotherapy, highlighting that while both require interpersonal sensitivity and psychological insight, their purposes and methods differ significantly. She described mediation as "a structured, problem-solving process, time-limited and future-oriented, focusing on resolving specific disputes or decisions", in contrast to psychotherapy, which

aims for deeper emotional insight, often working through unconscious material, with an open-ended timeframe.[1] Kelly argued that confusing these roles can lead to ethical missteps, unmet expectations, and diminished outcomes for clients.

2 These boundaries serve an important purpose, until we encounter persistent impasse. When skilled mediators find themselves stuck or when parties remain locked in rigid positions despite experienced facilitation, these neat distinctions begin to feel limiting. It is in these moments that Moore's deeper insight becomes crucial: "Behind every position lies one or more unmet needs."[2]

3 The challenge is that mediators often focus primarily on what parties say they want, their substantial and positional interests, while the emotional interests that drive these positions remain unexplored.[3] When needs for respect, validation, dignity, or reassurance go unmet, they quietly fuel resistance and escalation. What appears as positional deadlock may actually stem from deeper emotional wounds, namely fear, shame, rejection, or trauma that took root long before the current dispute.[4]

4 When impasse occurs, the question becomes pragmatic rather than ideological: what tools might help both mediator and parties move forward? Recent developments in trauma and attachment theory offer compelling insights. We begin to see striking parallels between mediation and counselling; both fields ultimately seek awareness, empowerment, and transformation. The Satir Iceberg Model, for instance, reveals how surface positions often mask deeper needs and fears, a dynamic mediators encounter constantly.[5]

5 Contemporary trauma research provides a crucial missing piece. Van der Kolk's insights on trauma's embodied nature,[6] Johnson's work on secure attachment,[7] Tatkin's psychobiological approach to couple conflict,[8]

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1 Joan B Kelly, "Mediation and Psychotherapy: Distinguishing the Differences" (1983)1 *Mediation Quarterly* 33.

2 Christopher W Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (Wiley, 4th Ed, 2014).

3 Roger Fisher, William Ury & Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (Houghton Mifflin Harcourt, 1981).

4 John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford University Press, 2004).

5 Virginia Satir, *The Satir Model: Family Therapy and Beyond* (Science and Behavior Books, 1991).

6 Bessel van der Kok, *The Body Keeps the Score* (Penguin Publishing Group, 2014).

7 Susan M Johnson, *Attachment Theory in Practice: Emotionally Focused Therapy (EFT) with Individuals, Couples, and Families* (Guilford Publications, 2018).

8 Stan Tatkin, *Wired for Love* (New Harbinger Publications, 2012)

Porges' polyvagal theory,[9] Siegel's interpersonal neurobiology,[10] Schore's affective neuroscience,[11] and Damasio's exploration of the embodied mind,[12] all illuminate how attachment wounds and trauma shape our perception of threat, safety and connection. These insights help explain why unresolved emotional pain fuels the very resistance that frustrates mediators the most, and why conventional negotiation approaches often fall short.

6 The solution is not to abandon mediation's strengths but to expand its toolkit. Drawing from future-oriented approaches like solution-focused brief therapy[13] and salutogenic thinking,[14] trauma-informed mediators can broaden their lens without becoming therapists. As Siegel emphasises, integration is the foundation of well-being, bringing together logic and emotion, narrative and solution, present and past.

7 This article presents a collection of micro-frameworks and health-focused perspectives drawn from brain science, trauma theory, and integrative psychotherapy. Rather than proposing a single unified model, it offers distinct lenses for enriching mediation practice. From understanding the neurobiology of safety to Dr Perry's regulate-relate-reason sequence,[15] from Antonovsky's sense of coherence[16] ("SOC") to internal family systems ("IFS") principles,[17] each perspective contributes to a deeper understanding. Mediation is not simply about solving problems but about creating conditions for healing and integration.

8 The foundation for this work is safety itself. Before mediators can engage with narrative, negotiation, or even understand parties' positions, there must be a felt sense of safety, both internally and relationally. Without safety, the nervous system remains in survival mode, narrowing perception and reducing capacity for curiosity or compromise. Trauma-aware mediation therefore begins not with persuasion or problem-solving, but with creating conditions where people can feel safe enough to engage authentically.

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9 Stephen W Porges, *The Polyvagal Theory: Neurophysiological Foundations of Emotions Attachment, Communication, and Self-Regulation* (W W Norton, 2011).

10 Daniel J Siegel, *The Developing Mind: How Relationships and the Brain Interact to Shape Who We Are* (Guilford Publications, 2nd Ed, 2012).

11 Allan N Schore, *Affect Dysregulation and Disorders of the Self* (W W Norton, 2003).

12 Antonio R Damaiso, *The Feeling of What Happens: Body and Emotion in the Making of Consciousness* (Harcourt Brace, 1999).

13 Steve De Shazer, *Keys to Solution in Brief Therapy* (W W Norton, 1985).

14 Aaron Antonovsky, *Unraveling the Mystery of Health: How People Manage Stress and Stay Well* (Wiley, 1987).

15 Oprah Winfrey & Bruce D Perry, *What Happened to You? Conversations on Trauma, Resilience, and Healing* (Flatiron Books, 2021).

16 Aaron Antonovsky, *Health, Stress, and Coping* (Jossey-Bass, 1979).

17 Richard C Schwartz, *Introduction to the Internal Family Systems Model* (Trailheads Publications, 2001).

9 The article now turns to understanding the nervous system itself, not as clinical theory or sidebar, but as the practical foundation for any real movement in mediation.

II. The body remembers: regulation before resolution

10 If mediation is to become a space not just for agreement but for integration, one must begin with the conditions that allow the human system to *stay in the room*. Before logic, before negotiation, and before meaning-making, there is the body. The nervous system, often invisible in traditional models of conflict resolution, plays a quiet but central role in whether parties feel safe enough to engage.

11 Trauma is not just a past event but a present-tense experience stored somatically. A person might say "I'm fine" while their body is in a defensive state – tight chest, shallow breaths, and eyes scanning for threat. In such moments, no amount of reasoning will bring clarity. What is needed first is regulation: a shift from survival physiology into relational presence.

A. Neuroception and the window of tolerance

12 Porges' concept of neuroception[18] explains how we unconsciously detect safety or danger. When a party perceives threat, whether from past trauma or present cues, their nervous system may activate fight, flight, or freeze responses. Mediators may notice this as shutdown, reactivity, or avoidance.

13 Trauma-informed mediators learn to spot these cues and help parties return to their window of tolerance[19] – a state where thinking, feeling, and relating are possible. When parties are within their window of tolerance, they have access to their prefrontal cortex – the brain's "executive center" responsible for rational thinking, decision-making, and emotional regulation. This keeps the logical brain online and maximises cognitive flexibility, allowing parties to process information, consider options, and engage in productive dialogue.

14 Conversely, when parties are pushed outside their window of tolerance and into hyperarousal (characterised by panic, anger, overwhelm) or hypoarousal (characterised by numbness, withdrawal, disconnection), the prefrontal cortex essentially goes offline. Only subcortical brain regions, the limbic system and brainstem, remain active, removing the ability to think through actions and consequences. For mediators, this means that

18 Stephen W Porges, *The Polyvagal Theory: Neurophysiological Foundations of Emotions Attachment, Communication, and Self-Regulation* (W W Norton, 2011) at p 11.

19 Kekuni Minton, Pat Ogden & Clare Pain, *Trauma and the Body: A Sensorimotor Approach to Psychotherapy* (W W Norton, 2006) at p 27.

no amount of logical argument or problem-solving will be effective until physiological safety is restored.

15 This does not require clinical training, but it does require attention to breath, tone of voice, eye contact, and pace. Mediators who understand this neurobiological reality can focus first on helping parties return to a regulated state before attempting substantive negotiation.

B. Regulate-relate-reason sequence

16 Dr Perry's regulate-relate-reason sequence[20] is a good reminder that reasoning only becomes available *after* the nervous system is calm. A dysregulated person cannot reflect meaningfully or empathise with the other party. The RRR sequence offers a helpful mantra:

(a) regulate: attend to physiological safety (*eg*, slow things down and allow breaks);

(b) relate: rebuild connection and trust before tackling issues; and

(c) reason: only when safety and connection are present does it make sense to explore options or agreements.

17 When impasse occurs, it is often not a matter of content but of capacity. The RRR sequence offers a gentle and accessible map for mediators to follow under pressure.

C. Somatic presence: the mediator as regulator

18 The mediator's own nervous system matters. If one is hurried, bracing, or overly fixated on outcomes, this can amplify tension. However, when one ground themselves through breath, posture, and intention, they become a co-regulating presence. This has been called "the biology of holding space".[21]

19 Practices such as *orienting* (*ie*, inviting someone to look around the room), *tracking breath*, or *offering silence* are not secondary to the work; they *are* the work. These moments offer the body a chance to feel safe again; and without that, no real resolution can occur.

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20 Bruce D Perry & Maia Szalavitz, *The Boy Who Was Raised as a Dog: And Other Stories from a Child Psychiatrist's Notebook* (Basic Books, 2017) ch 11 at pp 242–243; Bruce D Perry & Maia Szalavitz, *Born for Love: Why Empathy is Essential – and Endangered* (HarperCollins, 2010) chs 2–3; Oprah Winfrey & Bruce D Perry, *What Happened to You? Conversations on Trauma, Resilience, and Healing* (Flatiron Books, 2021) chs 5–6.

21 Bonnie Badenoch. *The Heart of Trauma – Healing the Embodied Brain in the Context of Relationships* (W W Norton, 2017) at p 89.

20 If regulation is the entry point, then relationship is the path forward. Once a sense of safety is restored, mediators can begin to understand how attachment histories and relational dynamics shape the conflict at hand. The next part of the article[22] explores this terrain – the hidden architecture of human connection and disconnection.

III. Attachment underneath: what gets activated in the room

21 If safety brings someone into the room, attachment patterns often determine how they stay there and how they relate to what unfolds. When parties are triggered in mediation, the surface behaviour (*eg*, stonewalling, lashing out, people-pleasing and avoiding) often masks deeper relational wounds. Trauma-informed mediation asks: "What is this behaviour protecting?" and "What need is going unmet beneath this strategy?"

22 Attachment theory, originally developed by Bowlby and later expanded by Ainsworth and others,[23] offers a profound map for understanding human responses under stress. Our early relationships shape implicit expectations around safety, trust, autonomy, and closeness. When conflict arises, especially in high-stakes, emotionally charged situations, these templates get activated.

A. Working with attachment styles in mediation

23 The four broad attachment styles – secure, anxious, avoidant, and disorganised – can offer insight into parties' coping patterns:[24]

(a) *Secure* individuals tend to seek collaboration and can hold both their own needs and the other's perspective.

(b) *Anxious* individuals may seek proximity, validation, or reassurance, sometimes appearing "needy" or emotionally reactive.

(c) *Avoidant* individuals may shut down, minimise conflict, or appear detached even when hurt.

(d) *Disorganised* individuals may swing between extremes, often due to unresolved trauma and conflicting inner impulses.

24 These are not labels to be imposed, but patterns to be gently recognised. A trauma-informed mediator does not diagnose but notices: Who retreats? Who pursues? Who freezes? Who explodes? These are often survival strategies shaped by early environments.

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22 See paras 21–32 below.

23 *Handbook of Attachment: Theory, Research, and Clinical Application* (Jude Cassidy & Phillip R Shaver eds) (Guilford Publications, 3rd Ed, 2016) chs 1 and 3–6.

24 Susan M Johnson, *Attachment Theory in Practice: Emotionally Focused Therapy (EFT) with Individuals, Couples, and Families* (Guilford Publications, 2018) chs 1 and 8–9.

25 Understanding attachment styles allows mediators to depersonalise difficult behaviour. It helps us move from "Why are they being difficult?" to "What has this person learnt about safety and conflict?"

B. Repetition compulsion and the unfinished story

26 One reason conflict becomes "stuck" is because it taps into an old wound – the kind that never got to complete or resolve. Mediation, in such moments, risks becoming the stage for a reenactment rather than a resolution.

27 Psychodynamic theory speaks of *repetition compulsion*,[25] *ie*, the unconscious drive to recreate early unresolved dynamics in the hope of a different outcome. A party may unconsciously cast the mediator as a punitive parent or an absent ally. The other party may resemble a critical sibling or a past abuser. These projections are not rational; they are emotional echoes seeking repair.

28 Being trauma-aware means recognising when we have stepped into someone's old story. It means pausing to ask internally, "What might this remind them of?" or even externally, "Is there something familiar about this dynamic for you?"

C. The mediator's role: secure base and safe haven

29 Attachment research also reminds us that healing happens in relationships. In the absence of a therapist, the mediator can serve a parallel function, not as a healer *per se*, but as a *secure base* (steady, attuned, not overwhelmed) and *safe haven* (emotionally available, respectful, non-judgmental).[26]

30 This does not mean becoming enmeshed. It means embodying steadiness. Offering validation without siding. Helping people stay with discomfort long enough to see what it is beneath.

31 Sometimes, this looks like slowing down, *eg*, naming the emotion in the room, or simply being willing to hold the silence.

32 If attachment helps us understand *why* certain patterns emerge in conflict, the next challenge is helping parties *make sense* of what has

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25 Judith Lewis Herman, *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror* (Basic Books, 1992) at p 42.

26 *Handbook of Attachment: Theory, Research, and Clinical Application* (Jude Cassidy & Phillip R Shaver eds) (Guilford Publications, 3rd Ed, 2016) chs 1 and 3–5; Mario Mikulincer & Phillip R Shaver, *Attachment in Adulthood* (Guilford, 2016) chs 1 and 6–8; Susan M Johnson, *Attachment Theory in Practice: Emotionally Focused Therapy (EFT) with Individuals, Couples, and Families* (Guilford Publications, 2018) chs 1 and 6–9.

happened. Trauma often fragments narrative coherence. It leaves people stuck in loops of blame, shame, or confusion. The following part of the article[27] now turns to the power of story, not just as information but also as integration.

IV. The power of narrative: from chaos to meaning-making

33 At the heart of many entrenched conflicts is a fractured story. Trauma shatters the continuity of a person's narrative. What once made sense no longer does. Events become fragmented. Cause and effect blur. People oscillate between helplessness and blame, both of which block resolution. A trauma-informed mediator understands that restoring narrative coherence is not merely about "getting the facts straight". It is about helping parties find meaning in the midst of chaos, and helping clients make sense of their experience is not just therapeutic, it is reparative.

A. Trauma's impact on story-making

34 Trauma impairs the brain's capacity to create a linear, integrated narrative.[28] Instead of a narrative with a beginning, middle, and end, the traumatic memory loops intrusive, unresolved, and often incoherent events. Neuroscience suggests that traumatic memories are stored differently from ordinary ones disconnected from language, time, and context. This explains why parties in conflict may repeat themselves, focus obsessively on certain details, or struggle to articulate their needs clearly.

35 In mediation, this can manifest as (a) repetitive storytelling without resolution; (b) emotional flooding or detachment; or (c) a fixation on being "right" rather than understood.

36 These are not just communication issues; they are symptoms of a nervous system trying to make sense of rupture. Narrative incoherence is not a communication problem. It is a signal that meaning has been lost and needs to be slowly, safely rebuilt.

B. Narrative coherence and the healing function of a story

37 Narrative coherence is the ability to tell a story that has a beginning, middle, and end and that makes emotional sense. Siegel, a key contributor to interpersonal neurobiology,[29] emphasises that coherence is not about having a perfect memory, but about integrating what happened into one's ongoing sense of self. When parties feel heard and can reflect on events

27 See paras 33–54 below.

28 Bessel van der Kok, *The Body Keeps the Score* (Penguin Publishing Group, 2014).

29 Daniel J Siegel, *The Developing Mind: How Relationships and the Brain Interact to Shape Who We Are* (Guilford Publications, 2nd Ed, 2012) at p 223.

without re-entering a state of distress, new understanding, and even growth, becomes possible.

38 In mediation, this does not mean retelling every detail of the conflict. Instead, it means creating space for reflecting on questions such as:

(a) What does this conflict mean to you?

(b) What does it remind you of?

(c) What feels unresolved or confusing?

39 When people feel truly heard, not just in their positions but in their pain, they are more likely to soften, to listen, and to reframe their narratives in a way that makes mutual understanding possible.

C. The mediator as witness and weaver

40 Mediators are not there to rewrite someone's story, but they can offer presence, reflection, and pacing to help people find their own thread. Restoring coherence requires more than logical sequencing. It involves creating a relational container in which parties feel safe enough to re-story their experience. The mediator becomes a temporary co-author, helping parties reframe, link events, and integrate emotion and meaning.

41 This might involve:

(a) naming emotional truths (*eg*, "It sounds like that moment really stayed with you.");

(b) reflecting shifts (*eg*, "Earlier you described it as betrayal; now it sounds like disappointment.");

(c) connecting parts of the story (*eg*, "You mentioned both wanting justice and fearing more loss – how do those sit together?");

(d) slowing down the process when distress surfaces;

(e) asking reflective questions (*eg*, "When did things start to feel that way?"); and

(f) highlighting change or growth (*eg*, "It sounds like this experience also showed you something new about yourself.").

42 These interventions do not impose meaning; they invite it. By helping clients narrate their experience with more clarity, mediators also help loosen the grip of trauma. When a story can be told without shame, interruption, or dismissal, it begins to settle.

43 Importantly, narrative work does not require full disclosure. It is about allowing enough coherence for the person to move forward, not rehashing every detail.

D. Externalisation and narrative distance

44 Narrative therapy offers a helpful practice: externalisation.[30] This is the art of separating the person from the problem. For instance, instead of saying "You always sabotage things", one might say "When distrust shows up, it makes it hard for us to move forward".

45 This shift reduces defensiveness and invites curiosity. Mediators can model this language and help both parties talk about what is happening between them rather than attacking each other directly.

46 Using metaphors can create narrative distance. Naming dynamics as "old patterns", "uninvited guests", or "protective armour" allows participants to reflect without becoming overwhelmed.

E. Moving from shame to meaning

47 Shame is often the most hidden and corrosive emotion in mediation. Unlike guilt (which says, "I did something bad"), shame says, "I am bad". It contracts the nervous system and isolates the person. Parties in shame often withdraw, attack, or deflect.

48 Helping someone move from shame to meaning involves:

(a) validation (*eg*, "Given what you've been through, it makes sense this feels overwhelming.");

(b) normalisation (*eg*, "Many people react this way when something important is at stake."); and

(c) invitation (*eg*, "Would it help to talk about what this moment brings up for you?").

49 By holding space for these moments with respect and care, mediators help repair internal dignity. This is often what unlocks movement when nothing else can.

F. From facts to felt meaning

50 While agreements may focus on facts and outcomes, resolution often requires deeper integration: a sense of being seen, of restoring dignity, and of understanding "what this means for me". Mediators who hold space for this level of storytelling allow parties not just to settle the dispute, but to reclaim their sense of agency and coherence.

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30 Michael White & David Epston, *Narrative Means to Therapeutic Ends* (W W Norton, 1990) at p 38.

51 Antonovsky's concept of SOC[31] provides a helpful map here. SOC involves three components:

(a) comprehensibility (*eg*, "Can I make sense of what happened?");

(b) manageability (*eg*, "Do I have the resources to cope with it?"); and

(c) meaningfulness (*eg*, "Can I find purpose or value in it?").

52 When mediators attend to these dimensions, they support not only understanding but also healing. For instance:

(a) reframing conflict as part of a larger life transition;

(b) validating resilience or insight gained through hardship; and

(c) acknowledging the cost of silence or rupture and the courage to revisit it.

53 By restoring coherence, mediation becomes more than a resolution process; it becomes a meaning-making space.

54 Once people feel safe, understood, and reintegrated in their narrative, they are more resourced to move forward. Yet, progress must be paced. Stories do not live in a vacuum. The pace at which they are told, the presence in the room, and the felt sense of "being with" another all shape what becomes possible. The next part of this article[32] explores the importance of titration, presence, and holding complexity not as delays to the process but as the path to lasting repair.

V. Pacing, presence and co-regulation

55 In trauma-informed mediation, how we proceed matters as much as what we do. One of the most common risks in emotionally charged mediation is going too fast pushing for resolution before the ground is steady. Trauma recovery teaches us that integration requires titration: attending to experience in manageable doses. The same holds true in mediation.

56 Just as healing happens in waves not in a straight line, so too does the process of resolution. Moments of opening may be followed by withdrawal; a breakthrough may lead to silence. These are not derailments. They are signs that something important is shifting.

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31 Aaron Antonovsky, *Unraveling the Mystery of Health: How People Manage Stress and Stay Well* (Wiley, 1987) at p 18.

32 See paras 55–79 below.

A. Titration and the art of doing less

57 Borrowed from somatic therapy, the concept of titration[33] refers to breaking down overwhelming experiences into smaller, more digestible pieces. Rather than plunging into the heart of the dispute immediately, mediators can gently explore moments of safety, small shifts, or partial agreements.

58 This is not avoidance; it is pacing. It respects the capacity of the parties and avoids re-traumatisation. Titration in mediation might look like:

(a) focusing first on a less contentious issue;

(b) checking in regularly on emotional tone; and

(c) allowing for silence or slow reflection instead of rushing into dialogue.

59 The goal is not to avoid discomfort, but to avoid flooding where emotional overwhelm shuts down meaningful engagement. When intense emotions or traumatic memories surface, moving slowly, naming what is happening, and checking for consent becomes an ethical imperative. Titration honours the window of tolerance, avoids re-traumatisation, and models a respectful pace for resolution. This embodies the paradox of trauma-informed practice: sometimes we must go slow to go fast.

B. The mediator's presence as containment

60 Beyond tools and techniques, the mediator's own presence is perhaps the most powerful intervention – not presence as performance but grounded, regulated, attuned being-with. A mediator who is calm but not passive, and spacious but not disengaged, brings a quality of steadiness that allows others to settle. This kind of presence says: "You do not need to rush. I can stay with you, even here."

61 Thus, pacing is not just a technique; it flows from the mediator's presence. When a mediator embodies steadiness, attunement, and calm curiosity, they become a regulating force in the room.

62 In therapeutic work, this is sometimes called "affect co-regulation",[34] *ie*, the ability of one nervous system to soothe another. Mediators do not need to be therapists, but they do need to be containers, holding emotion without trying to fix it, naming complexity without collapsing into it, and being willing to slow down when things feel too fast.

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33 Peter A Levine, *In an Unspoken Voice: How the Body Releases Trauma and Restores Goodness* (Berkeley: North Atlantic Books, 2010) at p 67.

34 Allan N Schore, *Affect Dysregulation and Disorders of the Self* (W W Norton, 2003) at p 45.

63 Even subtle signals like body posture, voice tone, and breathing can support containment. A mediator who can stay grounded in the face of intensity signals safety to others, and where there is safety, there is potential for movement.

64 Trauma often leaves people feeling alone, overwhelmed, or too much for others. A mediator's grounded presence counters that narrative not through words, but through their way of being.

C. We are wired to connect: the biological basis

65 At the heart of trauma-informed mediation lies a deceptively simple truth: people regulate through people. Long before words make meaning, our nervous systems scan for cues of safety or danger in others. This means that the quality of presence between individuals can either calm or escalate a conflict. In mediation, the relational field becomes as important as the agenda.

66 From infancy, human beings are biologically primed to co-regulate our heart rate and breathing, and even brainwaves sync with those around us. This social nervous system, described in Porges' polyvagal theory,[35] continues into adulthood. When a party feels truly seen and heard, their nervous system relaxes. When they feel judged or dismissed, it tightens. This explains why logical arguments can fail under pressure. Without a felt sense of safety, the brain defaults to protection, not connection.

D. How presence creates co-regulation

67 In emotionally charged situations, the mediator becomes a co-regulator. Their voice, eye contact, pace, and emotional neutrality send signals: "You are not alone. It is safe for you to stay here."

68 This presence cannot be faked; it comes from the mediator's internal state. Grounded mediators, aware of their own breathing and body, become steadying anchors for the room. Dysregulated mediators, by contrast, risk unconsciously transmitting anxiety or urgency.

69 Simple interventions make a difference:

(a) pacing: slowing the conversation or inviting silence;

(b) softening: modulating tone of voice or posture; and

(c) orienting: gently helping a party notice the environment (*eg*, "You're here now. There's no rush.").

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35 Stephen W Porges, *The Polyvagal Theory: Neurophysiological Foundations of Emotions Attachment, Communication, and Self-Regulation* (W W Norton, 2011) at p 273.

70 These are not therapeutic gestures but practical tools for restoring access to reason, empathy, and possibility.

E. The art of pacing: when to do less

71 Many mediators, especially those with a strong desire to help, may struggle with the urge to "fix" things. However, trauma-informed practice reminds us: resolution must arise from within the parties, not be imposed from the outside.

72 What appears as "resistance" may actually be protection. What looks like avoidance may be a sign that the nervous system has reached its limit. When we push too hard or too fast, we risk replicating the very dynamics that created harm in the first place.

73 In these moments, doing less is not failure. It is fidelity to the process. Mediators can ask:

(a) Is this moment too much, too soon?

(b) What would it mean to pause, to breathe, and to let things settle before moving on?

(c) How can I honour the pace of each party's readiness?

74 The paradox is this: When we stop pushing for change, change becomes more possible. This reflects the ethics of slowness – a fundamental respect for the human capacity to integrate difficult experiences at their own pace.

75 The mediator's role shifts from problem-solver to witness, from director to companion in the process of healing.

F. Moments that shift the energy

76 Mediators often describe a moment when "something shifted": the atmosphere lightened, tears welled up, or someone exhaled. These are nervous system events. What felt like a rupture was met with presence, and in that meeting the body could register, "I am not in danger." This is often when the shift becomes visible: a softening in the room, a lightening of the atmosphere, and the felt sense that new outcomes are possible. For mediators, such shifts are more than moments of relief; they mark the nervous system's move from protection into openness. Recognising these cues helps a mediator stay attuned and support the conversation as it begins to unfold in new directions.

77 Co-regulation is not about soothing every discomfort. It is about staying present to what emerges without flinching, fixing, or fleeing. It is about helping nervous systems remember what connection feels like.

78 When pacing, presence, and co-regulation work together, they create the conditions for deeper integration. Understanding parts of the self and internal conflict becomes the next layer of this work.

79 The following part of the article[36] explore how IFS and the idea of multiplicity can illuminate the inner tensions that complicate outer resolution.

VI. Parts in conflict: internal family systems-informed mediation practice

80 Sometimes, the source of mediation impasse is not just interpersonal but intrapersonal. While full IFS therapy is outside the scope of mediation, its principles can enrich practice. A party may appear inconsistent or ambivalent not because they are being evasive, but because different "parts" within them are in conflict. The IFS model, developed by Dr Schwartz,[37] offers mediators a compassionate lens for understanding such inner fragmentation.

81 Sometimes the resistance a mediator encounters is not between two people, but within a person. A client may say, "Part of me wants to settle, but another part can't forgive", or "I know I should move on, but I'm still furious". These are not metaphors; they are maps pointing to internal divisions that require acknowledgment.

A. Multiplicity as normal

82 IFS begins with a simple but profound premise: the mind is naturally multiple. We all have "parts", *ie*, sub-personalities with distinct feelings, thoughts and roles. For example, a person may have:

(a) a protective part that says, "Don't trust them".

(b) a compliant part that says, "Just agree and move on".

(c) a wounded part that says, "They never listen to me".

83 These parts are not pathological; they are adaptive. Especially in trauma, certain parts take on extreme roles to protect the system. In mediation, these roles may surface as defensiveness, withdrawal, or repeated patterns of "stuckness".

36 See paras 80–92 below.

37 Richard C Schwartz, *Introduction to the Internal Family Systems Model* (Trailheads Publications, 2001) at p 14.

B. Internal family systems: principles in practice

84 Key principles include:

(a) Naming without shaming: acknowledge inner tension as normal (*eg*, "We all have mixed feelings sometimes.").

(b) Inviting inner dialogue: help parties speak for, not from, their parts ("Can you say what that part of you wants us to know?").

(c) Hold space for the self: IFS posits that beyond our parts is the self, a centred, compassionate presence. Mediators, by modelling calm and curiosity, can help parties access more of this grounded state.

C. Befriending protective parts

85 IFS encourages curiosity, not confrontation. Rather than pushing past a resistant part, mediators (and clients) are invited to befriend it. Questions like "What is this part trying to protect?" and "What does it fear would happen if it stepped back?" can shift the dynamic from opposition to understanding.

86 In a mediation setting, this might look like:

(a) Recognising when someone's protectiveness is rooted in past betrayal.

(b) Normalising internal conflict (*eg*, "It sounds like a part of you wants peace, and a part of you doesn't trust it yet.").

(c) Giving space for ambivalence without forcing coherence too soon, as this inner permission often leads to more honest dialogue and sustainable outcomes.

D. Making space for parts

87 Mediators do not need to become therapists to work with parts. Simple language can invite integration, *eg*:

(a) "It sounds like a part of you is really angry, and another part just wants to move forward."

(b) "What does that protective voice want for you?"

(c) "Is there space in you that feels differently?"

88 These invitations honour internal complexity without demanding resolution. They allow parties to hear themselves more fully.

89 In some cases, naming the part relieves the person from over-identifying with it: "It's not that I am unforgiving; it's that a part of

me is still hurting." This shift opens up room for choice, flexibility, and compassion.

E. All parts to the table: welcoming the whole person

90 When mediators recognise and welcome parts, the table becomes more inclusive not just of parties, but of their inner worlds. This reduces shame and resistance, especially when someone is behaving in ways they do not fully understand. Rather than asking "Why are you being so defensive?", the question becomes, "What might this part be trying to protect?".

91 This shift can be subtle but profound. The room moves from judgment to curiosity, and when parts feel acknowledged, they often soften. Recognising this internal diversity can depersonalise gridlock. The conflict is not because a person is being difficult; it is because two (or more) parts are in tension.

92 Even small applications of IFS can open new paths when outer arguments reflect inner polarities. When mediators recognise and welcome parts, they expand their capacity to work with the whole person. Having explored these various trauma-informed approaches – from narrative work to pacing to parts work, the discussion now turns to the professional and ethical considerations that frame this practice.

VII. Professional boundaries and ethical considerations

93 Traditional boundaries remain important and must be clearly maintained. As Folberg and Taylor note, "[m]ediators are not therapists. Their role is not to diagnose or treat emotional or psychological conditions".[38] However, understanding emotional dynamics can inform practice without crossing professional boundaries.

94 The trauma-informed approach advocated in this article does not seek to transform mediators into therapists, nor does it suggest that mediation should become therapy. Rather, it proposes that awareness of trauma's impact on the nervous system, attachment patterns, and narrative coherence can enhance a mediator's ability to create conditions for effective resolution.

95 Key ethical considerations include:

(a) Scope of practice: mediators remain focused on conflict resolution, not therapeutic healing, while being informed by trauma awareness.

38 Jay Folberg & Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation* (Wiley, 1984) at p 7.

(b) Referral networks: Trauma-informed mediators should maintain relationships with qualified mental health professionals for appropriate referrals when needed.

(c) Self-care and training: Mediators working with trauma-affected parties must attend to their own regulation and seek appropriate training and supervision.

(d) Informed consent: Parties should understand the mediator's approach and limitations, particularly when trauma-responsive techniques are employed.

96 The goal is not to eliminate the boundary between mediation and counselling, but to create a more informed and responsive practice that honours both the professional integrity of mediation and the human complexity of those who seek its services.

VIII. Conclusion: holding a larger frame

97 Rather than proposing a singular trauma-informed mediation model, this article offers a mosaic of interlocking insights, each a piece of the puzzle in helping mediators work at greater depth. Some pieces focus on neurobiological safety, others on narrative integration, emotional regulation, or cultural humility. What binds them is a shared orientation: that beneath entrenched conflict often lies unspoken stories, activated attachment patterns, and unmet needs. By making these invisible dynamics visible and by cultivating the internal conditions to hold them, a mediator becomes more than a neutral third party. They become a steadying presence, capable of restoring dignity, coherence, and hope. Shifting from surface settlement to deeper attunement, the role of the mediator itself evolves: from problem-solver to pattern-seer, and from deal-maker to meaning-maker.

98 Mediation, then, becomes more than a process. It becomes a relational art grounded in presence, humility, and the quiet power to witness what is unresolved, without needing to rush to resolution.

99 When mediators centre what is going right however small and attune to what lies beneath the positions, they activate more than resolve. They invite coherence, dignity, and growth. In doing so, mediation becomes more than transactional; it becomes transformational.

SOFT TOOLS FOR HARD RIGHTS

Mediation in Intellectual Property Disputes

This article advances the case for mediation as an indispensable "soft tool" within the complex, multi-jurisdictional, and commercially sensitive landscape of intellectual property ("IP") disputes. It outlines the principal categories of such disputes and explains why mediation – more than conventional fora – addresses their intricacies by preserving commercial relationships, accommodating commercial and technical nuances, protecting confidentiality, and enabling parties to consolidate fragmented risks while retaining control over outcomes. The article also examines key impediments to wider uptake, including legal culture, enforcement uncertainty, and gaps in contractual and institutional design. Drawing on dispute system design principles, it concludes by proposing a blueprint for cultivating a sustainable and effective IP mediation ecosystem.

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I. Introduction

1 Intellectual property ("IP") disputes today emerge at a complex intersection of technology, commerce and law, spanning everything from patent infringement and trade mark opposition to multi-jurisdictional licensing and royalty negotiations. The rapid pace of innovation and global nature of IP, coupled with the commercial interdependence of stakeholders including rights-holders and implementers, demands an approach that accommodates technical nuance, preserves business relationships, and resolves multiple fragmented disputes in a unified and cohesive manner.

1 The views expressed in this article are solely those of the authors, and do not reflect the official stance of the organisations they work for.

2 In regions such as ASEAN – where the authors reside – the case for IP mediation is strengthened by cultural and systemic characteristics that favour consensual approaches. As articulated in the article "Singapore's Intellectual Property Dispute Resolution Experience and ASEAN Interoperability":[2]

> In the mediation context, for example, it has been suggested that there are three core themes that describe 'ASEAN values': Confucianism, collectivist inclination, and the prevalence of face concerns[3] … If this rings true, then it may [be] useful to think of achieving 'interoperability' by using a 'soft approach', for both procedural standards and substantive legal decision making.

3 To this, we add that this same "soft approach" equally applies to the intentional nurturing of and behavioral nudging towards IP mediation. With a mindset change in the stakeholders of the ecosystem, it could be mightily used to harness the advantages of a holistic, cohesive, win-win outcome for parties in IP disputes across jurisdictional boundaries.

4 This article therefore advances the case for mediation – properly embedded within the IP ecosystem – as an indispensable mechanism within the broader constellation of dispute resolution fora. The article will introduce the landscape of IP disputes, articulate its features that often make mediation a good choice, examine the challenges faced and present efforts to promote mediation for IP disputes, identify critical success factors, and conclude by suggesting a blueprint for cultivating a successful IP mediation ecosystem.

II. Understanding intellectual property disputes

A. What is intellectual property?

5 IP is a concept that most people have a general notion of, but of which a precise definition is more elusive.

6 From the late 19th century into the 20th century, the more common term in use was "industrial property". The Paris Convention for the Protection of Industrial Property[4] scopes it in Art 1 as such:

> (2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

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2 Mark Lim, See Tho Sok Yee & Diyanah Binte Baharudin, "Singapore's Intellectual Property Dispute Resolution Experience and ASEAN Interoperability" in *International Intellectual Property and the ASEAN Way* (Elizabeth Siew-Kuan Ng & Graeme W Austin gen eds) (Cambridge University Press, 2017) at para 6.5.1.

3 Joel Lee & Teh Hwee Hwee, *An Asian Perspective on Mediation* (Academy Publishing, 2009) at pp 53–67.

4 20 March 1883, entered into force 6 July 1884.

> (3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.

7 Its sister convention, the Berne Convention for the Protection of Literary and Artistic Works,[5] on the other hand, deals with the protection of works and the rights of their authors – in essence, copyright protection.

8 Fast forward to 1 January 1995, the Agreement on Trade-Related Aspects of Intellectual Property Rights[6] ("TRIPS Agreement") provides[7] for the protection of categories of IP that are the subject of Sections 1 through 7 of Part II. These are:

> 1. Copyright and Related Rights
>
> 2. Trademarks
>
> 3. Geographical Indications
>
> 4. Industrial Designs
>
> 5. Patents
>
> 6. Layout-Designs (Topographies) of Integrated Circuits
>
> 7. Protection of Undisclosed Information

9 Since the TRIPS Agreement, other parlance has arisen. The term "intangible assets" is sometimes used in enterprise talk, and represents a wider scope of assets beyond traditional IP, such as customer information, contracts, databases, know-how and domain names; and in contrast to traditional tangible assets, such as plants, machinery and inventory. An important feature of intangible assets is that, notwithstanding their nature, they contribute real value to enterprises and therefore deserve to be recognised as an asset class.

10 In 2019, the International Arbitration Act[8] in Singapore was amended to incorporate a new Pt 2A on "Arbitrations Relating to Intellectual Property Rights". It defines "intellectual property right" and "IPR" non-exhaustively as:[9]

> (*a*) a patent;
>
> (*b*) a trade mark;
>
> (*c*) a geographical indication;

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5 9 September 1886, entered into force 1 August 1951.
6 6 December 2005, entered into force 23 January 2017.
7 Agreement on Trade-Related Aspects of Intellectual Property Rights (6 December 2005), TRT/WTO01/002, Art 1 at para 2 (entered into force 23 January 2017).
8 Cap 143A, 2002 Rev Ed.
9 International Arbitration Act 1994 (2020 Rev Ed) s 26A(1).

(*d*) a registered design;

(*e*) a copyright;

(*f*) a right in a protected layout-design of an integrated circuit;

(*g*) a grant of protection in respect of a plant variety;

(*h*) a right in confidential information, trade secret or know-how;

(*i*) a right to protect goodwill by way of passing off or similar action against unfair competition; or

(*j*) any other intellectual property right of whatever nature.

11 "IPR disputes" in the same statute include:[10]

(a) a dispute over the enforceability, infringement, subsistence, validity, ownership, scope, duration or any other aspect of an IPR;

(b) a dispute over a transaction in respect of an IPR; and

(c) a dispute over any compensation payable for an IPR.

12 This leads us to a consideration of the types of disputes relating to IP that may arise.

B. Pure intellectual property disputes

(1) Infringement

13 IP rights are monopolistic in nature, to a larger or smaller extent. Patents are known to give their holders a strong monopoly while copyright is a relatively weaker monopoly in comparison.[11] Infringement takes place when there is incursion into these monopolistic rights.

14 One example that captured the public's imagination was the Apple-Samsung litigation, which played out over many battlefields across the globe in the 2010s, in what was colloquially known as the smartphone wars. Relationship-wise, Samsung started out as Apple's sole supplier of flash memory for the iPod. Things changed in 2009 when Samsung released its smartphone running on a competing operating system, Android, thus also becoming Apple's market competitor.

15 Apple sued over design features of the iPhone and iPad covered by its utility and design patents, one of which was over the shape of a smartphone (*ie*, a thin rectangular cuboid with rounded corners) and another pertained to the "pinch to zoom" feature. Samsung countersued for infringement of patents relating to its wireless and data transmission technology.

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10 International Arbitration Act 1994 (2020 Rev Ed) s 26A(4).

11 At least, in the authors' jurisdiction of Singapore.

16 There were twists and turns in the protracted litigation in the US, starting in 2011 at the District Court for the Northern District of California, winding all the way to the Supreme Court. Jury issues contributed to the complexity and hindered a clean, quick outcome. In the UK High Court in 2012, Judge Colin Birss, as he then was, famously ruled that Samsung's Galaxy tablets were unlikely to be confused with the iPad because they were "not as cool".[12] The tech giants crossed swords in multiple other jurisdictions such as France, Germany, Japan and South Korea, with Samsung mostly winning outside of the US.

17 Ultimately, the parties settled in 2018 after seven years of costly litigation that yielded patchwork outcomes.

(2) Registrability, validity and others

18 IP can be registrable or non-registrable. For example, in most jurisdictions, trade marks, designs and patents are registrable. This means that a person who wishes to obtain IP protection for registrable subject matter needs to make a formal application at the relevant national or regional IP regulator (commonly known as "IP offices"). There will then be a process of either formalities examination, substantive examination or both, before the IP office grants protection or declines to do so. There is also likely to be a process for other persons to object to the registration or grant of the IP right (which may be variously termed "opposition", "invalidation", "cancellation", *etc*, in different jurisdictions).

19 In general, it can be said that registrable IP can be the subject matter of disputes pertaining to the relevant public register (*eg*, the register of trade marks and the register of patents).

20 For instance, even before the registration stage, a pending application to register a trade mark may be subject to opposition to registration. On the other hand, a registered trade mark or granted patent already on the public register may be subject to validity challenges. The bases for such objection processes are several, depending on the specific legislation. For example, one may oppose the registration of a trade mark on the relative ground that it is confusingly similar to an earlier trade mark on the register of trade marks; or on the absolute ground that it is devoid of any distinctive character and does not function as a badge of origin. One may also apply to revoke a granted patent on the ground that it is not novel, nor inventive, nor capable of industrial application (all criteria for patentability); or revoke a registered design which is not novel. If successful, such IP rights will not be recognised on the relevant public register.

12 *Samsung Electronics (UK) Ltd v Apple Inc.* [2012] EWHC 1882 (Pat) at [190].

21 Aside from disputes relating to the nature of the registrable IP itself, it is also possible to encounter disputes pertaining to its ownership or inventorship, most notably in the field of patents.

22 As for non-registrable IP – which in most jurisdictions would include copyright – disputes over subsistence and ownership may arise in other contexts such as infringement or breach of contract.

C. Contractual disputes with intellectual property elements

23 Compared to pure IP disputes on matters pertaining to the register, contractual disputes with IP elements are more common.

24 The field of massively multiplayer online role-playing games ("MMORPGs") also had its high-profile case, culminating in the Singapore Court of Appeal's decision in May 2024.[13] The dispute involved several parties from Korea and China; and sprang from a software licensing agreement in June 2001 relating to a computer game series, The Legend of Mir 2. A number of contracts subsequently entered into by various combinations of parties added to the factual complexity. The Chinese licensees to the software licensing agreement purported to "sub-license"[14] the PC, web and mobile versions of the game in breach of the agreement. One of the joint owners and developers of The Legend of Mir 2, from Korea, filed for International Chamber of Commerce ("ICC") arbitration in 2017 because of this breach, while the other joint owner and developer (which had been acquired and became part of the same corporate group as one of the Chinese licensees) purported to extend the software licensing agreement in 2017 and replace the ICC arbitration clause with a provision for arbitration at the Shanghai International Arbitration Center ("SHIAC"). The ICC tribunal found that the 2017 extension agreement was invalid and executed in breach of the other joint owner's duty to consult with the Korean joint owner. It also found that the 2001 software licensing agreement was breached. Damages were awarded to the Korean joint owner. These awards were subsequently upheld by the Singapore International Commercial Court[15], and by the Singapore Court of Appeal on appeal.

25 As an indication of how much happened in the passage of around 20 years, The Legend of Mir 3 has since been launched; and there were arbitration actions besides the above, commenced at ICC in as early as 2003, as well as other cases at the Singapore International Arbitration Centre (SIAC) and the Korean Commercial Arbitration Board (KCAB).[16] All in all, at least five parties, four arbitral institutions and even more arbitral claims

13 *CNA v CNB* [2024] SGCA(I) 2.
14 *CNA v CNB* [2024] SGCA(I) 2 at [27].
15 *CNA v CNB* [2023] SGHC(I) 6.
16 Jack Ballantyne, "Korean Videogame Awards Survive Singapore Challenge", *Global Arbitration Review* (4 May 2023).

were in the mix, illustrating the long-running and multi-faceted nature of the dispute resolution landscape surrounding this one franchise.

26 Disputes involving standard essential patents ("SEPs") and fair, reasonable and non-discriminatory ("FRAND") rates are also becoming more common in the technology innovation sphere. SEPs are patents for specific technology *essential* to implementing a technical *standard*, *eg*, 5G in the telecommunications field where there is a need for interoperability across devices. Patent owners who contribute their SEPs to a technical standard commit to license these patents to implementers on a FRAND basis. FRAND terms ideally strike a balance between the public need for implementers' access to standardised technical solutions and SEP owners' private interests in recouping their research and development investment in the innovation.

27 When an SEP owner and an implementer negotiate FRAND rates, disputes may arise. For example, an implementer may dispute the validity or essentiality of the patents to the standard. How highly a patent owner (licensor) and an implementer (licensee) value the patents inevitably has a degree of subjectivity and variance, and the FRAND rate itself is thus subject to dispute. In a recent, high-profile case, InterDigital, a mobile, video and artificial intelligence technology research and development company, and its licensee, could not successfully negotiate the FRAND rate for their SEP licence renewal and submitted to arbitration.[17] This resulted in a very public ICC arbitral award of US$1.05bn FRAND royalties for an eight-year licence.[18]

28 The outcome of these SEP/FRAND disputes, by nature, has generally a larger economic and practical impact in the field of technology than ordinary IP disputes do. How they are resolved is therefore a matter of greater concern.

D. Conventional fora for intellectual property disputes

29 The conventional fora for IP disputes are a few.

30 For infringement disputes, because of the remedies that claimants usually wish to obtain, such as injunctions and damages, the courts are overwhelmingly the forum of recourse. Even in jurisdictions where the

17 "InterDigital and Samsung Conclude Arbitration and Announce New License Agreement", *Yahoo Finance* (30 July 2025) <https://finance.yahoo.com/news/interdigital-samsung-conclude-arbitration-announce-203000797.html> (accessed 17 September 2025).

18 "BREAKING: Arbitrators Grant InterDigital $1.05B for 8-Year Licence With Samsung", *IAM* (29 July 2025) <https://www.iam-media.com/article/breaking-arbitrators-grant-interdigital-105b-8-year-licence-samsung> (accessed 17 September 2025).

courts are pro-mediation, parties often institute court action first, to preserve their legal positions.

31 As for disputes pertaining to matters of the register, such as registrability, validity and inventorship, parties typically take their disputes before the IP office regulating the particular IP in the jurisdiction, which could be national or regional. The appropriate forum is generally prescribed by legislation, and may also include the relevant courts.

32 The largest category of IP disputes by volume, namely contractual disputes with IP elements, traditionally turn up before the courts for adjudication. However, with the ascendency of arbitration in the past two decades, and with parties wishing to retain a veil of confidentiality around finer details of their business dealings, more of such disputes now become the subject matter of arbitral awards – or *many* arbitral awards, as in the case of the Legend of Mir. SEP owners who wish to keep their FRAND rates private between themselves and their licensees may also have a preference for arbitration.

III. Why mediation for intellectual property disputes?

33 IP disputes can be technically complex, commercially sensitive, and often cross-border. They frequently involve innovations on cutting-edge, valuable intangible assets, and parties with differing legal traditions, languages, and strategic interests. What begins as a question of infringement or ownership of IP that is created in the course of international collaboration can quickly unravel into a multi-jurisdictional tangle of legal, technical, and relational challenges.

34 Litigation and arbitration, though important, can struggle under the weight of this complexity, offering binary outcomes in a global ecosystem that often demands flexibility, speed, and confidentiality. Against this backdrop, IP disputes are particularly suitable for resolution via mediation.

35 Non-adjudicative processes such as mediation and expert determination, especially when used in tandem with adjudicative processes, often lead to significantly faster, cheaper, and more satisfactory outcomes. 90% of users in IP mediation cases, whether domestic or international, have expressed satisfaction with the competence of the process.[19] Why?

19 Jeremy Lack, "Addressing the IP Dispute Resolution Paradox: Combining Mediation with Arbitration and Litigation", *Global Arbitration Review* (24 July 2024) <https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/addressing-the-ip-dispute-resolution-paradox-combining-mediation-arbitration-and-litigation> (accessed 17 September 2025).

A. Mediation's strategic fit for intellectual property disputes

(1) Collaborative opportunity and continuity.

36 Mediation possesses the unique potential to preserve commercial relationships, a key concern in IP-intensive industries, particularly those involving licensing, co-development, or research collaborations. Unlike litigation or arbitration, which are adversarial by nature, mediation offers a collaborative environment to de-escalate tensions and return to business, a feature particularly beneficial to commercially interdependent parties, such as licensors and licensees, research collaborators, or joint venture partners.

37 In a recent case mediated under the World Intellectual Property Organization ("WIPO") Arbitration and Mediation Center,[20] parties to a joint venture agreement in the food and beverage industry were engaged in a dispute over a trade mark. At the resolution of the dispute, the mediator remarked:[21]

> … the huge divide between the disputants in this case masked a shared commercial goal, that could have been easily sidelined by each party's focus and arguments on the merit of legal technicalities and factual interpretations in its favour. … Mediation presented parties with the holy grail of dispute resolution to prioritise and build on the shared goal, while defocusing each party's belief in the legal merit of its disparate position. In the face of a dispute having direct adverse impact on the conduct of a business as in this case, seeking its resolution is better served by formulating a carefully calibrated solution that balances competing interests, and is practically meaningful and helpful to the business over the longer term, rather than in a gamble of 'winner taking all'. Despite the great metaphorical distance between them, the parties in this case managed to mine the golden nuggets of mediation, to resolve an old festering dispute that had plagued them both for too many long years.

38 This case illustrates how mediation can redirect parties away from entrenched legal positions and toward pragmatic, forward-looking solutions that preserve – and even strengthen – the underlying commercial relationship.

39 Likewise, in the "Apple-Samsung wars", the parties had a pre-existing commercial relationship as Samsung was Apple's sole supplier of flash memory and had become a market competitor. Other factors probably weighed on the parties' minds, but in a more ideal world, mediation could have helped parties navigate their disputes and commercial relationships in a more mutually beneficial way from the outset, allowing continuity in their collaboration, before the parties settled their global disputes eventually in any case.

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20 *Fun Toast Pte Ltd & Fun Tea Pte Ltd* [2024] AMP MED 2.
21 *Fun Toast Pte Ltd & Fun Tea Pte Ltd* [2024] AMP MED 2, Reflections.

(2) Contextual relevance

40 Moreover, mediation enables a broader, more realistic engagement with the reasons behind disputes than litigation, which is often limited to legal "cases" stripped of contextual nuances. Courts and arbitral tribunals can sometimes apply a "legal filter", abstracting complex disputes into legal claims that can be adjudicated.[22] In contrast, mediation allows parties to address the full scope of the dispute, including business interests, reputational concerns, technical misunderstandings, and even relational breakdowns. This capacity is especially important in IP disputes where the legal issues (*eg*, allegations of infringement or invalidity) may only be part of a larger commercial conflict involving failed partnerships, divergent expectations, or even strained familial relationships.[23]

41 In The Legend of Mir 2 arbitration saga, it was in the joint owners' interests for a network of comprehensive software licensing agreements to be worked out commercially without the distraction of multiple contentious proceedings between them. The MMORPG market had exceptional potential and the joint owners could have focused efforts on working together rather than against each other. Arbitration has its advantages, but it was manipulated by the parties who sought to gain a "home advantage"[24] from arbitrating at SHIAC under PRC law as compared to ICC under Singapore law, without consultation with the Korean co-owner. The latter was concerned that parties should first address alleged past breaches before considering a renewal of the licence – a key interest within the dispute's context which was not helped by a quick launch into contentious proceedings. Mediation, if employed early and effectively, would likely have provided parties a structured yet flexible forum to reset their business relationship and co-create solutions preserving joint value.

(3) Confidentiality

42 IP mediation offers undeniable advantages in terms of confidentiality. Given that IP disputes frequently involve trade secrets, technical designs,

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22 Anna Carboni *et al*, "Mediation as a Resolution Method in IP Disputes" in *Mediation: Creating Value in International Intellectual Property Disputes* (Théophile Margellos eds) (Kluwer Law International, 2018) at pp 55–56.

23 See, *eg*, *Foo Chin & Foo Fang Rou* [2025] SGIPOS MED 1 and *Chew's Optics & Chew's Optics (Bishan), Chew's Optics (Kovan)* [2023] AMP MED 1 ("*Chew's Optics*"), two cases mediated at the WIPO Arbitration and Mediation Center that were, at their very core, family disputes that took the form of an intellectual property dispute. In *Chew's Optics*, the lawyers for one party remarked:

> The mediation … not only resolved the overt legal disputes but also included related commitments from parties that were strictly speaking out of the scope of the legal issues. This was made possible only with mediation, and is not achievable with litigation. The disputing parties were ultimately family members and it was desirable to assist them resolve all issues within a day than be put through long-drawn and acrimonious litigation proceedings.

24 *CNA v CNB* [2023] 5 SLR 1 at [173].

research data, or proprietary algorithms, parties may be reluctant to litigate in public or expose sensitive materials through discovery. Litigation and the publicity that it entails can result in irreversible harm to one's business where confidential information, including information about the *existence* of the dispute, becomes public.[25] Mediation, in contrast, allows parties to maintain control over disclosure. Institutional rules, such as those of WIPO,[26] allow parties to restrict access to sensitive documents or maintain confidentiality over the existence and outcome of the process.

(4) Competence

43 Another important benefit is the ability to select a mediator with the relevant subject-area competence and expertise. While some jurisdictions have specialist IP judges, many do not, and even where they exist, judges cannot always be expected to grasp complex technical subject matter in the time afforded to them. In mediation, parties can choose someone with legal, scientific, or industry-specific knowledge, or even a panel covering multiple disciplines. This flexibility helps parties bypass the steep learning curve that can afflict non-specialist adjudicators, and can lead to faster, better-informed outcomes.[27] In a world where IP rights increasingly involve hybrid technologies, such as AI-based diagnostics or blockchain-enabled IP registries, the ability to work with neutral experts is not just an advantage but a necessity. This is why some arbitration and mediation institutions, such as the WIPO Arbitration and Mediation Center, make it a point to empanel specialist neutrals with expertise in various areas of IP.[28]

44 On a related note, an expert mediator can also serve as a reality check. Litigators often become overly confident in their legal position, despite the unpredictability of trials and arbitral proceedings.[29] An experienced IP mediator can help reframe expectations, assess litigation risk, and foster settlement without undermining parties' legal rights.

(5) Control over outcome; consolidation of risk

45 Lastly, mediation offers parties close to full control over the outcome of the mediation. Unlike adjudicative proceedings, where outcomes are imposed on the parties, for better or worse, mediation allows the

25 Susan Corbett, "Mediation of Intellectual Property Disputes: A Critical Analysis" (2011) 17 *New Zealand Business Law Quarterly* 51 at 62.

26 World Intellectual Property Organization, WIPO Mediation Rules, Arts 15–18 <https://www.wipo.int/amc/en/mediation/rules> (accessed 17 September 2025).

27 Sarah Tran, "Experienced Intellectual Property Mediators: Increasingly Attractive in Times of 'Patent' Unpredictability" (2008) 13 *Harvard Negotiation Law Review* 313 at 316.

28 World Intellectual Property Organization, "WIPO Neutrals" <https://www.wipo.int/amc/en/neutrals/index.html> (accessed 17 September 2025).

29 Sarah Tran, "Experienced Intellectual Property Mediators: Increasingly Attractive in Times of 'Patent' Unpredictability" (2008) 13 *Harvard Negotiation Law Review* 313 at 319.

disputants to shape the process and the substance of the resolution under the facilitation and guidance of a mediator. Mediation facilitates "win-win" outcomes, such as how parties may, for example, agree to license disputed technology, redefine territories, collaborate in new projects, or restructure a royalty arrangement.[30] These possibilities are not so readily available in a court judgment or arbitral award, constrained by the pleadings and the legal remedies available under the forum.

46 Furthermore, given the intrinsic complexity and sensitive nature of IP disputes, litigation and arbitration are both fraught with risk.[31] IP disputes are increasingly multi-territorial and nationalistic, and the breakneck pace at which technologies evolve also means a growing divergence in IP jurisprudence across jurisdictions.[32] Parties to mediations have the benefit of consolidating their multi-territorial disputes in "one fell swoop", achieving for them a global settlement and legal certainty in all the involved jurisdictions.[33]

47 These advantages of mediation stand in stark contrast to the protracted and fragmented litigation seen in the "Apple-Samsung wars" mentioned earlier. In the US alone, Apple experienced twists and turns in the passage of its lawsuits through multiple levels of courts. Mediation could have consolidated the parties' conflicts into a single, coordinated process under their control. This would have reduced strategic uncertainty and jurisdictional fragmentation, which resulted in a patchwork of decisions that ultimately diluted the global efficacy of their respective patent monopolies.

48 The InterDigital FRAND dispute brings home a simple point. The wins and losses, the upsides and downsides, in arbitration (and litigation) can be binary and risky. Parties in dispute do not always have the benefit of hindsight to know whether they will fare better in a contentious setting or a conciliatory one. Mediation may have been a step worth attempting to retain autonomy and mitigate risk, possibly even as a tiered dispute resolution process, to which we turn further below.

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30 Sarah Tran, "Experienced Intellectual Property Mediators: Increasingly Attractive in Times of 'Patent' Unpredictability" (2008) 13 *Harvard Negotiation Law Review* 313 at 314.

31 Jeremy Lack, "Addressing the IP Dispute Resolution Paradox: Combining Mediation with Arbitration and Litigation", *Global Arbitration Review* (24 July 2024) <https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/addressing-the-ip-dispute-resolution-paradox-combining-mediation-arbitration-and-litigation> (accessed 17 September 2025).

32 See generally, Ann Monotti, "Divergent Approaches in Defining the Appropriate Level of Inventiveness in Patent Law" in *The Common Law of Intellectual Property: Essays in Honour of Prof David Vaver* (Lionel Bently, Catherine W Ng & Giuseppina D'Agostino eds) (Hart Publishing, 2010) at pp 178–198.

33 Friederike Heckmann & Thorsten Bausch, "The Use of Mediation in Settling Patent Disputes" (2018) 11(45) *International In-house Counsel Journal* 1 at 1.

B. Beyond mediation: dispute avoidance and hybrid processes

49 In addition to traditional mediation, IP disputes have begun to incorporate more proactive and integrated neutral mechanisms. One of these is *deal mediation*, which brings a mediator into the negotiation phase of a commercial arrangement, often before any dispute arises. Deal mediators use alternative dispute resolution ("ADR") techniques "up-front", in what is also known as "dispute-avoidance" to transform negotiating parties from adversaries into collaborators.[34] This is especially useful in high-value IP transactions, where parties come from different jurisdictions and legal cultures, and mistrust or misunderstanding can derail agreement.

50 The WIPO Arbitration and Mediation Center has reported successful use of deal mediation in IP contexts. In one case, a European university and a pharmaceutical company, stuck in a three-year negotiation deadlock, engaged a deal mediator under the WIPO Mediation Rules. A single mediation session allowed parties to clearly identify interests and enabled direct negotiations to resume and parties to agree shortly after.[35] The swiftness of the resolution against the protracted negotiation deadlock highlights the efficacy of a skilled mediator in helping parties renew their strategic trust in one another.

51 In the context of FRAND/SEP licensing disputes, the WIPO Arbitration and Mediation Center has seen growing use of its ADR services to resolve such disputes. As at the date of writing, it has administered more than 80 FRAND-related licensing transactions. These mediations have involved a diverse range of parties, including small and medium-sized enterprises ("SMEs"), patent pools, and major telecommunications firms, with participants spanning more than 20 jurisdictions across Asia, Europe, and North America.[36] To streamline the resolution of FRAND disputes, WIPO has developed a suite of model submission agreements which may be tailored by parties and used in either standalone agreements or contract clauses. These model agreements, developed through consultations with global experts and standards institutions such as the European

34 L Michael Hager, "Deal Mediation: How ADR Techniques Can Help Achieve Durable Agreements in the Global Markets" (1999) 14(1) *ICSID Review - Foreign Investment Law Journal* 1 at 2.

35 World Intellectual Property Organization, "WIPO ADR Options for Life Sciences Dispute Management and Resolution" at p 6 <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2022-14-en-wipo-adr-options-for-life-sciences-dispute-management-and-resolution.pdf> (accessed 17 September 2025).

36 Heike Wollgast & Ella Callanan, "WIPO ADR Procedures to Resolve FRAND And SEP Disputes", *LES* (March 2025) <https://lesi.org/wp-content/uploads/2025/03/LN_Legal_1_LN-SEP002-Wollgast-Callahan-p.47-52.pdf> (accessed 17 September 2025).

Telecommunications Standards Institute, incorporate FRAND-specific features to enhance efficiency and procedural clarity.[37]

52 One should also not forget the tiered dispute resolution clause in the toolbox.[38] This option is not new to commercial and collaborative agreements and sets out a sensible escalation plan when contracting parties encounter disagreements, starting with less costly and more informal processes such as negotiation or mediation, before arbitration or litigation. One wonders if the joint owners, and the licensees downstream, would have had a more time- and cost-effective experience had the numerous agreements in The Legend of Mir 2 saga incorporated a mediation-before-arbitration dispute resolution clause. It would have afforded an opportunity for parties to negotiate the global MMORPG market more holistically with the assistance of an expert mediator. Given the acknowledged high costs of arbitration, first attempting a less costly mode of resolution to which IP contractual disputes are suited is surely a prudent course of action.

53 Dispute resolution boards ("DRBs") represent another innovation. DRBs are standing panels of experts, jointly appointed at the outset of a long-term collaboration, who monitor the relationship and can be called upon to intervene in disputes. This process is also sometimes referred to as "expert determination". Parties may agree to keep a DRB informed throughout their collaboration, allowing it to assist with disputes as they arise. Having followed the project from the outset, the DRB can resolve issues quickly and confidentially without needing to catch up on background. Parties can decide whether the DRB's decisions are binding or advisory. As a result, DRBs allow for quick, confidential interventions without escalation.[39]

54 DRBs and deal mediation provide a robust infrastructure for complex IP disputes arising from long term, often collaborative, contracts such as in the information technology field. For example, parties may engage in deal mediation while negotiating their contracts, be advised by a DRB when issues arise, submit to mediation with the benefit of the DRB's advice, submit technical aspects to an expert for determination, then return to mediation to finalise a settlement. These flexible models allow parties to structure their dispute resolution path around the realities of their business, technologies, and partnerships. They are thus better supported to

37 World Intellectual Property Organization, "WIPO ADR for FRAND Disputes" <https://www.wipo.int/amc/en/center/specific-sectors/ict/frand/> (accessed 17 September 2025).

38 See, *eg*, World Intellectual Property Organization, "Drafting Efficient Dispute Resolution Clauses" <https://www.wipo.int/amc/en/clauses/clause_drafting.html> (accessed 17 September 2025).

39 World Intellectual Property Organization, "WIPO ADR Options for Life Sciences Dispute Management and Resolution" at p 6 <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2022-14-en-wipo-adr-options-for-life-sciences-dispute-management-and-resolution.pdf> (accessed 17 September 2025).

achieve their longer-term goals as short-term issues are resolved efficiently and effectively.

IV. Current intellectual property mediation landscape

55 Despite mediation's suitability and increasing institutional support, its practical uptake in resolving IP disputes remains disproportionately low. This paradox reflects a range of structural, cultural, legal, and behavioural impediments, which continue to restrict the mainstreaming of mediation in IP dispute resolution ecosystems.

A. Lack of familiarity and legal culture

56 One of the most entrenched obstacles is the widespread lack of familiarity with mediation among IP practitioners, particularly in jurisdictions where adversarial legal culture dominates. Lawyers trained in litigation or arbitration often default to adjudicative modes, viewing non-adjudicative processes with scepticism or indifference. This creates a cyclical barrier: because IP litigators are unfamiliar with mediation, they are unlikely to recommend it; without their recommendation, clients do not experience it; and without more users, the process fails to gain traction.[40]

57 Even where awareness exists, misconceptions abound. Parties may wrongly assume that proposing mediation signals weakness, that it will be used as a stalling tactic or fishing expedition (to fish information from the counterparty that may indirectly affect the course of resolution if the mediation fails), or that the process lacks enforceability or strategic value.[41] In jurisdictions where mediation is not yet established, professional advisers may be reluctant to encourage clients to mediate, fearing not only perceived weakness and their own lack of experience, but also lost billing opportunities.[42] These attitudes are reinforced by institutional and educational gaps. In many law schools and bar training programmes, mediation is still taught, if at all, as peripheral to litigation or arbitration.

58 Research confirms that legal culture shapes uptake. US lawyers who had experienced mediation were more likely to value and recommend

40 Jeremy Lack, "Addressing the IP Dispute Resolution Paradox: Combining Mediation with Arbitration and Litigation", *Global Arbitration Review* (24 July 2024) <https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/addressing-the-ip-dispute-resolution-paradox-combining-mediation-arbitration-and-litigation> (accessed 17 September 2025).

41 "A Proposal of Mediation is a Sign of Strength: Bazul Ashhab", *Singapore International Mediation Centre* <https://simc.com.sg/insights/proposal-mediation-sign-strength-bazul-ashhab> (accessed 17 September 2025).

42 Nadja Alexander, Jean-Francois Roberge & Fatma Ibrahim. *Mediation Essentials: The Definitive Deskbook* (2016) at 39.

it, compared to those who had not.[43] This suggests that greater exposure could produce a cultural shift over time, but the inertia of legal training and institutional practice remains a formidable hurdle.

B. Enforcement uncertainty and cross-border hesitation

59 These concerns are particularly pronounced in cross-border IP disputes, where questions of enforceability are paramount. While domestic mediated settlement agreements can be enforced as contracts, the enforcement of international mediated settlement agreements ("iMSAs") has historically been less certain. Until recently, there was no global instrument equivalent to the New York Convention[44] for arbitration awards.

60 This gap in legal infrastructure significantly lessens mediation's appeal in cross-border contexts. Parties in international disputes often lack long-standing relationships or mutual trust, making enforcement a key determinant of process selection.[45] In such cases, the unpredictability and cost of enforcing an iMSA, especially where litigation would be required in a foreign court, deters parties from using mediation at all.

61 The United Nations Convention on International Settlement Agreements Resulting from Mediation[46] ("Singapore Convention"), addresses this gap. Like the New York Convention, it allows for direct enforcement of iMSAs in the courts of contracting states, without requiring separate litigation. However, despite its promise, the Singapore Convention's impact remains constrained by limited uptake and continuing legal uncertainty. Many major jurisdictions have not yet ratified the Singapore Convention. Moreover, the transition from theory to practice will depend on courts' willingness to interpret and apply the Singapore Convention robustly. Until that happens, enforcement concerns will remain a deterrent, particularly for sophisticated IP owners with international portfolios.

62 Hybrid approaches, such as Arb-Med-Arb, aim to bridge the gap between mediation's flexibility and arbitration's enforceability. Under this model, parties initiate arbitration, attempt mediation, and, if successful, convert the mediated outcome into a consent award enforceable under the New York Convention. This "hybridisation" offers a practical workaround to the enforcement deficit.[47] Yet, challenges remain as converting a mediated

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43 Richard C Reuben, "The Lawyer Turns Peacemaker" (1996) 82 *ABA Journal* 54 at 57.

44 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958), 330 UNTS 38 (entered into force 7 June 1959).

45 David Tan, "The Singapore Convention on Mediation to Reinforce the Status of International Mediated Settlement Agreement: Breakthrough or Redundancy?" (2023) 40(4) *Conflict Resolution Quarterly* 467 at 468.

46 20 December 2018, entered into force 12 September 2020.

47 David Tan, "The Singapore Convention on Mediation to Reinforce the Status of International Mediated Settlement Agreement: Breakthrough or Redundancy?" (2023) 40(4) *Conflict Resolution Quarterly* 467 at 477.

outcome into an arbitral award requires the settlement terms to fall within the scope of the tribunal's authority, which may exclude some commercial or forward-looking agreements.[48]

C. Contractual and institutional barriers

63 Another structural barrier lies in the drafting of IP agreements. Many contracts fail to include tailored ADR clauses or tiered resolution mechanisms that incorporate mediation. Instead, parties often rely on generic arbitration clauses, excluding the possibility of mediation altogether. This omission removes an important procedural gateway that would otherwise normalise and encourage mediation, whether as a standalone recourse, or as part of a tiered, measured response to managing disagreements in the form of tiered resolution mechanisms.

64 WIPO's statistics show that while many cases are submitted to WIPO through contractual clauses, a growing number of IP mediation requests arise not from existing contractual clauses but from *ad hoc* party referrals.[49]

65 Article 4 of the WIPO Mediation Rules is particularly significant in this context. It enables a party to submit a unilateral request for Mediation at no cost, which the WIPO Arbitration and Mediation Center may then transmit to the other party for consideration.[50] While this mechanism provides a valuable entry point for mediation in the absence of a mediation clause, its use also highlights the structural gap: had mediation been embedded *ex ante*, parties would not need to rely on discretionary acceptance post-dispute. Indeed, the fact that a considerable proportion of WIPO mediations originate from such Art 4 referrals illustrates both the flexibility of the system and the missed opportunity for more systematic integration of mediation through contract design.

V. Building sustainable intellectual property mediation ecosystem: what needs to happen for bigger take-up

66 Despite growing recognition of the advantages of mediation in IP disputes, its uptake remains uneven and far below potential. If it is to take root more widely in IP practice, it cannot depend on *ad hoc* success or isolated

48 David Tan, "The Singapore Convention on Mediation to Reinforce the Status of International Mediated Settlement Agreement: Breakthrough or Redundancy?" (2023) 40(4) *Conflict Resolution Quarterly* 467 at 476.

49 Jeremy Lack, "Addressing the IP Dispute Resolution Paradox: Combining Mediation with Arbitration and Litigation", *Global Arbitration Review* (24 July 2024) <https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/addressing-the-ip-dispute-resolution-paradox-combining-mediation-arbitration-and-litigation> (accessed 17 September 2025).

50 World Intellectual Property Organization, WIPO Mediation Rules, Art 4.

enthusiasm. To cultivate a sustainable and effective IP mediation ecosystem, a good seedbed needs to be prepared for it. Here, insights from dispute system design ("DSD") are particularly useful. Effective DSD emphasises that systems should be intentionally structured to prioritise interest-based processes, sequence procedures to minimise costs, incorporate feedback loops, and provide parties with both incentives and resources to engage meaningfully in resolution.[51]

67 Building on these DSD principles, this section identifies five pillars necessary for embedding mediation more deeply into IP dispute resolution systems:

(a) cross-agency collaboration and co-operation;

(b) carrots and sticks – incentive design;

(c) cultivating public confidence through greater visibility;

(d) cultural literacy – professional mindset shifts; and

(e) capacity-building for IP mediators.

68 This section explores each of these factors, identifies good practices, and recommends practical measures that can be taken.

A. Cross-agency collaboration and co-operation

69 The foundation of an effective IP mediation ecosystem lies in the efficacious collaboration of stakeholders, including IP offices, dispute resolution centres, national courts, professional associations, and industry actors.

70 ASEAN is a region that holds great promise of economic potential and uplifting of lives through innovation and trade. It has a market size of US$2.3tn[52] and aims to become the world's fourth largest integrated economy by 2045.[53] Its current ASEAN Intellectual Property Rights Action

51 See generally, Seun Lari-Williams & Stefan Rutten & Esther van Zimmeren, "Enhancing the IP system through Dispute System Design" 20(6) *Journal of Intellectual Property Law and Practice* 377, which draws on the work of William L Ury, Jeanne M Brett & Stephen B Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* (Jossey-Bass, 1988).

52 Association of Southeast Asian Nations, "Economic Community" <https://asean.org/our-communities/economic-community-2/> (accessed 17 September 2025).

53 Association of Southeast Asian Nations, "ASEAN Economic Community Strategic Plan: 2026–2030" (2025) <https://asean.org/wp-content/uploads/2025/06/AEC-Strategic-Plan-2026-2030.pdf> (accessed 17 September 2025).

Plan ("AIPRAP") 2016–2025[54] is themed "Meeting the Challenges of 'One Vision, One Identity, One Community' through Intellectual Property".

71 On the dispute resolution front, the present focus of the action plan is on litigation, information resources on IP rights enforcement, and supporting national judiciaries to expedite the disposal of IP cases; a starting point for ASEAN member states which are at different stages of development. There is potential to build on this in the next AIPRAP, for 2026–2030, which is expected to be published later in 2025, and aims to "Advance an Effective, Enterprising and Inclusive IP Ecosystem in the ASEAN Region" by 2030.[55] From what is in the public domain, it appears that the upcoming action plan will "proactively tackle the implications of emerging technology, particularly Artificial Intelligence, on existing intellectual property legal frameworks, exploring potential regional approaches to issues of ownership, inventorship, and the protection of AI-generated works".[56]

72 Mediation fits the developments in this direction like a glove, with the possibility of IP expert mediators, perhaps assisted by technologically savvy neutrals, helping to work out a balanced way ahead among disputing parties in these growth areas where law and technology intersect, and yet where legal principles and precedents are still developing.

73 Another example of regional collaboration is the African Regional Intellectual Property Organization, which is actively developing plans to introduce mediation services as part of its broader initiative to harmonise IP protection among its member states.[57]

74 The importance of coordination between adjudicatory bodies and mediation providers cannot be overstated. IP office- or court-annexed mediation schemes function best when built on inter-agency co-operation. The WIPO Arbitration and Mediation Center reports that since 2020, its

54 Association of Southeast Asian Nations, "The ASEAN Intellectual Property Rights Action Plan 2016–2025: Meeting the Challenges of 'One Vision, One Identity, One Community' through Intellectual Property" <https://asean.org/wp-content/uploads/2021/01/ASEAN-IPR-Action-Plan-2016-2025.pdf> (accessed 17 September 2025).

55 World Intellectual Property Organization, "Successful Development by ASEAN Member States of the Forthcoming ASEAN IPR Action Plan" (20 March 2025) <https://www.wipo.int/en/web/office-singapore/w/news/2025/successful-development-by-asean-member-states-of-the-forthcoming-asean-ipr-action-plan> (accessed 17 September 2025).

56 Daitin & Associates' post at <https://www.linkedin.com/posts/daitin-%26-associates-co-ltd-_cambodia-asean-ipr-activity-7325338525879480321-5q2h> (accessed 17 September 2025).

57 African Regional Intellectual Property Organization, "Inaugural Alternative Dispute Resolution Seminar" (7 March 2023) <https://www.aripo.org/news/Inaugural+Alternative+Dispute+Resolution+Seminar-1678198277> (accessed 17 September 2025).

caseload has increased by 280%,[58] and attributes this growth to its growing collaboration with courts, IP and copyright offices.[59] Disputes arising from IP offices, such as oppositions, cancellations; or licensing challenges before specialist copyright tribunals, are often suitable for early intervention but require formal processes to support referral and administration to be fully optimised.

75 One exemplary example of an institutional bridge between adjudication at the IP office and an ADR center is the collaboration between the Intellectual Property Office of Singapore ("IPOS") and various mediation providers, including the WIPO Arbitration and Mediation Center. Parties involved in proceedings before the IPOS Registrar are recommended mediation as a means of resolving their disputes at structured points in the process and are free to approach any one of the mediation service providers in Singapore for their customised offerings. As part of this collaboration, the WIPO Arbitration and Mediation Center offers an adjusted schedule of fees for mediations referred from IPOS, lowering the barrier to entry to mediation.[60]

76 A further example of a structured institutional framework is the long-standing collaboration between the Intellectual Property Office of the Philippines ("IPOPHL") and the WIPO Arbitration and Mediation Center, established through a memorandum of understanding signed in 2014. Under this framework, WIPO and IPOPHL co-administer a range of IP-related disputes through a joint dispute resolution procedure.[61] The WIPO Arbitration and Mediation Center provides parties with the option to conduct mediation under the WIPO Mediation Rules, including access to the WIPO List of Neutrals. Under this collaboration, the WIPO Arbitration and Mediation Center facilitates the administration of such proceedings through dedicated infrastructure including online case management tools and video conferencing services, and offers procedural guidance and tailored training to support capacity-building in the Philippines.[62]

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58 World Intellectual Property Organization, "WIPO ADR Highlights 2024" <https://www.wipo.int/amc/en/center/summary2024.html> (accessed 17 September 2025).

59 Ignacio de Castro, Heike Wollgast & Justine Ferland, "Recent Trends in WIPO Arbitration and Mediation", *World Trademark Review* (3 April 2025) <https://www.worldtrademarkreview.com/guide/the-guide-ip-arbitration/third-edition/article/recent-trends-in-wipo-arbitration-and-mediation> (accessed 17 September 2025).

60 World Intellectual Property Organization, "WIPO Mediation for Proceedings Instituted in the Intellectual Property Office of Singapore (IPOS)" <https://www.wipo.int/amc/en/center/specific-sectors/ipos/mediation/> (accessed 17 September 2025).

61 Intellectual Property Office of the Philippines, "Adjudication and Mediation – Schedule of Fees" <https://www.ipophil.gov.ph/services/ip-adjudication/adr-fees/> (accessed 17 September 2025).

62 World Intellectual Property Organization, "WIPO Mediation Proceedings Instituted in the Intellectual Property Office of the Philippines (IPOPHL)" <https://www.wipo.int/amc/en/center/specific-sectors/ipophl/> (accessed 17 September 2025).

77 Likewise, in China, through a series of Memoranda of Understanding between WIPO and China's Supreme People's Court, Ministry of Justice, and regional High People's Courts, a framework was constructed for the referral of foreign-related IP disputes to WIPO Mediation. This arrangement not only aligns court procedure with ADR options but also reinforces China's growing preference for amicable resolution of IP disputes.[63] At the time of writing, more than 150 cases have been referred from the Chinese courts to the WIPO Shanghai Service.

78 Elsewhere, on a regional scale, the European Union Intellectual Property Office ("EUIPO") launched its mediation centre in 2023, pursuant to Regulation (EU) 2017/1001,[64] as part of its broader commitment to facilitating amicable resolution of disputes involving EU trade marks and registered Community designs.[65] The EUIPO Mediation Centre offers mediation, conciliation, and expert determination, primarily for *inter partes* proceedings at the appeal stage, with phased access to first-instance users, particularly SMEs. Proceedings are generally online or held at the EUIPO headquarters. Within a year of the launch of the EUIPO Mediation Centre in 2023, it saw a growth of 188% in mediation.[66] This shows how institutional commitment and procedural integration can significantly increase the uptake of mediation within a regional IP system.

79 Bridges between courts and IP offices and mediation service providers are hence vital to increasing the take-up and, perhaps more importantly, the credibility of mediation in the IP ecosystem.

B. Carrots and sticks – incentive design

80 Even with institutional frameworks in place, uptake will remain limited without clear and effective incentives. Many parties hesitate to mediate, not due to opposition to the concept, but because the perceived benefits are unclear or undercut by perceived costs.

81 The concept that a mix of "carrots" and "sticks" is necessary to encourage meaningful engagement with mediation has long been recognised. A 2011 study by the European Parliament outlines four practical

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63 World Intellectual Property Organization, "Mediation for Foreign-Related Intellectual Property Cases Referred by Courts in China" <https://www.wipo.int/amc/en/center/specific-sectors/ipoffices/national-courts/china/spc.html> (accessed 17 September 2025).

64 Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (codification), [2017] OJ L 154/1.

65 Patrick Ernst Sensburg, "Business Mediation in the Framework of EU-Law" 3(1) *European Business Law Journal* 4 at 16–17

66 Goran Marjanovic & Luwin Dela Concha, "The EUIPO Mediation Centre and Its Services" (11 November 2024) <https://ipkey.eu/sites/default/files/ipkey-docs/2024/IPKEY_SEA_act16_01_The_EUIPO_Mediation_Centre_and_its_Services.pdf> (accessed 17 September 2025).

approaches: legal enforceability, tax benefits, reimbursement of dispute fees, and judicial encouragement.[67] While now somewhat dated, the study remains a useful reference point for considering how regulatory frameworks might be designed to make mediation an attractive and credible alternative to litigation.

82 Italy's Legislative Decree No 28/2010 exemplifies such an integrated approach. Certain categories of civil disputes must be submitted to mediation prior to litigation – a classic "stick".[68] Simultaneously, several "carrots" are deployed, *eg*, each party to a mediation can claim tax credits of up to €600, both for mediation and legal fees.[69]

83 Fee reduction and cost-support mechanisms are increasingly used to improve access to mediation, particularly for small enterprises and individual rights-holders. For example, the Korean Intellectual Property Office's no-cost mediation service provides a user-friendly option for parties with limited resources.[70] In Singapore, IPOS supports similar efforts through programmes such as the Revised Enhanced Mediation Promotion Scheme ("REMPS"), which help defray mediation costs for eligible parties.[71] These initiatives reduce financial barriers and signal institutional support for mediation as a credible first step in dispute resolution.

84 Judicial engagement is another force multiplier. The European Parliament study notes that encouraging judges to refer cases to mediation significantly boosts uptake.[72] Courts in the Commonwealth, including Singapore and Hong Kong, have demonstrated a willingness to adjust cost awards based on a party's conduct in relation to their attempts at amicable resolution – a powerful judicial nudge towards mediation.[73]

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67 European Parliament. *Quantifying the Cost of Not Using Mediation – A Data Analysis.* (April 2011) at p 18 <https://www.europarl.europa.eu/RegData/etudes/note/join/2011/453180/IPOL-JURI_NT(2011)453180_EN.pdf> (accessed 17 September 2025).

68 Legislative Decree No 28 of 4 March 2010, Art 20.

69 Leonardo D'Urso, Julia Radanova & Constantin Adi Gavrila, "The Italian Opt-Out Model: A Soft Mandatory Mediation Approach in Light of the Recent CJUE Decision", *Kluwer Mediation Blog* (14 October 2024) <https://legalblogs.wolterskluwer.com/mediation-blog/the-italian-opt-out-model-a-soft-mandatory-mediation-approach-in-light-of-the-recent-cjue-decision> (accessed 17 September 2025).

70 Korean Intellectual Property Office, "IP Protection" <https://www.kipo.go.kr/en/HtmlApp?c=91022&catmenu=ek02_06_01> (accessed 17 September 2025).

71 Intellectual Property Office of Singapore, "For Enterprises" <https://www.ipos.gov.sg/manage-ip/resources/for-enterprises> (accessed 17 September 2025).

72 European Parliament. *Quantifying the Cost of Not Using Mediation – A Data Analysis.* (April 2011) at p 19 <https://www.europarl.europa.eu/RegData/etudes/note/join/2011/453180/IPOL-JURI_NT(2011)453180_EN.pdf> (accessed 17 September 2025); Bulgarian Code of Civil Procedure (SG No 59/2007, amended 2 February 2023) Arts 321(2) and 321(3).

73 See generally *Halsey v Milton Keynes General NHS Trust* [2004] 1 WLR 3002; *Re Chow Tak Wa* [2020] HKCFI 2020 (Hong Kong) and in Singapore, see O 21 r 2(*a*) of the Rules of Court 2021.

85 Together, these measures demonstrate that widespread use of mediation is most likely to take root when supported by institutional and procedural "carrots" and "sticks" creating a balanced ecosystem of encouragement and obligation. Other forms of incentives may include subsidies for mediation fees, particularly for SMEs and individuals; and procedural benefits such as fast-track treatment for parties who attempt mediation in good faith.

C. Cultivating public confidence through greater visibility

86 Another "carrot" to consider is public recognition, and, as a corollary, transparency and information for the public's benefit. As mediated disputes often settle in silence and without the fanfare of a published judgment, there is often little visible evidence of their effectiveness. As such, awards, testimonials, and anonymised case studies can sometimes showcase the effectiveness of mediation and legitimise it in the eyes of prospective users. For example, the WIPO Arbitration and Mediation Center regularly publishes anonymised examples from its caseload,[74] while IPOS has also developed a compendium of mediation case studies, each of which is captured in fairly descriptive detail including the nature of the dispute and the process by which the mediator enabled parties to resolve the dispute.[75] WIPO and IPOS also require consent to limited publicity and feedback as preconditions to their various funding schemes, such as the WIPO-ASEAN Mediation Programme[76] (WIPO and IPOS) and REMPS[77] (IPOS).

87 The WIPO Arbitration and Mediation Center frequently receives queries, often through its good offices (bons offices) function, from parties considering mediation. Through these queries, WIPO notes anecdotally that prospective users often consult IPOS' compendium of cases to assess which mediators might be best suited to their own disputes, relying on the nature of past cases and the profiles of mediators involved. Indeed, one mediator on the WIPO list reported being contacted directly by a potential party simply because they had been featured in a past case published in the compendium, demonstrating the influential role such public resources can play in fostering trust and informed uptake of mediation.

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74 World Intellectual Property Organization, "WIPO Mediation Case Examples" <https://www.wipo.int/amc/en/mediation/case-example.html> (accessed 17 September 2025).

75 Intellectual Property Office of Singapore, "Mediation Cases" <https://www.ipos.gov.sg/manage-ip/resolveip-disputes-overview/mediation/mediation-success> (accessed 17 September 2025).

76 World Intellectual Property Organization, "WIPO-ASEAN Mediation Programme (AMP+)" <https://www.wipo.int/web/office-singapore/w/news/2025/wipo-asean-mediation-programme-amp-> (accessed 19 September 2025).

77 Intellectual Property Office of Singapore, "For Enterprises" (updated 15 July 2025) <https://www.ipos.gov.sg/manage-ip/resources/for-enterprises> under Grants and Support Schemes: Revised Enhanced Mediation Promotion Scheme (REMPS) (accessed 19 September 2025).

88 These efforts combine to build confidence in mediation as a credible and effective ADR mechanism, particularly among prospective users who may be unfamiliar with its processes or benefits.

D. Cultural literacy – professional mindset shifts

89 For mediation to take root within the IP ecosystem, players in the field need to keep updated not only in their technical knowledge, but equally or perhaps more importantly, in their cultural attitudes towards mediation.

90 IP is almost exclusively a rights-based field of law, and lawyers are conditioned from their legal education to see legal issues as disputes that ought to be decided by a third party, and their role as that of persuading a court of the superiority of their client's claim.[78] This rights-based lens thus has the potential to overshadow underlying issues in dispute, leading lawyers to drive their legal case home, rather than evaluating or dealing with the emotional or practical issues that their clients may wish to deal with instead.[79]

91 To change this, law schools, business programmes, and technical training institutes should incorporate mediation elements into their IP curricula to impress on prospective users that mediation should be considered for IP disputes, just as naturally as litigation and arbitration are. Testimonials and case studies, especially those involving respected firms or institutions, can help normalise mediation as a professional and legitimate choice.

92 Institutions such as the Singapore International Dispute Resolution Academy ("SIDRA") and IPOS have also contributed by publishing data and resources that help build public trust and professional confidence in mediation. SIDRA regularly publishes surveys and empirical data on ADR uptake, trends, and user satisfaction,[80] while IPOS provides its compendium of mediation case examples that demonstrate the value and practical application of mediation in IP contexts. These transparency efforts provide real-world proof of concept and support a shift in cultural perceptions. Over time, as mediation becomes more visible, accessible, and culturally

78 Leonard L Riskin, "Mediation and Lawyers" (1982) 43 *Ohio State Law Journal* 29 at 45.

79 Kathy Douglas, "The Evolution of Lawyers' Professional Identity: The Contribution of the ADR in Legal Education" (2013) 18(2) *Deakin Law Review* 315 at 315.

80 See, *eg*, Nadja Alexander *et al*, *Singapore International Dispute Resolution Survey: 2024 Final Report* (2024) <https://sidra.smu.edu.sg/research-program/appropriate-dispute-resolution-empirical-research/sidra-survey-2024> (accessed 17 September 2025). The Singapore International Dispute Resolution Academy ("SIDRA") is a research and thought leadership centre based at the Singapore Management University, Yong Pung How School of Law. It specialises in dispute resolution theory, practice, and policy, with a particular focus on mediation and the Singapore Convention on Mediation. SIDRA conducts empirical research, develops training programmes, and produces publications to support the growth of appropriate dispute resolution in Asia and globally.

validated, it will hopefully become accepted as a standard tool in the IP dispute resolution toolkit. This goes some way to address the issue on the demand side of the house.

E. Capacity-building for intellectual property mediators

93 As cultural attitudes towards mediation are remedied, on the supply side, the requisite expertise in IP mediation also needs to be built up.[81] As IP disputes require neutrals with both procedural competence and substantive familiarity with IP law, licensing, and technical domains, a solid base of IP neutrals is indispensable. Currently, while mediation centres or institutions organise the occasional *ad hoc* IP mediation training programme, many jurisdictions lack dedicated training pathways, accreditation systems, or standards for continuing education in IP mediation.

94 The WIPO Arbitration and Mediation Center has been leading the charge in this area and regularly partners local IP or judicial authorities to conduct IP-specific mediation training. WIPO also fosters a dedicated pipeline for young professionals through WIPO ADR Young, a global network for practitioners under 40. Membership is free and provides access to mentorship, training, and collaborative opportunities designed to support entry into the ADR field.[82] These programmes are designed to cultivate a new wave of skilled IP mediators and ADR practitioners worldwide.

95 Ukraine's 2023 IP Strategy illustrates one possible model. It recommends the establishment of dedicated IP mediation centres and structured training for mediators and arbitrators.[83] Such reforms could build a sustainable cadre of IP-neutral professionals, particularly in emerging jurisdictions. Meanwhile, discussions at the 2024 New York Intellectual Property Law Association Annual Meeting revealed growing interest in setting minimum qualifications for mediators operating in US federal IP cases,[84] a development that could influence international norms and expectations. This reflects a growing priority globally for minimum standards for IP mediators.

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81 Including on the foundation of general mediation standards bodies such as Singapore International Mediation Institute.

82 World Intellectual Property Organization, "WIPO ADR Young" <https://www.wipo.int/amc/en/center/wipoadryoung/index.html> (accessed 17 September 2025).

83 Olena Orliuk, "Strategic Directions of the Intellectual Property Area Development in Ukraine" in *Competition and Intellectual Property Law in Ukraine, MPI Studies on Intellectual Property and Competition Law* vol 31 (Hans Richter ed) (Springer, 2023) at p 344.

84 New York Intellectual Property Law Association, *New York Intellectual Property Law Association 2024 Annual Meeting* (8 May 2024) <https://www.nyipla.org/images/nyipla/AnnualMeeting/2024AnnualMeeting/NYIPLA%20Annual%20Meeting%205.8.24%20--%20Panel%20Discussion%20Materials.pdf> (accessed 17 September 2025).

96 Another excellent example of mediator development can be found in Singapore's IP Strategy 2030 ("SIPS 2030").[85] Singapore's approach to mediator development reflects a deliberate, institution-wide strategy to build both substantive IP knowledge and practical ADR expertise. As part of SIPS 2030, IPOS has collaborated with local law schools to embed IP-related content into legal education. This includes the incorporation of IP elements into mediation modules at the Singapore Management University Yong Pung How School of Law and at the National University of Singapore ("NUS") Faculty of Law. IPOS' strong commitment to the promotion of *appropriate* dispute resolution for IP disputes is also evinced in its introduction of what is believed to be the first tertiary module anywhere, on the arbitration of IP disputes, at the NUS Faculty of Law. IPOS' introduction of IP elements and perspectives to ADR content in law schools contributes to expertise in IP ADR. IPOS and the Singapore Mediation Centre have also developed and run an IP mediation certification course for mediators seeking to upskill in IP dispute resolution.

97 Complementing these structural efforts, IPOS' Young IP Mediators initiative, launched in 2020, aims to build successive generations of IP mediators by providing final year law students and recent law graduates with opportunities to shadow or co-mediate real IP disputes. Through these combined efforts, Singapore is laying the groundwork for a capable and specialised cohort of IP mediation professionals, a framework that serves as an exemplary model for a thriving IP mediation ecosystem.

VI. Conclusion

98 A sustainable IP mediation ecosystem brings multiplier benefits to people, enterprises, economies and societies. Having taken stock of the IP mediation landscape and forecast of what is needed for IP mediation to reach the next stage of normalisation and adoption, it is hoped that more concerted efforts and constructive developments will materialise in the near future.

99 For ASEAN and similarly situated regions, where cultural values and legal traditions naturally support conciliatory processes, the opportunity is particularly ripe. As discussed in the introduction, a "soft approach" – in the form of gentle norm-building, interoperability, and strategic behavioural nudging – may offer a path not only to increased use of mediation but also to a reimagined, culturally attuned model of IP dispute resolution.

100 Mediation must be positioned, not at the margins but at the centre of strategy, if the goal is to support a healthy IP ecosystem. The task ahead

85 Intellectual Property Office of Singapore, *Singapore IP Strategy 2030 Report* (2021) <https://isomer-user-content.by.gov.sg/61/2336fcc2-4f45-43d0-9d82-1bdb89846df9/singapore-ip-strategy-report-2030-18May2021.pdf> (accessed 17 September 2025).

therefore is not only to promote mediation, but to normalise it and embed it within the legal, commercial, and cultural DNA of the business of IP.

THE MARTIN FRAMEWORK

A Culturally Responsive Approach to Community Mediation in Singapore's Multi-Racial Society

This article sets out the MARTIN framework, a practice-grounded approach tailored to Singapore's multi-racial and multi-religious setting. It offers a structured yet adaptable six-phase sequence: (a) Mindful Engagement; (b) Assessment of Entrenchment; (c) Reframing Perspectives; (d) Transformative Dialogue; (e) Interest-Based Solutions; and (f) Nurturing Commitment. Two case illustrations follow: one on cooking odours ("curry dispute") and the other on use of shared corridors. They demonstrate how culturally sensitive process design can build readiness to engage, reduce defensiveness, and support workable, face-preserving arrangements.

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I. Introduction

1 Community mediation in Singapore sits at the intersection of density, diversity and everyday life. In close quarters, ordinary routines can grate. Religious observances, food aromas, corridor use, and family rhythms become shared experiences rather than private choices. Most neighbours accommodate each other; some do not. When relationships harden, mediators work with culture, identity, and concerns about face alongside interests and options. Here, "face" refers to a person's social standing in the eyes of others and the need to avoid public diminishment; face-concerns often shape willingness to speak, apologise or concede in mixed-cultural settings.[1]

2 This article presents the MARTIN framework as a practice-grounded approach for such cases. Designed for Singapore's multi-racial and multi-religious setting, it blends cultural literacy, psychologically informed de-entrenchment, and relationship repair across six phases:

1 Angela K-Y Leung & Dov Cohen, "Within- And Between-Culture Variation: Individual Differences and the Cultural Logics of Honor, Face, and Dignity Cultures" (2011) 100(3) *Journal of Personality and Social Psychology* 507.

(a) Mindful Engagement; (b) Assessment of Entrenchment; (c) Reframing Perspectives; (d) Transformative Dialogue; (e) Interest-Based Solutions; and (f) Nurturing Commitment.[2]

3 Two commitments shape the contribution. First, treat culture as foundational: needs linked to face, religious practices, language preferences, and communication styles are process variables, not background. Second, address psychology directly. Parties bring loss aversion, reactive devaluation, and confirmation bias. The framework proposes routes to loosen these trenches without humiliation.

4 A brief orientation to Singapore's community-mediation landscape precedes the framework. Part III of this article sets out the phases of the MARTIN framework; Part IV applies them to two recurrent neighbourhood disputes: cooking odours and the use of shared corridors. The aim is practical: to equip mediators for their next session.

5 The framework does not claim universality. It is tailored to Singapore and is best read as scaffolding rather than script; nor does it guarantee settlement. Sometimes the most responsible outcome is safer communication and a workable plan for living alongside difference.

II. Community mediation in Singapore: a brief orientation

A. Institutional architecture

6 Community mediation is delivered primarily through the Community Mediation Centre, with the Community Disputes Resolution Act 2015[3] providing a tribunal pathway via the Community Disputes Resolution Tribunals ("CDRTs") when matters cannot be settled. A recent ministry profile noted that the Housing and Development Board ("HDB") received about 11,400 noise-related feedback cases between January and September 2020, roughly 3,600 more than in the same period in 2019, underscoring the value of upstream resolution.[4]

B. Shift to pre-filing mediation

7 In 2024, Parliament passed amendments to the Community Disputes Resolution Act 2015. The scheme now encourages and, in many instances,

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2 Kevin Avruch, *Culture and Conflict Resolution* (United States Institute of Peace, 2003); Stella Ting-Toomey & John G Oetzel, *Managing Intercultural Conflict Effectively* (SAGE Publications, 2001).

3 2020 Rev Ed.

4 Ministry of Law, "Getting to the Heart of Community Conflicts" (18 March 2022) <https://insight.mlaw.gov.sg/articles/our-people/2022-03-18-getting-to-the-heart-of-community-conflicts/> (accessed 18 September 2025).

requires, an attempt at mediation before filing a claim at the CDRTs, subject to limited waivers where mediation is unsuitable. This moves community mediation from a purely voluntary step to a structured pre-action gateway in appropriate cases.[5] Court user guidance and subsidiary legislation issued in 2025 reinforce this pre-filing pathway. Scholarly commentary has long noted the tension between voluntariness and court-connected schemes, and outlines safeguards to protect party self-determination.[6]

C. Community Relations Unit

8 Government has also established a Community Relations Unit ("CRU") within the enhanced Community Disputes Management Framework to tackle a minority of severe cases, such as persistent noise or hoarding.[7] Community Relations Officers coordinate targeted interventions. The CRU is not a first responder for all disputes. It is intended for complex matters that require coordinated action, and it sits upstream of adjudication while working in tandem with community mediation.

D. Implications for practice

(1) Intake and readiness

9 With pre-filing mediation now being the general requirement in CDRT cases, more reluctant parties will arrive. This sits within the wider debate on mandatory mediation and the need for suitability screening and proportionate opt-outs.[8] Expect defensiveness; plan for swift psychological safety in culturally mixed dyads.

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5 Ministry of Culture, Community and Youth, "Community Disputes Management Framework" (27 May 2025) <https://www.mccy.gov.sg/sectors/community/community-disputes-management-framework/> (accessed 18 September 2025); Edwin Tong, Minister for Culture, Community and Youth and Second Minister for Law, opening speech for Second Reading of Community Disputes Resolution (Amendment) Bill (15 November 2024) <https://www.mccy.gov.sg/about-us/news-and-resources/opening-speech-for-second-reading-of-community-disputes-resolution--amendment--bill> (accessed 18 September 2025); Koh Wan Ting, "New Govt Unit to Investigate Severe Neighbour Disputes, Could Deploy Noise Sensors Under Proposed Law", *CNA* (12 August 2024) <https://www.channelnewsasia.com/singapore/noise-sensors-neighbour-disputes-community-relations-unit-4541501> (accessed 18 September 2025).

6 Dorcas Quek Anderson, "Mandatory Mediation: An Oxymoron? Examining the Feasibility of Implementing a Court-Mandated Mediation Program" (2010) 11(2) *Cardozo Journal of Conflict Resolution* 479.

7 Ministry of National Development, "Community Relations Unit (CRU)" <https://www.mnd.gov.sg/our-work/ensuring-high-quality-living-environment/community-relations-unit> (accessed 18 September 2025).

8 Dorcas Quek Anderson, "Mandatory Mediation: An Oxymoron? Examining the Feasibility of Implementing a Court-Mandated Mediation Program" (2010) 11(2) *Cardozo Journal of Conflict Resolution* 479; Edwin Tong, Minister for Culture, Community and Youth and Second Minister for Law, opening speech for Second Reading of Community Disputes Resolution (Amendment) Bill (15 November 2024) <https://

(cont'd on the next page)

(2) Process design in a mixed ecosystem

10 Some cases will sit within a wider management plan that involves the CRU or grassroots partners. The mediation process should clarify roles, avoid duplication, and, where helpful, complement CRU actions. Gentle reality-testing helps parties understand what mediation can and cannot achieve relative to regulatory steps.

(3) Standards of success

11 Settlement matters, yet in culturally charged disputes, durable coexistence can depend more on face-preserving arrangements, incremental exposure, and simple communication routines than on maximalist bargains.

E. Positioning the MARTIN framework

12 Against this backdrop, the MARTIN framework emphasises culturally attuned rapport, surfaces needs without rushing to bargains, offers face-preserving ways to shift position, and ends with routines for living together.

III. The MARTIN framework

A. Theoretical foundations and influences

13 The MARTIN framework synthesises mediation theory, psychological insights on entrenchment, and cultural communication scholarship, adjusted for Singapore's multi-racial setting.

14 Interest-based negotiation offers the basic move from positions to interests in a way that can be culturally adapted for Singapore's context. Transformative and narrative contributions inform the emphasis on empowerment, recognition, and reframing. Cultural frameworks (including face and high-context communication) shape how people perceive and respond to conflict in Singapore's multi-racial setting.

15 These strands are integrated into a practice-oriented scaffold rather than presented as theory for its own sake. The aim is pragmatic: culturally literate rapport-building, techniques that loosen entrenched stances without humiliation, and option-building that preserves dignity and improves daily coexistence.

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www.mccy.gov.sg/about-us/news-and-resources/opening-speech-for-second-reading-of-community-disputes-resolution--amendment--bill> (accessed 18 September 2025).

B. Core principles and values

16 The framework is guided by core principles and values that shape community mediation in Singapore's diverse society. These reflect universal mediation ethics alongside Singapore-specific considerations: cultural resonance; relationship preservation; face-saving mechanisms; psychological de-entrenchment; adaptive facilitation; cultural integration; and practical implementation.

(a) Cultural resonance: The framework recognises and respects the diverse cultural and religious backgrounds of parties in Singapore's multi-racial society. Effective mediation should align with parties' cultural values, communication styles, and conflict-resolution preferences rather than impose an ill-fitting approach.

(b) Relationship preservation: Reflecting traditional values of harmony and community, the framework prioritises the maintenance and improvement of relationships between parties. This principle is particularly relevant in Singapore's high-density living environment, where parties often must continue to coexist in close proximity after mediation. Unlike disputes where parties can disengage, neighbours in HDB flats must find ways to live together. Relationship outcomes are therefore as important as specific agreements.

(c) Face-saving mechanisms: The framework incorporates techniques that allow parties to retreat from entrenched positions without losing dignity or "face". This principle acknowledges the importance of face ("*mianzi*") in Chinese culture and similar concepts in Malay and Indian cultures, where social recognition and reputation are highly valued.[9] Face concerns are deeply embedded in social psychology and can determine whether mediation succeeds in Singapore's context. Neglecting them can undermine the process.[10]

(d) Psychological de-entrenchment: The framework utilises evidence-based psychological techniques to help parties recognise and move beyond defensive positions. This principle addresses the common challenge of entrenchment in community disputes, where parties often become emotionally invested in their positions. Entrenchment has both cognitive and emotional dimensions. Addressing both dimensions is essential for effective mediation.

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9 Stella Ting-Toomey & John G Oetzel, *Managing Intercultural Conflict Effectively* (SAGE Publications, 2001); Angela K-Y Leung & Dov Cohen, "Within- And Between-Culture Variation: Individual Differences and the Cultural Logics of Honor, Face, and Dignity Cultures" (2011) 100(3) *Journal of Personality and Social Psychology* 507.

10 Lim Lan Yuan, "Mediation Styles and Approaches in Asian Culture", paper presented at the 2nd Asia-Pacific Mediation Forum, Singapore (2003) <https://www.asiapacificmediationforum.org/resources/2003/limlanyuan.pdf> (accessed 18 September 2025).

(e) Adaptive facilitation: The framework balances facilitative and evaluative approaches based on cultural expectations and case needs. This principle recognises that some parties in Singapore may expect mediators to be more active and directive than in Western facilitative models, while maintaining mediator neutrality. The framework rejects a one-size-fits-all approach and encourages adaptability to cultural context and specific case dynamics.[11]

(f) Cultural integration: The framework promotes mutual understanding and respect across cultural differences, contributing to broader goals of cultural integration in Singapore's diverse society. This principle aligns with Singapore's national emphasis on racial harmony and multi-cultural appreciation. Effective mediation should not only resolve the immediate dispute but also contribute to the broader goal of a cohesive multi-cultural society.

(g) Practical implementation: The framework emphasises solutions that are practically implementable in Singapore's community context, particularly in high-density public-housing environments. This principle ensures that mediated agreements address real-world constraints and opportunities. Elegant theories that cannot be implemented in practice have little value to parties living in close quarters with limited resources; practicality matters.

17 These core principles and values provide the foundation for the MARTIN framework's structure and process, guiding mediators in their facilitation of community disputes in Singapore's multi-racial context. They reflect both universal mediation values and Singapore-specific considerations. This combination makes the framework particularly suitable for its intended context.

C. The MARTIN framework structure and process

18 The MARTIN framework is structured around six interconnected phases, represented by the acronym MARTIN: Mindful Engagement; Assessment of Entrenchment; Reframing Perspectives; Transformative Dialogue; Interest-Based Solutions; and Nurturing Commitment. Each phase incorporates specific techniques and considerations tailored to Singapore's multi-racial context.

11 Lim Lan Yuan, "Mediation Styles and Approaches in Asian Culture", paper presented at the 2nd Asia-Pacific Mediation Forum, Singapore (2003) <https://www.asiapacificmediationforum.org/resources/2003/limlanyuan.pdf> (accessed 18 September 2025).

(1) Mindful Engagement

19 The Mindful Engagement phase focuses on creating psychological safety and establishing rapport with all parties through culturally appropriate communication. Key elements include:

(a) Using appropriate greetings and honorifics: Small gestures build early rapport and signal respect.

(b) Meeting parties separately at the outset: Private preliminaries surface concerns in a low-threat setting and reduce defensiveness.

(c) Acknowledging cultural and religious commitments: Schedule around observances and show respect for identities to build trust.

(d) Beginning with brief, culturally attuned small talk: Avoid abrupt entry into conflict and prepare the ground for dialogue.

(e) Demonstrating sincerity: Convey a genuine desire to help parties reach resolution, not merely to run a procedure.

20 This phase establishes the foundation for effective mediation by creating culturally appropriate psychological safety and rapport, essential for parties to engage meaningfully in the process. Without this foundation, subsequent phases are unlikely to succeed, which makes Mindful Engagement a critical first step in the MARTIN framework. This groundwork also helps counter confirmation bias and other selective-interpretation tendencies, reducing defensiveness and improving openness to later reframing.[12]

(2) Assessment of Entrenchment

21 The Assessment of Entrenchment phase involves identifying the emotional "trenches" that parties have dug and understanding the cultural and psychological factors influencing their positions. Key elements include:

(a) mapping positions and underlying interests, noting how culture shapes expression;

(b) identifying identity-linked practices that may reinforce entrenchment;

(c) anticipating face-risk for each party and avoiding likely triggers;

(d) capturing relationship dynamics including history, hierarchy, and patterns that fuel the conflict; and

12 Raymond S Nickerson, "Confirmation Bias: A Ubiquitous Phenomenon in Many Guises" (1998) 2(2) *Review of General Psychology* 175.

(e) gauging the depth of entrenchment and selecting suitable levers for movement.

22 This phase provides mediators with a comprehensive understanding of the dispute's dimensions, including the cultural and psychological factors that must be addressed to help parties move beyond entrenched positions. It is a diagnostic phase that informs the mediator's strategy for subsequent phases. This ensures that interventions are tailored to the specific dynamics of the dispute.

(3) Reframing Perspectives

23 The Reframing Perspectives phase focuses on helping parties analyse their own positions and consider alternative perspectives through culturally sensitive techniques. Key elements include:

(a) using Socratic questioning adapted to communication styles to prompt reflection;

(b) facilitating perspective-taking to loosen attachment to positions;

(c) translating positions into interests so core needs can be met in multiple ways;

(d) normalising cultural style differences so they are read as patterns, not personal slights; and

(e) offering low-commitment trials that let parties test alternatives without loss of face.

24 This phase helps parties gain distance from their entrenched positions and begin to see the dispute from broader perspectives, including cultural dimensions they may not have previously considered. It is a transformative phase that shifts parties from positional thinking toward interest-based exploration. This prepares the ground for more constructive dialogue.

(4) Transformative Dialogue

25 The Transformative Dialogue phase facilitates controlled communication between parties to enhance understanding and recognition across cultural differences. It aims to lower emotional arousal, address identity and face concerns, and build readiness for interest-based problem solving, consistent with guidance on managing emotionally charged conflicts.[13] Key elements include:

13 Daniel Shapiro, *Negotiating the Nonnegotiable: How to Resolve Your Most Emotionally Charged Conflicts* (Penguin Books, 2016).

(a) facilitating structured exchange with clear guidelines adapted to cultural communication norms;

(b) serving as a cultural interpreter when necessary to bridge perspectives and styles;

(c) promoting recognition by encouraging acknowledgment of each other's legitimate needs and perspectives with sensitivity to face concerns;

(d) identifying shared values such as family well-being, community harmony and mutual respect to provide common ground; and

(e) facilitating relationship repair through culturally appropriate reconciliation practices, reflecting the emphasis on relationships.

(5) Interest-Based Solutions

26 The Interest-Based Solutions phase involves collaborative generation and testing of options that meet underlying needs while respecting face, identity, and practical constraints. The mediator facilitates co-creation, reality-tests proposals against day-to-day routines, and aligns solutions with cultural and religious considerations. Key elements include:

(a) generating options collaboratively, reflecting cultural preferences in decision making and shifting from adversarial stance to joint problem solving;

(b) screening proposals for cultural or religious friction; the curry dispute shows why this matters;

(c) testing options against community harmony; this is consistent with Singapore's emphasis on racial cohesion;

(d) building face-preserving elements so all parties can agree with dignity; and

(e) planning implementation details that work in dense public-housing routines.

27 This phase produces solutions that address core needs, are workable in the parties' daily lives, and preserve dignity. The mediator checks feasibility, reciprocity, and proportionality; drafts specific, observable commitments with timelines and contingencies; and ensures that language is culturally appropriate and non-stigmatising.

(6) Nurturing Commitment

28 The Nurturing Commitment phase focuses on solidifying agreements and establishing sustainable patterns for future interaction. Key elements include:

(a) reinforcing agreements with appropriate rituals or gestures;

(b) setting follow-up routines that are culturally sensitive and easy to use;

(c) establishing simple channels for future concerns;

(d) linking parties to community resources that sustain change; and

(e) acknowledging success in ways that reinforce harmony.

29 This phase ensures that the resolution is sustainable and contributes to improved relationships and community harmony beyond the immediate dispute. It is a forward-looking phase that transforms a point-in-time agreement into an ongoing process of peaceful coexistence. This is essential in Singapore's high-density, multi-racial living environment.

30 Effective practice begins by stabilising the room, normalising close-living friction and setting respectful ground rules. Early in the conversation, clarify non-negotiables, identity stakes, outside audiences and time pressures. Reframe accusations into daily-life impact statements and anchor the discussion to shared values such as good neighbourliness and living well side by side. When drafting terms, express commitments as observable actions with clear locations, times and thresholds, and include a neutral communication channel for raising concerns. This keeps agreements face-preserving and self-executing.

D. Unique features for Singapore's context

31 The MARTIN framework incorporates several features designed specifically for Singapore's multi-racial and multi-religious context. These features distinguish it from generic approaches and make it particularly suitable for community disputes in Singapore.[14]

(1) Cultural and religious sensitivity

32 The framework emphasises cultural and religious sensitivity through several specific features:

(a) Cultural knowledge base: Mediators are equipped with knowledge of Singapore's major cultural and religious traditions, including Chinese, Malay, Indian, and other communities' practices, values, and sensitivities. This knowledge base helps mediators

14 Dean G Pruitt, "Process and Outcome in Community Mediation" (1995) 11(4) *Negotiation Journal* 365; Lim Lan Yuan, "Mediation Styles and Approaches in Asian Culture", paper presented at the 2nd Asia-Pacific Mediation Forum, Singapore (2003) <https://www.asiapacificmediationforum.org/resources/2003/limlanyuan.pdf> (accessed 18 September 2025).

recognise and respect cultural dimensions of disputes, which is essential for effective facilitation in Singapore's diverse society.

(b) Communication style adaptation: The framework provides guidance on adapting communication approaches to different cultural styles, from the more indirect, high-context communication common in Chinese and Malay cultures to the more expressive styles often found in Indian communities. This adaptation helps mediators connect effectively with parties from diverse cultural backgrounds and helps avoid communication mismatches that could undermine the process.

(c) Religious practice accommodation: Mediators are trained to recognise and accommodate religious practices and constraints, such as prayer times, dietary restrictions, and religious observances, in the mediation process. This accommodation shows respect for parties' religious identities and needs, creating an inclusive process that works for all participants.

(d) Traditional element incorporation: The framework incorporates elements from traditional conflict-resolution approaches in Chinese, Malay, Indian, and other communities, creating cultural resonance for parties from diverse backgrounds. This incorporation helps parties feel that the process respects their cultural heritage and is not simply imposing a Western model on their dispute.[15]

(e) Multi-lingual capability: The framework emphasises the importance of language accessibility, including the use of interpreters or bilingual mediators when necessary to ensure full participation. This capability ensures that language differences do not create barriers to effective participation, which is a critical consideration in Singapore's multi-lingual society.

(2) Psychological de-entrenchment techniques

33 The framework includes specialised psychological techniques for helping parties move beyond entrenched positions, adapted to Singapore's cultural context.

(a) Culturally appropriate emotional expression: Techniques for facilitating controlled emotional expression that respect cultural norms around emotional display, which vary across Singapore's ethnic groups. These techniques help parties process emotions without breaching cultural norms. This is a delicate balance that calls for cultural sensitivity.

15 Lim Lan Yuan, "Mediation Styles and Approaches in Asian Culture", paper presented at the 2nd Asia-Pacific Mediation Forum, Singapore (2003) <https://www.asiapacificmediationforum.org/resources/2003/limlanyuan.pdf> (accessed 18 September 2025).

(b) Cognitive reframing with cultural sensitivity: Approaches to cognitive reframing that acknowledge and work with cultural worldviews rather than challenging them directly. These approaches help parties consider alternative perspectives without feeling that their cultural values are being questioned. This reduces defensive reactions.

(c) Culturally adapted perspective taking: Perspective-taking exercises that account for cultural differences in how empathy is expressed and understood. These exercises help parties understand each other's viewpoints within their own cultural contexts, rather than imposing a universal model of empathy.

(d) Gradual exposure techniques: Methods for gradually exposing parties to alternative viewpoints in ways that minimise defensive reactions, adapted to different cultural communication styles. These techniques recognise that entrenchment often yields to incremental rather than sudden change. The process should be culturally calibrated.

(e) Face-saving exit ramps: Specific techniques that allow parties to step back from entrenched positions without losing face, which is particularly salient in many Singaporean contexts. These exit ramps help parties move toward agreement without feeling that they have capitulated or been defeated, and address the social dimension of position change.[16]

(3) Relationship-focused outcomes

34 The framework emphasises outcomes that preserve and enhance relationships, reflecting relational norms salient in many Singaporean contexts:

(a) Harmony restoration emphasis: Focus on restoring harmony in the community as a primary goal and reflecting traditional values across Singapore's ethnic groups. This emphasis aligns with cultural preferences for social harmony over individual vindication, a value orientation common across Singapore's diverse communities.

(b) Coexistence solutions: Develop practical arrangements that enable continued coexistence in close proximity, which is essential in Singapore's high-density housing environment. These solutions acknowledge the reality that neighbours must continue to live near each other, which makes relationship outcomes as important as specific terms.

16 Lim Lan Yuan, "Mediation Styles and Approaches in Asian Culture", paper presented at the 2nd Asia-Pacific Mediation Forum, Singapore (2003) <https://www.asiapacificmediationforum.org/resources/2003/limlanyuan.pdf> (accessed 18 September 2025).

(c) Face-saving outcome design: Carefully craft solutions that allow all parties to maintain dignity and face within their cultural communities. This design addresses the social dimension of agreements and ensures that resolutions do not create social costs for parties within their reference groups.

(d) Extended impact consideration: Attend to how resolutions affect not only the immediate parties but also extended family and community networks, reflecting the collectivist orientation of many Singaporean communities. This consideration acknowledges that disputes and their resolutions exist within social networks rather than between isolated individuals.

(e) Practical arrangement focus: Emphasise concrete, implementable arrangements for shared spaces and resources, addressing the practical realities of community living in Singapore. This focus ensures that agreements work in the real-world context of Singapore's high-density housing rather than remaining theoretical solutions that sound persuasive but do not function in practice.

35 These features distinguish the MARTIN framework from generic mediation approaches and make it particularly suitable for Singapore's multi-racial and multi-religious context. They reflect both theoretical understanding and practical experience, creating a framework that is academically sound and practically effective.

E. Implementation guidelines

36 Effective implementation of the MARTIN framework requires attention to several key areas. These translate theoretical understanding into practical application:

(1) Mediator qualifications

37 Mediators implementing the MARTIN framework should possess or develop:

(a) Cultural competence: Knowledge of and sensitivity to Singapore's diverse cultural and religious traditions, including Chinese, Malay, Indian, and other communities' practices, values, and communication styles. This competence goes beyond superficial awareness to a deep understanding of how culture shapes conflict perceptions and resolution preferences, which is essential for effective cross-cultural mediation.

(b) Religious literacy: Understanding of major religious practices and sensitivities in Singapore, including Buddhism, Christianity, Islam, Hinduism, and Taoism. This literacy helps mediators recognise when disputes involve religious dimensions

and address them with appropriate respect and sensitivity, preventing unintentional offence or misunderstanding.

(c) Psychological insight: Training in psychological techniques for addressing entrenched positions, including cognitive reframing, perspective taking, and emotion regulation. This insight helps mediators understand the psychological dynamics of entrenchment and apply appropriate techniques to help parties move beyond defensive positions, which is a critical skill for effective community mediation.

(d) Adaptive facilitation skills: Ability to balance between facilitative and evaluative approaches based on cultural expectations and case needs. This adaptability allows mediators to adjust their style to match cultural expectations and case dynamics, avoiding a one-size-fits-all approach that might work in some contexts but fail in others.

(e) Relationship focus: Commitment to relationship preservation and improvement as a primary goal of mediation, reflecting relational norms salient in many Singaporean contexts. This focus helps mediators maintain attention on the relational dimension of disputes, which is particularly important in Singapore's high-density living environment where ongoing relationships are inevitable.

(2) Process adaptations

38 The implementation of the MARTIN framework may require several process adaptations.

(a) Flexible scheduling: Accommodate religious observances and cultural practices when scheduling mediation sessions, such as avoiding Muslim prayer times or important religious holidays. This flexibility shows respect for parties' religious and cultural commitments and creates an inclusive process that works for all participants.

(b) Venue considerations: Select mediation venues that are culturally neutral and comfortable for all parties, with attention to religious sensitivities, for example the availability of prayer spaces if needed. These considerations ensure that the physical environment supports rather than hinders the mediation process and creates comfort and safety for all participants.

(c) Language support: Provide interpretation or translation services when necessary, and select mediators with relevant language skills when possible. This support ensures that language differences do not create barriers to effective participation, which is a critical consideration in Singapore's multi-lingual society.

(d) Cultural hospitality: Incorporate culturally appropriate refreshments and hospitality practices that respect dietary restrictions and cultural preferences. These practices create a welcoming environment that acknowledges and respects cultural differences and represent a small but significant aspect of cultural sensitivity.

(e) Hierarchical sensitivity: Respect hierarchical considerations in multigenerational or status-differentiated disputes, which is particularly important in Asian cultural contexts. This sensitivity helps mediators navigate power dynamics and status differences that might otherwise undermine the mediation process. It also recognises that equality, in the Western sense, may not be the most effective approach in every Singaporean context.

(3) Training and development

39 The implementation of the MARTIN framework requires comprehensive training and ongoing development for mediators. Singapore-focused practitioner scholarship offers case-based insights that can be incorporated into training curricula.[17]

(a) Cultural intelligence training: Programmes to develop mediators' cultural knowledge, awareness, and skills for working across cultural differences. This training helps mediators build the cultural competence needed to implement the framework effectively, moving beyond generic mediation skills to culturally responsive approaches.

(b) Psychological technique development: Training in specific psychological approaches for addressing entrenched positions, adapted to Singapore's cultural context. This development helps mediators acquire the specialised skills needed to help parties overcome psychological barriers to resolution, which is a critical capability for effective community mediation.

(c) Case study analysis: Regular review and analysis of case studies to refine application of the framework in diverse situations. This analysis helps mediators learn from experience and develop a nuanced understanding of how the framework applies in different contexts, creating a learning community that continuously improves practice.

(d) Peer learning circles: Establishment of peer learning communities where mediators can share experiences and insights from applying the framework. These circles provide support, feedback, and collective wisdom, helping mediators navigate the

17 *Contemporary Issues in Mediation* vol 1 (Joel Lee & Marcus Lim eds) (World Scientific, 2016).

challenges of implementing a new approach and refine their skills through shared reflection.

(e) Continuous improvement: Ongoing evaluation and refinement of the framework based on mediator feedback and outcome assessments. This improvement ensures that the framework evolves in response to practice rather than remain static, and adapts to new insights and changing conditions.

40 Through attention to mediator qualifications, process adaptations, and ongoing training and development, the MARTIN framework can be implemented effectively in Singapore's community-mediation context. Implementation requires not only understanding the framework but also building the capabilities and systems needed to apply it in practice.

IV. Case studies

A. The curry dispute: a cultural flashpoint

(1) Background and original outcome

41 The "curry dispute" of 2011 is a widely discussed case in Singapore's community mediation history. It involved a Chinese immigrant family who complained about the smell of curry cooked by their Indian neighbours in an HDB flat. The Chinese family, recent arrivals from mainland China, found the unfamiliar cooking odours overwhelming. The Indian family viewed curry cooking as integral to cultural identity and traditional food practices, something they had done for years without complaint from previous neighbours.[18]

42 After mediation at the Community Mediation Centre, the agreement stipulated that the Indian family would cook curry only when the Chinese family was not at home and would keep their windows closed while cooking. Although this addressed the immediate concern, it later proved controversial in public discussion.

43 When the outcome became public, a backlash followed. Many saw the agreement as an unreasonable restriction on an established practice to appease newcomers. The "Cook and Share a Pot of Curry" campaign drew

18 Harry Suhartono, "Singaporeans' Culinary Anti-Immigration Protest: Curry" (22 August 2011) <https://www.reuters.com/article/business/singaporeans-culinary-anti-immigration-protest-curry-idUSLNE77L010> (accessed 18 September 2025); Sharon Teng, "Curry Dispute", *National Library Board* (11 May 2015) <https://www.nlb.gov.sg/main/article-detail?cmsuuid=bcea3bb0-06d7-4ca6-8d9e-37a8bea0e1f3> (accessed 18 September 2025); "Curry Dispute (2011)", *Wiki.sg* <https://wiki.sg/p/Curry_dispute_(2011)> (accessed 18 September 2025).

tens of thousands of supporters and reframed the dispute as a question of integration and accommodation.

44 The agreement addressed the smell complaint but not the cultural asymmetries. It privileged newcomer preferences and left underlying tensions unresolved, which the public quickly identified.

(2) Application of the MARTIN framework

45 Had the MARTIN framework been applied to the curry dispute, the approach and likely outcome would have differed. The following analysis considers how each component of the framework could have addressed this culturally charged conflict.

(a) Mindful Engagement

46 The mediator would begin by creating psychological safety through culturally appropriate engagement with both families. For the Indian family, this could include acknowledging the cultural significance of curry in Indian cuisine and identity, rather than treating it as a "smell problem". For the Chinese family, the mediator would recognise their unfamiliarity with the local environment and the genuine discomfort they experienced. The mediator would validate their feelings without endorsing their proposed solution.

47 Private preliminary sessions would allow each family to express their concerns without immediate confrontation. The Indian family could explain the cultural and religious significance of their cooking practices, while the Chinese family could express their difficulty adjusting to unfamiliar sensory experiences in their new home. These sessions would reveal the deeper cultural dimensions of what might otherwise be framed as a simple nuisance dispute.

48 The mediator would demonstrate cultural knowledge and respect by acknowledging relevant cultural contexts. For example, the mediator might note that curry has a long history in Singapore and is enjoyed by many Singaporeans across ethnic groups, while also recognising that adapting to a new cultural environment can be challenging for recent immigrants. This balanced acknowledgement would set the stage for a more culturally sensitive mediation process.

(b) Assessment of Entrenchment

49 The mediator would identify the Indian family's "trench" as the protection of cultural identity and traditional practices, with curry cooking as a salient symbol. Their position may be entrenched because the complaint is perceived as an attack on identity and as a suggestion that long-standing practices should be curtailed to accommodate newcomers. Awareness of

belonging to one of Singapore's founding ethnic communities may reinforce this stance.

50 The Chinese family's "trench" concerns the desire for a comfortable home environment free from unfamiliar and, to them, unpleasant odours. Their position may be entrenched because they are recent arrivals who are still adjusting to Singapore's multi-cultural environment, and because expectations formed in their previous living environment may differ from those in high-density, multi-ethnic housing in Singapore.

51 The mediator would analyse how cultural factors were influencing the entrenchment, recognising that for the Indian family, curry cooking was not merely a food preference but a cultural practice tied to identity and heritage. For the Chinese family, the reaction to curry smells reflected not just sensory discomfort but the broader challenges of cultural adaptation and integration into a new society.

(c) Reframing Perspectives

52 The mediator would help both families reflect on their positions through culturally sensitive questioning. The Indian family might be asked to recall their own experiences of adapting to unfamiliar practices or environments, encouraging empathy for the adjustment challenges faced by new immigrants. The Chinese family might be asked about aspects of Singapore's multi-cultural environment they have enjoyed or appreciated, helping them see beyond the immediate discomfort to the enriching aspects of cultural diversity.

53 The mediator would facilitate emotional detachment by helping both families distinguish between the specific issue (cooking smells) and broader cultural identities. The Indian family would be encouraged to see that accommodating neighbours doesn't diminish their cultural identity, while the Chinese family would be helped to understand that their discomfort is part of a normal adjustment process, not a permanent condition requiring others to significantly alter their practices.

54 Cultural bridging would be employed to help both families understand how cultural backgrounds influence their perceptions and expectations. The mediator might explain that, in Singapore's multi-cultural context, mutual accommodation and cultural learning are valued in community living.[19] Neither complete restriction nor the unmodified continuation of practices is typically expected.

19 Lim Lan Yuan, "Mediation Styles and Approaches in Asian Culture", paper presented at the 2nd Asia-Pacific Mediation Forum, Singapore (2003) <https://www.asiapacificmediationforum.org/resources/2003/limlanyuan.pdf> (accessed 18 September 2025).

(d) Transformative Dialogue

55 Once both families were prepared through the earlier phases, the mediator would facilitate a structured exchange between them, with clear guidelines for respectful communication. This might include opportunities for each family to share aspects of their cultural background and experiences, humanising each other beyond the dispute.

56 The mediator would serve as a cultural interpreter when necessary, helping parties understand each other's cultural perspectives and communication styles. This interpretation would help to bridge cultural gaps that might otherwise lead to misunderstanding and escalation.

57 The mediator would promote recognition by encouraging the Indian family to acknowledge the genuine discomfort experienced by their neighbours, while encouraging the Chinese family to recognise the importance of cultural practices and traditions. This mutual recognition provides a foundation for a more balanced and respectful resolution.

(e) Interest-Based Solutions

58 With improved understanding established, the mediator would facilitate collaborative brainstorming of potential solutions that address the interests of both families. Unlike the original outcome, these solutions would aim to balance accommodation rather than placing the burden primarily on one party.

59 Potential solutions might include:

(a) the Indian family providing advance notice of their curry cooking days;

(b) the Chinese family gradually increasing exposure to curry smells, perhaps starting with milder versions;

(c) practical measures such as improved ventilation, air purifiers, or cooking during times when windows can be opened;

(d) cultural exchange opportunities, such as the Indian family introducing the Chinese family to milder curry dishes to build familiarity and appreciation; and

(e) community integration activities that help the Chinese family adapt to Singapore's multi-cultural environment.

60 These solutions would be evaluated against cultural considerations, ensuring they respect the Indian family's practices while addressing the Chinese family's comfort needs. They would also be assessed against standards of community harmony and mutual respect, avoiding one-sided restrictions that privilege one culture over another.

(f) Nurturing Commitment

61 Parties can record practical steps (such as ventilation routines and brief notice windows for stronger-odour dishes) so the arrangement is clear and workable in daily life.

62 If helpful, the families may draw on community resources that support cultural understanding (*eg*, neighbourhood events), while keeping the responsibility for day-to-day coordination between themselves.

(3) Potential outcomes under the MARTIN framework

63 Under the MARTIN framework, the outcome would likely differ from the original mediated agreement. Rather than restricting the Indian family's cooking to times when the Chinese family is absent, a more balanced and culturally sensitive resolution might emerge.

(a) Both families would gain cultural understanding and appreciation through education and shared experiences.

(b) Practical arrangements would be implemented, such as improved ventilation, agreed cooking times with advance notice, or the use of air purifiers.

(c) The Chinese family would gradually adapt to the local multi-cultural environment, perhaps starting with exposure to milder versions of curry.

(d) The Indian family would maintain their cultural practices while taking reasonable measures to minimise impact on their neighbours.

(e) Both parties would feel respected and understood, with their core needs addressed.

(f) Community harmony would be preserved and enhanced through mutual accommodation rather than one-sided restriction.

64 This outcome would better reflect Singapore's values of multi-culturalism and mutual respect, avoiding the public backlash that followed the original mediation and contributing to the positive integration of new immigrants into Singapore's diverse society. It is not only about solving the immediate problem; it is also about doing so in a way that strengthens, rather than weakens, the social fabric.

B. Common corridor dispute: space utilisation

(1) Background and scenario

65 The use of common spaces, particularly HDB corridors, is a frequent source of disputes in Singapore's high-density public housing. With limited

private space, residents sometimes extend their living areas into corridors by placing plants, shoe racks, religious altars, or furniture. These practices can create friction with neighbours who share these spaces.

66 An elderly Malay couple lined the corridor with large potted plants; their Chinese neighbour complained about obstruction and mosquitoes and installed a sizeable shoe rack in response. Tensions escalated and the case came to mediation.

(2) Application of the MARTIN framework

(a) Mindful Engagement

67 The mediator would begin by creating psychological safety through culturally appropriate engagement with both parties. For the elderly Malay couple, this might include acknowledging the cultural value of gardening in Malay tradition and the importance of meaningful activities in retirement. For the Chinese neighbour, the mediator would recognise their concerns about access and safety in shared spaces.

68 Private preliminary sessions would allow each party to express their concerns without immediate confrontation. The Malay couple could explain the significance of their plants as both a hobby and a connection to their cultural background, perhaps sharing how gardening helps them cope with the limitations of apartment living. The Chinese neighbour could express their specific concerns about corridor access and mosquito breeding, as well as their perception of inconsistent enforcement of corridor regulations.

69 The mediator would demonstrate cultural knowledge by acknowledging relevant contexts. For example, both gardening and concerns about mosquito-borne diseases have cultural and practical significance in Singapore's context, and that negotiating shared space use is a common challenge in HDB living.

(b) Assessment of Entrenchment

70 The mediator would identify the Malay couple's "trench" as defending their retirement activity and cultural practice, which the plants represent. Their position might be entrenched due to the emotional investment in their plants, the time spent nurturing them, and the limited alternative spaces for gardening in HDB living. The perceived hypocrisy of their neighbour's shoe rack would further reinforce their resistance to compromise.

71 The Chinese neighbour's "trench" would involve their concerns about corridor accessibility and safety standards. Their position might be entrenched due to frustration with perceived selective enforcement of rules and possibly underlying cultural differences in space utilisation preferences. Their own shoe rack might represent a form of territorial marking in response to what they perceive as the couple's excessive use of shared space.

72 The mediator would analyse how cultural factors and age differences might be influencing the conflict, with the elderly Malay couple potentially viewing the corridor as an extension of community space (consistent with traditional kampong values) while the Chinese neighbour might view it more as a functional transit area that should remain largely clear (consistent with urban living norms).

(c) Reframing Perspectives

73 The mediator would help both parties reflect on their positions through culturally sensitive questioning. The Malay couple might be asked to consider how corridor accessibility affects their neighbour's daily life and whether some adjustments could maintain their gardening joy while addressing legitimate concerns. The Chinese neighbour might be encouraged to consider the significance of gardening for elderly residents and the benefits that plants bring to the shared environment.

74 Emotional detachment would be facilitated by helping both parties recognise that the conflict is not about personal disrespect but about navigating shared space in a dense living environment. This is a common challenge in Singapore's public housing. The mediator would help them look beyond the immediate irritation to the legitimate needs and preferences on both sides.

75 The mediator would translate positions to interests, identifying the Malay couple's core interest in maintaining a meaningful retirement activity and connection to nature, and the Chinese neighbour's core interest in ensuring safe passage and compliance with perceived community standards. This translation would reveal potential compatibility between these interests with appropriate arrangements.

(d) Transformative Dialogue

76 The mediator would facilitate a structured exchange between the parties, perhaps including a joint corridor walk-through to physically identify specific concerns and possibilities. This concrete approach would help move the discussion from abstract complaints to specific, addressable issues.

77 The mediator would promote recognition by encouraging the Malay couple to acknowledge their neighbour's legitimate access needs, and by encouraging the Chinese neighbour to recognise the psychological and cultural benefits the plants provide to the elderly couple. This mutual recognition would create the foundation for a more balanced and respectful resolution.

78 The mediator would identify shared values, such as pride in their shared living environment, desire for harmony with neighbours, and the importance of both personal expression and community standards. These

shared values would provide common ground for developing solutions that respect both parties' needs.

(e) Interest-Based Solutions

79 With improved understanding established, the mediator would facilitate collaborative brainstorming of potential solutions that address the interests of both parties. These might include:

(a) rearrangement of plants to ensure a minimum corridor width that exceeds emergency requirements;

(b) selection of plants that are less likely to attract mosquitoes or cause allergies;

(c) regular maintenance schedule for the plants, including mosquito prevention measures;

(d) agreed standards for both plant placement and shoe rack size/positioning;

(e) potential sharing of gardening benefits, such as the Malay couple offering herbs or flowers to their Chinese neighbour; and

(f) exploration of alternative spaces for some plants, such as community gardens or void deck greening initiatives.

80 These solutions would be evaluated for practical implementability in the HDB context, ensuring they comply with essential safety regulations while addressing both parties' core needs and preferences.

(f) Nurturing Commitment

81 To give the arrangement durability, the settlement would specify the minimum clear width, identify permissible placement zones and state a simple step the parties can take if the width is breached. These elements make the settlement self-executing.

82 The parties can maintain a neutral, text-first channel for raising concerns about shared-space use and, where useful, tap community avenues such as residents' groups, without external oversight being required for ordinary upkeep.

(3) Potential outcomes under the MARTIN framework

83 Under the MARTIN framework, the resolution of this common corridor dispute would likely include:

(a) a reconfigured plant arrangement that maintains the couple's gardening activity while ensuring adequate corridor access;

(b) agreed standards for both plant placement and shoe rack positioning;

(c) improved understanding of each other's needs and cultural perspectives;

(d) a sustainable pattern for addressing future concerns related to shared space use; and

(e) potential community benefits from the couple's gardening knowledge and their neighbour's ideas for organising shoes.

84 This outcome would balance personal expression with community standards, demonstrating how the MARTIN framework can navigate conflicts over competing claims to limited shared resources in Singapore's high-density housing environment. It would contribute to neighbourhood harmony while allowing cultural expression within practical constraints. This is a balance that Singapore's diverse and space-limited society continually negotiates.

C. Cross-case insights: patterns and practice design

(1) Recurrent patterns in neighbour disputes

85 In high-density settings, ordinary routines such as work, rest and caregiving frequently intersect with practices that carry identity and meaning. Noise and odour concerns are seldom about decibels or smell alone; they often signify perceived respect, control or belonging. Health and safety claims often meet appeals to tradition, faith and dignity. Visibility within shared spaces also shapes judgment, so agreements that manage what is seen, when it is seen and how it is contained tend to reduce friction.

(2) Applying the MARTIN framework

86 Mindful Engagement orients participants to the shared task and establishes respectful turn-taking. Assessment of Entrenchment then surfaces non-negotiables, identity stakes, outside audiences and time pressures, allowing a realistic scope for movement. Reframing Perspectives shifts the conversation from blame to concrete impacts linked to daily functioning and dignity. Transformative Dialogue uses short, structured turns that focus on what each party can live with in the near term. Interest-Based Solutions combine temporal zoning with practical mitigations framed as clear, observable routines and a simple written channel for raising concerns. Nurturing Commitment records who will do what, where and when, with observable thresholds so the settlement operates on a self-executing basis without external follow-up.

V. Conclusion

87 The MARTIN framework offers a culturally responsive structure for community mediation in Singapore. The cases show how structured rapport, careful de-entrenchment, and face-sensitive option building can

turn stalemates into workable routines. While only two illustrations are presented here, the same sequence travels to other recurrent disputes that centre on identity, dignity and daily routines.

88 Two limitations deserve emphasis. First, the framework has not yet been evaluated through a formal empirical pilot. Satisfaction, durability, and relational outcomes should be examined prospectively, preferably with comparison to conventional practice and clear process measures.[20] Second, cultural diversity within categories is significant. Chinese, Malay, and Indian communities are internally varied, and the techniques outlined here will benefit from calibration to age, class, language, and religiosity differences inside each group.[21]

89 Future work should test which of the elements improve practice in culturally mixed dyads the most, track costs and benefits in real cases, and examine how pre-filing and the CRU interact with mediation to produce better outcomes at lower social cost.

90 The framework is not a script. It is a scaffold that supports professional judgment. In some disputes, the right outcome is a modest, face-preserving arrangement rather than a sweeping deal. If the result is safer communication, reduced triggers, and clearer routines, that is progress worth valuing in dense, diverse neighbourhoods.

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20 James A Wall & Timothy C Dunne, "Mediation Research: A Current Review" 28(2) *Negotiation Journal* 217; Robert A Baruch Bush & Joseph P Folger, *The Promise of Mediation: The Transformative Approach to Conflict* (John Wiley & Sons, Revised Edition, 2004); Timothy Hedeen, "The Evolution and Evaluation of Community Mediation: Limited Research Suggests Unlimited Progress" (2004) 22(1-2) *Conflict Resolution Quarterly* 101.

21 Angela K-Y Leung & Dov Cohen, "Within- And Between-Culture Variation: Individual Differences and the Cultural Logics of Honor, Face, and Dignity Cultures" (2011) 100(3) *Journal of Personality and Social Psychology* 507.

WALKING THE TIGHTROPE OF NEUTRALITY AS MEDIATOR, ADVOCATE AND ENFORCER

A Study of Ethics in Singapore Employment Disputes Mediation

This article examines the multifaceted role of mediators in employment disputes under Singapore's Tripartite Alliance for Dispute Management ("TADM"). It argues that classical mediator neutrality, understood as passive non-intervention, is insufficient to guide TADM mediators in performing their functions as a mediator, norm advocate, and enforcer which can pull in divergent directions. The article argues for a model of principled facilitation where TADM mediators are informed by their institutional mandate to uphold fair employment norms, which is better aligned with TADM's mission as both a dispute resolution forum and a protector of fair employment practices. Practical recommendations for aligning TADM mediations more closely with a principled facilitation approach conclude the discussion.

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I. Introduction

1 In observing "the law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread," poet Anatole France calls out the moral blindness of absolute neutrality. In many mediation models, the mediator serves as a neutral who safeguards the process but is prohibited from influencing the substantive content or outcome. Yet in contexts with significant structural power imbalances, neutrality in an absolute and rigid form can undermine meaningful participation and just outcomes.

2 Tripartite Alliance for Dispute Management ("TADM") in Singapore provides a compelling site to discuss the ideal and practice of mediator neutrality and ethics. Established in 2017 by Ministry of

1 The author thanks the Humanitarian Organization for Migration Economics (HOME), Migrant Workers' Centre (MWC) and Transient Workers Count Too (TWC2) (in alphabetical order) for sharing their experiences in supporting low-wage migrant workers through Tripartite Alliance for Dispute Management ("TADM") mediations, which informed the perspectives incorporated in this article. All errors remain the author's own.

Manpower ("MOM"), the National Trades Union Congress ("NTUC"), and the Singapore National Employers Federation ("SNEF"), TADM provides services on salary-related claims and employment disputes.[2] It is intended to be a low-cost and accessible forum for resolving certain employment disputes. TADM mediation is not simply an alternative dispute resolution option but is a mandated process before any claims within the stipulated categories can be heard by the Employment Claims Tribunals ("ECT"). In that manner, TADM places mediation at the heart of a large swathe of employment disputes, which can arise from low-wage employees, migrant workers, and unrepresented individuals. The presence of power asymmetry is not incidental to TADM mediation but is a pervasive feature of these employment disputes.

3 As of the writing of this article, MOM is celebrating its 70th anniversary. It is a timely reminder that MOM was founded in 1955 as the Ministry of Labour and Welfare.[3] The welfare of workers is at the heart of MOM's mission which TADM shares as a tripartite partner. Beyond being a mediation service provider, TADM must ultimately be a protector of fair employment practices. Within Singapore's employment dispute landscape, TADM is feted as a significant and effective player. In 2023, a total of 9,397 employment claims were lodged with MOM and TADM. The Employment Standards Report 2023 released by MOM noted that the overall resolution rate at mediation is high, with 80% of employment claims resolved at TADM.[4]

4 Within this statutory and institutional context, and to protect fair employment practices in the face of structural power imbalances in employment mediations, TADM mediators triple-hat as a mediator, norm advocate, and enforcer. While "norm advocate" and "enforcer" are not formally within the mandate of TADM mediators, as will be explained below, TADM mediators do perform functions which carry elements of norm advocacy and enforcement. These potentially conflicting functions may pull a mediator in different directions and the strict application of passive neutrality is insufficient for guiding mediators in navigating these tensions.

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2 Singapore Courts, "New Dispute Resolution Platform for Wrongful Dismissal Claims", media release (1 April 2019) <https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-new-dispute-resolution-platform-for-wrongful-dismissal-claims> (accessed 1 September 2025).

3 Ministry of Manpower, "MOM 70th Anniversary: Celebrating Our People, Charting Our Progress, Championing Our Potential" <https://www.mom.gov.sg/about-us/mom70> (accessed 1 September 2025).

4 Ministry of Manpower & Tripartite Alliance for Dispute Management, *Employment Standards Report 2023* (2 August 2024) <https://www.mom.gov.sg/-/media/mom/documents/press-releases/2024/0802-annex-employment-standards-report-2023.pdf> (accessed 1 September 2025).

5 This article seeks to articulate a model for principled facilitation in TADM mediation. Rather than passive non-interference, the author argues that neutrality can take the form of principled facilitation where TADM mediators are expressly guided by substantive norms underpinning their institutional role within the tripartite labour framework. This model of principled facilitation better serves mediators in achieving TADM's roles as both a dispute resolution mechanism and a protector of fair employment practices.

6 In the sections that follow, the article will examine the TADM framework, the application of traditional mediation ethics in TADM mediation, the TADM mediator's multifaceted (and potentially conflicting) functions, and the normative and practical case for principled facilitation in TADM mediation. It explores how ethical mediation practice must evolve in response to the institutional mission of TADM, the tripartite nature of its governance, and the broader policy imperative of protecting vulnerable workers. The article will end with proposals for moving TADM mediation towards principled facilitation, to better align with its public interest role.

II. Employment disputes and Tripartite Alliance for Dispute Management

7 TADM was established in 2017 as a tripartite initiative by MOM, NTUC, and SNEF.[5] This followed an extensive consultation and policy review process for the ECT and Employment Claims Bill.[6] The public consultation via the Reaching Everyone for Active Citizenry @ Home (REACH) Online Consultation Portal received more than 80 responses from employees, employers, legal experts, and non-governmental organisations. In MOM's responses to feedback from the public consultation, MOM first announced that tripartite partners would set up a new centre, TADM, to conduct pre-ECT mediation and serve as an MOM-approved mediation centre for all employees.[7]

8 TADM's establishment marked a key shift towards making employment dispute resolution more accessible, affordable, and non-adversarial. By mandating mediation before eligible disputes may be referred to the ECT, the clear policy intention is to encourage early and amicable resolution of these employment-related claims.

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5 Singapore Courts, "New Dispute Resolution Platform for Wrongful Dismissal Claims", media release (1 April 2019) <https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-new-dispute-resolution-platform-for-wrongful-dismissal-claims> (accessed 1 September 2025).

6 Bill No 20/2016.

7 REACH (Reaching Everyone for Active Citizenry @ Home), "Proposed Establishment of an Employment Claims Tribunal" (18 December 2024) <https://www.reach.gov.sg/latest-happenings/public-consultation-pages/2016/proposed-establishment-of-an-employment-claims-tribunal> (accessed 1 September 2025).

9 The following sections look at the processes and framework established by TADM.

A. Legislative framework

10 TADM is a non-statutory body administered by Tripartite Alliance Ltd ("TAL"). However, it serves a legislative framework comprising the Employment Claims Act 2016[8] ("Employment Claims Act") and the Employment Claims Regulations 2017.[9] This is supported by provisions from the Employment Act 1968[10] ("Employment Act"), the Industrial Relations Act 1960[11] ("Industrial Relations Act"), the Retirement and Re-employment Act 1993[12] ("Retirement and Re-employment Act"), and the Child Development Co-Savings Act 2001[13] ("Child Development Co-Savings Act").

B. Employment Claims Act 2016: establishing the mediation-tribunal model

11 The Employment Claims Act sets out a two-tiered process comprising:

(a) mandatory mediation at TADM as the first step for eligible employment disputes;[14] and

(b) adjudication at the ECT where (i) no settlement is reached at the end of the mediation; (ii) the respondent does not attend the mediation; or (iii) the mediator is satisfied that there is no reasonable prospect of settlement through mediation.[15]

12 Eligible claims which must first be submitted for mediation before they can be heard by the ECT include:[16]

(a) statutory salary-related claims for all employees covered by the Employment Act, the Retirement and Re-employment Act, and the Child Development Co-Savings Act;

(b) contractual salary-related claims made by all employees, except domestic workers, public servants, and seafarers;

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8 2020 Rev Ed.
9 2025 Rev Ed.
10 2020 Rev Ed.
11 2020 Rev Ed.
12 2020 Rev Ed.
13 2020 Rev Ed.
14 Employment Claims Act 2016 (2020 Rev Ed) s 3(1).
15 Employment Claims Act 2016 (2020 Rev Ed) s 6(2).
16 Employment Claims Act 2016 (2020 Rev Ed) s 2, read with the First Schedule and Second Schedule.

(c) wrongful dismissal claims for all employees covered by the Employment Act and the Child Development Co-Savings Act; and

(d) claims made by all employers for salary in lieu of notice.

13 Claims must be filed within one year of the dispute for current employees, or within six months of the last day of work for former employees.[17] The claim limit is up to:[18]

(a) S$20,000; or

(b) S$30,000 for those who go through the Tripartite Mediation Framework or mediation assisted by unions recognised under the Industrial Relations Act.

14 In this manner, s 3 of the Employment Claims Act institutionalises TADM as a mandatory initial forum for early-stage employment dispute resolution. Without a claim referral certificate from a designated mediation service provider (which is issued by TADM if mediation does not resolve the dispute),[19] a claim cannot be lodged with ECT.[20] Mediation is not merely an option but serves a crucial gatekeeping function.

C. Interaction with Employment Act 1968, Retirement and Re-Employment Act 1993, Child Development Co-Savings Act 2001 and Industrial Relations Act 1960

15 The Employment Act, the Retirement and Re-employment Act, and the Child Development Co-Savings Act create substantive employment rights and obligations. Disputes over these rights are channelled procedurally through the Employment Claims Act framework. The Industrial Relations Act governs tripartite mediation for union members which is partly administered through TADM.

16 The Employment Act is the bedrock of employment relationships in Singapore. It sets out minimum employment standards including salary payments, rest days, and termination procedures. The Employment Act applies to employees in Singapore, except for seafarers, domestic workers, and public servants.[21] Many of the disputes mediated at TADM involve breaches of statutory entitlements, minimum terms, and conditions of employment under the Employment Act.

17 Employment Claims Act 2016 (2020 Rev Ed) s 3(2).
18 Employment Claims Regulations 2017 (2025 Rev Ed) reg 17.
19 Employment Claims Act 2016 (2020 Rev Ed) s 3(1).
20 Employment Claims Act 2016 (2020 Rev Ed) s 6(2).
21 Ministry of Manpower, "Employment Act: Who It Covers" (24 July 2025) <https://www.mom.gov.sg/employment-practices/employment-act/who-is-covered> (accessed 1 September 2025).

17 The Retirement and Re-employment Act sets out the retirement and re-employment ages, and provides safeguards against premature dismissal on the ground of age.[22] While the Retirement and Re-Employment Act provides for a separate mediation process through MOM's re-employment mediation services, wrongful dismissal claims related to retirement or re-employment refusals may also arise under the Employment Claims Act framework if an employee alleges that their contract was terminated in bad faith to avoid re-employment obligations.

18 The Child Development Co-Savings Act governs statutory parental leave schemes, including maternity leave, paternity leave, shared parental leave, and adoption leave.[23] Disputes over the recovery of unpaid leave-related salary components may be eligible claims for resolution through TADM mediation or ECT adjudication.

19 Finally, the Industrial Relations Act governs trade union matters and collective disputes but also provides for tripartite mediation. The Tripartite Mediation Framework, operationalised through the Industrial Relations Act, allows union members in non-unionised companies to go through tripartite mediation for certain categories of claims. These include claims for employment statutory benefits, re-employment, breach of contract, retrenchment benefits, and wrongful dismissal.[24]

D. Process and enforceability

20 The TADM process begins when an employee or employer lodges a claim online or in person with TADM. Following assessment by TADM, eligible claims proceed to e-Negotiation via the TAL eServices website. Through the online portal, claimants and respondents engage in a negotiation process involving offers, acceptances, counter-offers or disputes, and withdrawal of claims. Supporting documents and reasons may be provided for parties' positions.[25]

21 The e-Negotiation stage lasts for five working days. If a settlement is reached, the respondent will be required to state a payment date and make payment. If no settlement is reached, the dispute proceeds to the mediation stage.[26]

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22 Retirement and Re-employment Act 1993 (2020 Rev Ed) ss 4(1)–4(2), 6, 7A and 8.

23 Child Development Co-Savings Act 2001 (2020 Rev Ed) Pt 3, ss 12D–12DA and 12H.

24 Ministry of Manpower, "Managing Employment Disputes at the Tripartite Alliance for Dispute Management (TADM)" (14 March 2024) <https://www.mom.gov.sg/employment-practices/managing-employment-disputes> (accessed 1 September 2025).

25 Tripartite Alliance for Dispute Management, *e-Negotiation (Claimant): A Quick Guide to Responding to an Offer or Counter-offer During e-Negotiation on* EmPOWER (13 July 2023) <https://www.tal.sg/tadm/-/media/tal/tadm/general-files/2023/tad47enegotiation-claimantv10.ashx> (accessed 1 September 2025) at p 5.

26 Tripartite Alliance for Dispute Management, *e-Negotiation (Claimant): A Quick Guide to Responding to an Offer or Counter-offer During e-Negotiation on* EmPOWER

(cont'd on the next page)

22 The mediation stage is estimated to take about eight weeks, and typically involves one to three rounds of mediation by a TADM-appointed mediator. Only the employee, a representative of the employer, and the mediator are allowed to participate in the mediation process. Third parties such as lawyers, non-governmental organisation representatives, family, or friends are not allowed to participate.[27]

23 TADM mediators are not required to be legally trained, but undergo training by the Singapore Mediation Centre ("SMC"). Many of them have prior human resource experience or were previously employed by MOM's former Labour Court. Further, TADM mediators are required to undergo in-house training on the law and dispute resolution process, and to study the grounds of decisions issued by the ECT.[28]

24 While TADM itself does not have adjudicative powers, the legal enforceability of its mediated outcomes is supported by statute. Where parties reach a settlement at TADM, the agreement can be recorded in writing and, where appropriate, filed with the State Courts to obtain the status of a consent order.[29] This provides legal finality and enforceability without litigation. In cases where mediation fails, parties may file their claim with the ECT which is a subordinate court of the State Courts and whose orders may be enforced as a court order.[30]

E. Tripartite Alliance for Dispute Management as a tripartite institution

25 While TADM operates closely alongside MOM and handles cases arising under MOM's policy remit, it is structurally and functionally distinct. TADM is not a regulatory or enforcement agency. In contrast, MOM functions as a statutory regulator, empowered to investigate, inspect, and prosecute violations.[31] MOM officers possess enforcement powers that TADM mediators do not, and MOM's institutional focus extends beyond dispute resolution to include labour market regulation, workforce development, and policy enforcement.

(13 July 2023) at p 5 <https://www.tal.sg/tadm/-/media/tal/tadm/general-files/2023/tad47enegotiation-claimantv10.ashx> (accessed 1 September 2025) at p 5.

27 Tripartite Alliance for Dispute Management, "Mediation Guide" <https://www.tal.sg/tadm/mediation-guide-3> (accessed 1 September 2025).

28 Ministry of Manpower, "Oral Answer by Senior Minister of State for Manpower Dr Koh Poh Koon to PQ on Wrongful Dismissal Claims" (4 March 2022) <https://www.mom.gov.sg/newsroom/parliament-questions-and-replies/2022/0304-oral-answer-by-sms-koh-on-wrongful-dismissal-claims> (accessed 1 September 2025).

29 Employment Claims Act 2016 (2020 Rev Ed) s 7(2).

30 Employment Claims Act 2016 (2020 Rev Ed) s 8; State Courts Act 1970 (2020 Rev Ed) ss 3(1A) and 3(5).

31 Employment Act 1968 (2020 Rev Ed) Pt 15 and s 139.

26 Despite these differences, TADM and MOM operate interdependently. TADM mediators may refer systemic or serious breaches of employment standards, such as repeated wage underpayment, housing violations, or document falsification, to MOM. The TADM Code of Conduct for Mediators ("TADM Code") (which will be discussed below) explicitly allows disclosure to MOM for case management and regulatory compliance.[32] Similarly, MOM may refer cases to TADM when mediation is a suitable first response.

27 The strong interdependence and coordination between TADM and MOM are a corollary of TADM's nature as a tripartite institution that shares MOM's mission and policy objectives of upholding fair employment practices. This context has implications for the conduct and ethics of TADM mediation which will be discussed below.

III. Ethical challenges in Tripartite Alliance for Dispute Management mediations and principled facilitation as a solution

28 As demonstrated above, TADM plays a crucial role in Singapore's employment dispute resolution framework. Ethical norms must constitute the foundation of any credible mediation model. The unique nature of a tripartite mediation body and the socio-legal context of employment disputes pose ethical challenges for TADM mediators, which are examined below.

A. Mediation ethics in Tripartite Alliance for Dispute Management mediations

29 This section examines how core ethical principles such as impartiality, conflict of interest management, confidentiality, and party self-determination are encoded in the TADM Code. Where relevant, comparisons will be made to the codes of conduct or rules of the SMC Code of Conduct ("SMC Code") and the Singapore International Mediation Institute ("SIMI") Code of Professional Conduct for SIMI Mediators ("SIMI Code").[33]

32 Tripartite Alliance Ltd, "Code of Conduct for Mediators" (2025) <https://www.tal.sg/tadm/-/media/tal/tadm/general-files/2025/mediators-code-of-conduct.ashx> (accessed 1 September 2025) ("TADM Code").

33 Singapore International Mediation Institute, "Code of Professional Conduct for SIMI Mediators: Version 2.0" (10 November 2023) ("SIMI Code").

(1) Neutrality and impartiality

30 The TADM Code requires mediators to "act impartially in helping parties to resolve the dispute",[34] consistent with the traditional conception of mediator neutrality.

31 On neutrality, the SMC Code requires that the mediator "be independent, impartial and fair to the Parties" and disclose all circumstances which may lead to the impression that they may not be independent, impartial or fair.[35] The SIMI Code similarly requires that the mediator "act in an independent and impartial manner" and "act in an unbiased manner and treat all relevant parties to the mediation with fairness, equality and respect".[36]

32 Beyond equal treatment in an absolute sense, a more holistic and meaningful form of fairness may require addressing power imbalances. It may depend on parties' ability to understand the process, articulate their interests, and negotiate on relatively equal footing.

33 The TADM Code is silent on the mediator's role in managing mediation procedure to address language barriers, lack of legal literacy, or fear of retaliation, issues that are especially salient in employment mediation. While not inconsistent with neutrality and impartiality, mediators may be left to navigate alone the difficult ethical quandaries posed when mediating between significantly power-imbalanced parties.

34 In contrast, the SIMI Code provides guidance for the conduct of the mediation to uphold impartiality. This includes requiring mediators to ensure that all parties have equal opportunity to "raise their issues and to be heard during the mediation" and "if one party wishes to seek advice from their legal counsel prior to finalising a settlement, the other party should also be given an opportunity to do likewise".[37] On private sessions and private communications (whether before or during the mediation), the SIMI Code prescribes that the mediator "will ensure that an equal opportunity will be provided to the other party to engage in such similar communication" and that "both parties are aware that he is engaging in private communications with one or more of the parties".[38] Further, the SIMI Code requires mediators to consider whether "any imbalance of power between the parties may compromise a party's safety".[39]

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34 TADM Code at para 1.1.

35 Singapore Mediation Centre, "Code of Conduct" (25 October 2024) <https://mediation.com.sg/wp-content/uploads/2024/10/SMC-Code-of-Conduct-for-Mediators-25.10.2024.pdf> (accessed 1 September 2025) ("SMC Code") cl 2.1.

36 SIMI Code cll 5.1–5.2.

37 SIMI Code cl 5.5.

38 SIMI Code cl 5.6.

39 SIMI Code cl 8.1(c).

(2) Conflict of interest

35 Relevant to impartiality is the management of conflicts of interest. The TADM Code mandates disclosure to a supervisor in cases where a mediator has acted for a party previously, holds a financial interest in a party or the outcome of the mediation, or possesses relevant confidential information about the parties or the dispute.[40]

36 Likewise, the SIMI Code and SMC Code require mediators to manage actual or perceived conflicts of interest. The SMC Code prohibits the mediator from accepting any appointment if he has a financial interest in any of the parties or the outcome of the mediation.[41] The SMC Code also requires a mediator to "disclose all circumstances which may lead to the impression that he may not be independent, impartial or fair".[42]

37 The SIMI Code requires the mediator to ensure that "he does not have an ongoing relationship with a party, or have given legal advice to a party prior to the mediation" and upon accepting an appointment as a mediator, will take reasonable steps to ensure that he will not enter into any relationship that may create a conflict of interest or a perception of a conflict of interest.[43]

38 A notable distinction between the TADM Code and the other Codes is that the TADM Code mandates disclosure to a supervisor. This reflects the institutionalised and centralised nature of TADM mediation, as opposed to private mediation which relies more on mediator autonomy and professionalism (albeit under the auspices of and some extent of oversight of mediation institutions).

(3) Confidentiality

39 Confidentiality assures parties that disclosures made during mediation will not be used against them and encourages candour in negotiations. The TADM Code upholds this principle but introduces an important exception. Information pertaining to the mediation, including mediation communications, may be disclosed to MOM or TAL for case management, coaching, auditing, or legal compliance purposes.[44]

40 Exceptions to mediation confidentiality are not wholly exceptional. When it comes to compliance with laws, the Mediation Act 2017[45] ("Mediation Act") (which does not apply to TADM mediations) permits the disclosure of mediation communications to assist a law enforcement

40 TADM Code at para 2.1.
41 SMC Code cl 2.1.
42 SMC Code cl 2.1.
43 SIMI Code cl 5.3.
44 TADM Code at para 3.3.
45 2020 Rev Ed.

agency in the investigation of any offence, or in compliance with a request or requirement by a regulatory authority, and when it is necessary to enable the regulatory authority to perform its duties.[46] The SIMI Code also allows disclosure where the SIMI mediator "has good reason to believe that disclosure is necessary to prevent death, serious physical harm or damage, or an illegal act". [47]

41 Nonetheless, the TADM Code exceptions to mediation confidentiality appear to be broader in other respects. While the SIMI Code allows disclosure for "educational, research, record-keeping, auditing, or verification purposes", such disclosure must be sufficiently anonymised. [48]

42 The TADM Code does not expressly require anonymisation of mediation communications that are disclosed for purposes beyond legal compliance, such as case management, coaching, or auditing purposes.[49] Disclosure for the purposes of coaching and auditing by a tripartite body also appears to be broader than the exceptions to mediation confidentiality under the Mediation Act to enable a regulatory authority to perform its duties.

B. Tripartite Alliance for Dispute Management mediator's role as mediator, advocate and enforcer

43 The role of a TADM mediator in Singapore presents a complex balancing act between three potentially conflicting functions: neutral mediator, advocate, and enforcer. While mediation is typically grounded in the principle of party neutrality and self-determination, the statutory and institutional nature of employment disputes at TADM imposes additional layers of responsibility that may pull mediators in divergent directions.

44 As evident from the TADM Code, TADM mediators are expected to remain impartial facilitators. While the TADM Code does not expressly refer to the facilitative mediation approach, all TADM mediators undergo training by the SMC which had a focus on the facilitative model when first introduced to Singapore.[50] In this model, the mediator facilitates the process as a neutral third party and refrains from expressing an opinion on the dispute.[51] The role of the mediator is process-centric to maximise

46 Mediation Act 2017 (2020 Rev Ed) s 9(2).
47 SIMI Code cl 7.1.2.
48 SIMI Code cl 7.2.
49 TADM Code at para 3.3.
50 Dorcas Quek Anderson, "The Evolving Concept of Access to Justice in Singapore's Mediation Movement" (2020) 16(2) *International Journal of Law in Context* 128 at 135.
51 Dorcas Quek Anderson, "The Evolving Concept of Access to Justice in Singapore's Mediation Movement" (2020) 16(2) *International Journal of Law in Context* 128 at 135.

participants' decision-making based on personal and commercial needs, instead of legal rights and duties.[52]

45 However, TADM mediators arguably also play the role of advocates, particularly for vulnerable employees who may be in a weaker position to assert their rights. It is important to clarify that in respect of TADM mediators' advocacy role, the term is used here to refer to their advocacy for existing norms set out in Singapore's broader tripartite framework, including fair treatment and harmonious employment relations, instead of advocacy on behalf of either party. In practice, this often requires TADM mediators to educate parties about statutory entitlements, highlight legal minimums, and occasionally nudge parties towards more equitable outcomes. As Ellen A Waldman observed, once mediation began to play a role in the resolution of divorce, environmental, criminal, and civil rights disputes, a purely procedural approach was insufficient for assimilating and applying social norms to the problems at hand.[53] Waldman further noted that allowing parties to dictate the norms that guide the solution to the dispute may pose "a threat to the continued articulation and enforcement of principles that society holds dear".[54] Here, the TADM mediator may need to transcend neutrality as conceptualised in the facilitative model where party autonomy is prioritised over legal rights and duties, to play a role in educating parties about entitlements under the employment legislative frameworks.

46 In addition to these roles, TADM mediators also serve, explicitly or implicitly, as enforcers of statutory employment rights and public policy standards. To be clear, as explained above, TADM is not an enforcement agency and TADM mediators do not have formal enforcement powers. However, TADM mediators carry the weight of institutional authority vested in TADM by MOM as the sole mediation service provider designated under the Employment Claims Regulations 2017[55] to conduct mediation for specified employment claims.[56] The unique position occupied by TADM mediators that is so closely adjacent to MOM may mean that a TADM mediator serves a higher public function. This may entail accompanying responsibilities to safeguard public interest standards, including ensuring that agreements meet statutory minima or even referring cases of egregious violations to enforcement authorities. Thus, party autonomy is (defensibly) curtailed in the name of legal compliance and fairness.

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52 Ellen A Waldman & Lola Akin Ojelabi, "Mediators and Substantive Justice: A View from Rawls' Original Position" (2016) 30(3) *Ohio State Journal on Dispute Resolution* 391 at 409.

53 Ellen A Waldman, "Identifying the Role of Social Norms in Mediation: A Multiple Model Approach" (1997) 48 *Hastings Law Journal* 703 at 724–725.

54 Ellen A Waldman, "Identifying the Role of Social Norms in Mediation: A Multiple Model Approach" (1997) 48 *Hastings Law Journal* 703 at 724–725.

55 2025 Rev Ed.

56 Employment Claims Regulations 2017 (2025 Rev Ed) reg 2: see definition of "mediation service provider" as meaning "department of Tripartite Alliance Limited known as Tripartite Alliance for Dispute Management".

47 These intersecting roles give rise to an inherent tension. The advocate and enforcer functions may conflict with the mediator's duty to maintain neutrality and uphold party autonomy. For example, stepping in to correct an unfair imbalance or to insist on strict statutory rights could be perceived as partiality by employers. Conversely, strict neutrality could result in outcomes that undermine the protections in Singapore's employment regime, particularly for low-wage or vulnerable employees. These tensions are explored below.

(1) Tension between mediator and advocate roles

48 The tension between mediators and advocates has been explored by scholars, such as David Dyck. In Dyck's analysis (which uses the terms advocate and activist interchangeably), mediators often view activists as overly focused on confrontation, neglecting the interpersonal relationships, listening, and collaborative processes that mediators value.[57] Conversely, activists critique mediators for promoting an "ideology of harmony" that masks deeper structural injustices, reduces systemic issues to mere communication problems, and often serves the interests of the powerful.[58]

49 As Robert A Baruch Bush and Joseph Folger noted, early modern mediation saw a mediator's duty of impartiality as only applying to the conduct of the process. The mediator had no role in guaranteeing the fairness of the outcome and the only guarantee was that the agreement would be mutually acceptable to the parties.[59]

50 However, a growing body of scholarship suggests that mediators cannot remain entirely indifferent to fairness concerns. An early proponent of this view is Lawrence Susskind who argued that a mediator was accountable for intervening to reduce the risk of unfairness, specifically where public policy disputes were concerned. He was specifically concern about the impacts on unrepresented and likely disadvantaged groups.[60] Bush and Folger observed that, over time, the dominant view has moved in the direction of Susskind's view that one of a mediator's key responsibilities is the substantive fairness of the outcome.[61]

57 David Dyck, "The Mediator as Nonviolent Advocate: Revisiting the Question of Mediator Neutrality" (2000) 18(2) *Mediation Quarterly* 129 at 131.

58 David Dyck, "The Mediator as Nonviolent Advocate: Revisiting the Question of Mediator Neutrality" (2000) 18(2) *Mediation Quarterly* 129 at 131–132.

59 Robert A Baruch Bush & Joseph P Folger, "Mediation and Social Justice: Risks and Opportunities" (2012) 27(1) *Ohio State Journal on Dispute Resolution* 1 at 10.

60 Robert A Baruch Bush & Joseph P Folger, "Mediation and Social Justice: Risks and Opportunities" (2012) 27(1) *Ohio State Journal on Dispute Resolution* 1 at 11.

61 Robert A Baruch Bush & Joseph P Folger, "Mediation and Social Justice: Risks and Opportunities" (2012) 27(1) *Ohio State Journal on Dispute Resolution* 1 at 11.

51 Ellen A Waldman and Lola Akin Ojelabi propound this view by drawing on Rawls' Theory of Justice, a hypothetical scenario in which rational individuals select principles of justice without knowing their own future position in society. They argue that mediators would design processes and guide parties towards outcomes that they would endorse if they were unaware of their own power or privilege in the dispute. Based on this, mediators have an ethical responsibility not just to facilitate fair processes but also to help ensure that outcomes themselves are substantively just.[62]

52 Omer Shapira similarly prefers a substantive conception of impartiality that is consistent with fairness which involves evaluation of the content of the rules and the extent to which parties' actions "fit the purpose and spirit of the rule and of the game as a whole, and according to the manner in which they interact with the reality and context".[63] Shapira argues that, among other reasons, substantive impartiality would promote more genuine self-determination.[64]

53 Shapira goes further in grounding a mediator's accountability for unfair outcomes based on a mediator's duties: (a) towards the parties to conduct the mediation on the basis of substantive party self-determination;[65] (b) towards the mediation profession to maintain public faith and confidence in mediation, by ensuring that the outcome does not jeopardise the institution of mediation;[66] and (c) towards the public to avoid harming important societal interests.[67]

54 Mediators cannot avoid engaging with legal and social norms. Whether by introducing them, remaining silent about them, or actively advocating for them, the choice inevitably affects the fairness and outcome of the process. Waldman argues that strict adherence to the traditional norm-generating model (where norms are generated by parties) may be insufficient to assimilate and apply social norms where mediation plays a role in the resolution of public interest disputes. In these disputes, allowing parties to dictate the norms may threaten the articulation and enforcement

62 Ellen A Waldman & Lola Akin Ojelabi, "Mediators and Substantive Justice: A View from Rawls' Original Position" (2016) 30(3) *Ohio State Journal on Dispute Resolution* 391 at 419 – 429.

63 Omer Shapira, "Conceptions and Perceptions of Fairness in Mediation" (2012) 54 *South Texas Law Review* 281 at 307–310.

64 Omer Shapira, "Conceptions and Perceptions of Fairness in Mediation" (2012) 54 *South Texas Law Review* 281 at 309.

65 Omer Shapira, "Conceptions and Perceptions of Fairness in Mediation" (2012) 54 *South Texas Law Review* 281 at 336–337.

66 Omer Shapira, "Conceptions and Perceptions of Fairness in Mediation" (2012) 54 *South Texas Law Review* 281 at 337–339.

67 Omer Shapira, "Conceptions and Perceptions of Fairness in Mediation" (2012) 54 *South Texas Law Review* 281 at 339–340.

of principles that society holds dear.[68] Shapira cites Professor Trina Grillo who argued that:[69]

> Equating fairness in mediation with formal equality results in, at most, a crabbed and distorted fairness on a microlevel; it considers only the mediation context itself. There is no room in such an approach for the discussion of fairness of institutionalized societal inequality.

55 One model of dispute resolution which allows the introduction of applicable contextual norms and standards is conciliation as adopted by the Australian Fair Work Commission for unfair dismissal disputes.[70] In 2021, the Australian Dispute Resolution Advisory Council published a report which defined conciliation as a "facilitative dispute resolution process" which is "conducted under and in accordance with legislation or other binding rule which places obligations on conciliators and the disputing parties to comply with the norms and standards required by that context".[71] In this definition of conciliation, conciliators "may use their specialist knowledge and experience to evaluate each disputing party's position, to express their own opinions, to offer advice, and to identify and clarify issues".[72] This provides express recognition that conciliated disputes need to be determined in accordance with the norms and standards of the enabling legislation.

56 In Singapore, mediation (and not conciliation) is the prescribed dispute resolution method for workplace disputes. TADM mediations take place against the backdrop of legislation and codes with embedded values and substantive norms. However, there is no express recognition of these standards and norms in the TADM Code. In contrast, Dorcas Quek Anderson identifies within the SIMI Code and the Mediation Act certain limits that are "clear endorsements of mediation taking place within the constraints of public norms".[73] These include (a) prohibitions under the Mediation Act against recording a mediated settlement which contravenes public policy in Singapore or that is not in the best interest of a child to be

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68 Ellen A Waldman, "Identifying the Role of Social Norms in Mediation: A Multiple Model Approach" (1997) 48 *Hastings Law Journal* 703 at 724–725.

69 Omer Shapira, "Conceptions and Perceptions of Fairness in Mediation" (2012) 54 *South Texas Law Review* 281 at 308; citing Trina Grillo, "The Mediation Alternative: Process Dangers for Women" 100 *The Yale Law Journal* 1545 at 1569.

70 Fair Work Commission, "Conciliation" <https://www.fwc.gov.au/conciliation> (accessed 1 September 2025).

71 Australian Dispute Resolution Advisory Council, "Conciliation: Connecting the Dots" (November 2021) <https://f77b663a-db93-4dd8-823d-909937839d69.filesusr.com/ugd/34f2d0_0b0c4493e87b414f8b8eafb2865da6fa.pdf> (accessed 1 September 2025) at p 11.

72 Australian Dispute Resolution Advisory Council, "Conciliation: Connecting the Dots" (November 2021) <https://f77b663a-db93-4dd8-823d-909937839d69.filesusr.com/ugd/34f2d0_0b0c4493e87b414f8b8eafb2865da6fa.pdf> (accessed 1 September 2025) at p 11.

73 Dorcas Quek Anderson, "The Evolving Concept of Access to Justice in Singapore's Mediation Movement" (2020) 16(2) *International Journal of Law in Context* 128 at 141.

recorded as a court order; and (b) the requirement under the SIMI Code for mediators to withdraw from a mediation if the mediation has assumed "an unconscionable or illegal character", or is likely to result in a settlement "against public policy or of an illegal nature".[74]

57 Quek Anderson has suggested that public norms are particularly prominent in mediation programmes that are closely connected to state institutions and involve legal principles. In addition to employment disputes lodged with MOM, she notes community mediations handled by the Community Mediation Centres set up by the Ministry of Law and family conflicts as other examples of mediation programmes that are closely connected to state institutions and where mediators are expected to exercise oversight of the substantive outcomes. Far from being value-agnostic, mediators need to have a clear understanding of the applicable norms limiting parties' exercise of self-determination and their ethical obligations include terminating mediations when such norms are in danger of being violated.[75]

58 In this vein, Quek Anderson observed that to advance substantive fairness in mediation, there should be explicit acknowledgment of the mediator as a norm educator for key principles embedded in codes and legislation, which has yet to be done for many statutory mediation programmes in Singapore. She noted the potential to articulate this role of the mediator within the relevant mediation standards.[76]

59 Beyond norm education, the author ventures to suggest that norm-advocacy may be appropriate in certain TADM cases. As Waldman acknowledges, norm education may not be suitable in two categories of cases: (a) where the conflict involves important societal concerns, extending far beyond the parties' interests; and (b) where the conflict only involves the interests of the parties but one party is so structurally disenfranchised that allowing them to negotiate away legal rights and entitlements would make the mediator complicit in their continued oppression.[77]

60 The mediator's role at TADM is embedded within a quasi-regulatory structure, operating under the joint auspices of MOM, NTUC, and SNEF. Within this framework, the mediator is not simply a neutral third party facilitating a private bargain, but part of a public mechanism for upholding labour standards and resolving employment disputes in a fair and accessible manner. Arguably, both categories of norm advocacy identified

74 Dorcas Quek Anderson, "The Evolving Concept of Access to Justice in Singapore's Mediation Movement" (2020) 16(2) *International Journal of Law in Context* 128 at 141.

75 Dorcas Quek Anderson, "The Evolving Concept of Access to Justice in Singapore's Mediation Movement" (2020) 16(2) *International Journal of Law in Context* 128 at 141.

76 Dorcas Quek Anderson, "The Evolving Concept of Access to Justice in Singapore's Mediation Movement" (2020) 16(2) *International Journal of Law in Context* 128 at 142.

77 Ellen A Waldman, "Identifying the Role of Social Norms in Mediation: A Multiple Model Approach" (1997) 48 *Hastings Law Journal* 703 at 753–754.

by Waldman are relevant to TADM mediations which involve important norms surrounding fair employment and labour protections and structural disparities that exist in employer-employee disputes. These disparities are even more salient where the employee is a low-wage foreign employee.[78]

61 Waldman argued that rather than prescribing a single correct model, mediators should consciously choose their orientation based on the nature of the dispute.[79] The author does not propose to prescribe norm education or norm advocacy as the superior approach for TADM mediation. Both approaches involve some level of advocacy by the mediator of social norms and as Quek Anderson noted, more can be done to expressly acknowledge and provide guidance for the role of the mediator as a proponent of substantive norms.

(2) Tension between mediator and enforcer roles

62 A TADM mediator's role is further complicated by their responsibilities as an enforcer. It is important to see TADM's role not only as a dispute resolution platform but also as a key component in Singapore's broader employment protection ecosystem. TADM mediators are tasked primarily with facilitating settlement between disputing parties. However, they also occupy a unique institutional position that may place on them responsibilities, whether express or implicit, to identify and act upon breaches of employment standards that fall outside the immediate scope of the mediated dispute. There is an ethical basis for doing so since mediation should not inadvertently obscure or enable systemic violations.

63 We examine the TADM mediator's enforcer role through two examples: (a) their role in ensuring employers meet their continuing obligations under the Employment of Foreign Manpower Act 1990;[80] and (b) their role in reporting widespread or systemic breaches of employment laws.

(a) Enforcement of employers' obligations

64 Even where a salary dispute has arisen, the employer of a work permit holder remains responsible for ensuring that the work permit holder has acceptable accommodation, and for the upkeep and maintenance of the work permit holder, including the provision of adequate food and medical

78 The Employment Standards Report 2023 noted that in 2023, 4,318 (or 46%) were lodged by local employees while the remaining 5,079 (or 54%) were lodged by foreign employees: Ministry of Manpower & Tripartite Alliance for Dispute Management, *Employment Standards Report 2023* (2 August 2024) <https://www.mom.gov.sg/-/media/mom/documents/press-releases/2024/0802-annex-employment-standards-report-2023.pdf> (accessed 1 September 2025) at p 4.

79 Ellen A Waldman, "Identifying the Role of Social Norms in Mediation: A Multiple Model Approach" (1997) 48 *Hastings Law Journal* 703 at 724–725 and 756.

80 2020 Rev Ed.

treatment. This obligation extends to a situation where the foreign employee's work permit is cancelled and the foreign employee is placed on a special pass. Although upkeep, maintenance, and housing issues may not be part of the formal mediation claim, they may arise in the course of the mediation, *eg*, where a foreign employee reveals that they have been asked to leave their dormitory because of the salary claim. In such situations, MOM has reported that the TADM mediator may refer the foreign employee to MOM's Assurance, Care & Engagement Group for housing assistance.[81] The TADM Code does not explicitly require mediators to investigate such matters, but para 3.3 of the Code allows disclosure of information to MOM or TAL where necessary for case management or legal compliance.[82] In practice, this positions the mediator as an ethical first responder, *ie*, someone who, while not formally acting as an enforcer, can recognise potential red flags and escalate them to the appropriate authorities.

(b) Reporting widespread or systemic breaches to MOM

65 Mediators may encounter cases where a particular employer appears repeatedly before TADM with similar categories of breaches, *eg*, consistent underpayment of wages, non-issuance of payslips, or wrongful dismissals. While each case may be resolved individually through mediation, the pattern of misconduct may suggest deliberate or systemic non-compliance with employment laws. In such scenarios, the ethical duty of the mediator may extend beyond the resolution of individual disputes. TADM mediators, as institutional actors, are well placed to support MOM's enforcement efforts by flagging repeat offenders or systemic risks to employment standards. In May 2023, Minister for Manpower Dr Tan See Leng noted that MOM has investigated complaints of non-payment or short payment of salaries for work done on rest days,[83] including referrals from TADM.[84] This would suggest that there is a channel for TADM mediators to refer cases for investigation by MOM. That said, the criteria for referrals are not publicly available. The processes and channels through which such referrals take place are also unclear.

66 In practice, TADM mediators play a role not only in early and amicable dispute resolution but also in the early detection of, and proactive enforcement against, risks to worker welfare and systemic abuse.

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81 Ministry of Manpower, "Response to Transient Workers Count Too (TWC2) Article on Migrant Worker Who Was Bullied By His Employer" (17 May 2024) <https://www.mom.gov.sg/newsroom/fact-checks/2024/response-to-twc2-article-on-mw-who-was-bullied-by-his-employer> (accessed 1 September 2025).

82 SIMI Code cl 3.3.

83 Under Pt 4 of the Employment Act 1968 (2020 Rev Ed), employers must provide one rest day per week and compensate workers who work on their rest days. The rate of pay for work on rest day is one day's basic salary if the request is made by the worker and two days' basic salary if the request is made by the employer.

84 Singapore Parl Debates; Vol 95, Sitting No 103; [9 May 2023] (Dr Tan See Leng, Minister for Manpower).

67 This expanded role must, however, be carefully managed. Ethical mediation practice demands strict adherence to confidentiality, and parties must be able to trust that what is shared in mediation is not unfairly weaponised. As noted above, para 3.3 of the TADM Code permits disclosure of information to MOM or TAL for case management or legal compliance.[85] The challenge for the mediator lies in identifying the threshold at which a workplace issue, such as poor housing or recurrent underpayment, moves from a private contractual dispute to a matter of public concern. Presently, the criteria for such referral (if any exist) is not publicly available. The referral decision should not be made unilaterally by the mediator but should be guided by institutional protocols, with support from TADM supervisors and case managers. Where there is clear evidence of a breach that has broader public interest implications beyond the case at hand, escalation to MOM can be ethically and legally justified as a protective measure.

68 Ultimately, the mediator must be guided by a set of transparent and consistent principles, as part of a principled facilitation approach which will be advanced below.

C. Principled facilitation as a solution for navigating ethical challenges

69 Principled facilitation provides a more nuanced understanding of how TADM mediators can navigate the ethical challenges posed by their different roles. The author proposes a model of principled facilitation which recognises a TADM mediator's institutional mandate to uphold fair employment norms. As Quek Anderson has noted, many statutory mediation programmes in Singapore have not adequately acknowledged the role of the mediator in upholding the relevant standards of substantive fairness in codes and legislation related to mediations.[86]

70 In principled facilitation, the mediator's role is to actively introduce and foreground external norms, values, and ethical considerations into the mediation to assist parties in evaluating the fairness and legitimacy of potential outcomes. The mediator does not remain strictly neutral or passively accept terms proposed by the parties. While the mediator would still refrain from prescribing outcomes, the mediator actively articulates the substantive standards by which parties' proposals should be assessed.

71 In certain cases, principled facilitation may require the mediator to be the final bulwark against significant substantive injustice. This may require the mediator to terminate the process if one party acts unconscionably or if

85 TADM Code at para 3.3.

86 Dorcas Quek Anderson, "The Evolving Concept of Access to Justice in Singapore's Mediation Movement" (2020) 16(2) *International Journal of Law in Context* 128 at 142.

an unconscionable agreement appears likely.[87] Waldman and Akin Ojelabi have opined that such termination provisions acknowledge that sometimes mediation negotiations can lead to harmful or exploitative outcomes and that the mediator should be on the lookout for these disturbing outcomes, work to modify them, or seek to disassociate from them.[88]

72 Waldman and Akin Ojelabi go on to propose that while not every code contains these termination agreements, those that do suggest a more layered and complex set of responsibilities for the mediator than do codes that focus exclusively on procedural fairness to the exclusion of other concerns.[89] For instance, the former Australian National Mediator Standards[90] allow a mediator to withdraw from the mediation process when "any agreement is being reached by the participants that the mediator believes is unconscionable".[91] The International Mediation Institute's Code of Professional Conduct goes further in *requiring* a mediator to withdraw from a mediation "if a negotiation among the parties appears to be moving toward an unconscionable or illegal outcome".[92] It further elaborates that:[93]

> An unconscionable outcome is one which is the product of undue pressure, exploitation or duress. An unconscionable outcome reflects one party's exploitation of an existing power imbalance to the degree that the resulting agreement 'shocks the conscience' and violates accepted legal and cultural norms of fairness.

73 In Singapore, the SIMI Code provides in similar language that:[94]

> SIMI Mediators should take steps to withdraw from a mediation if they determine in the course of the mediation that the mediation has assumed, or is likely to assume, an unconscionable or illegal character, or is likely to result in a settlement that is against public policy or be of an illegal nature.

87 Ellen A Waldman & Lola Akin Ojelabi, "Mediators and Substantive Justice: A View from Rawls' Original Position" (2016) 30(3) *Ohio State Journal on Dispute Resolution* 391 at 417.

88 Ellen A Waldman & Lola Akin Ojelabi, "Mediators and Substantive Justice: A View from Rawls' Original Position" (2016) 30(3) *Ohio State Journal on Dispute Resolution* 391 at 418.

89 Ellen A Waldman & Lola Akin Ojelabi, "Mediators and Substantive Justice: A View from Rawls' Original Position" (2016) 30(3) *Ohio State Journal on Dispute Resolution* 391 at 418.

90 The National Mediator Accreditation System was replaced by the Australian Mediator & Dispute Resolution Accreditation Standards on 1 July 2024.

91 "Australian National Mediator Standards for Mediators Operating Under the National Mediator Accreditation System" (September 2007) <https://www.ama.asn.au/Final_%20Practice_Standards_200907.pdf> (accessed 1 September 2025) at p 14.

92 International Mediation Institute, "Code of Professional Conduct" <https://imimediation.org/wp-content/uploads/2022/02/IMI-Code-of-Conduct-EN.pdf> (accessed 1 September 2025) at p 5.

93 International Mediation Institute, "Code of Professional Conduct" <https://imimediation.org/wp-content/uploads/2022/02/IMI-Code-of-Conduct-EN.pdf> (accessed 1 September 2025) at p 5.

94 SIMI Code cl 6.1.

74 This suggests that it may be within the bounds of ethical mediator behaviour for a mediator to bring in assessments of what constitutes unconscionable behaviour.[95]

75 In extreme cases suggestive of systemic and recalcitrant violations, the pre-eminence of norms that underpin principled facilitation may even require the mediator to refer a case to MOM for further investigation. Clearly articulating the norms that should guide the actions of TADM mediators will provide a principled basis for TADM mediators in exercising their discretion to refer cases to MOM for investigation and enforcement. The same norms in a principled facilitation which are used to assess the legitimacy and fairness of outcomes, and which guide and legitimise a mediator's decision to terminate a mediation where unconscionability arises, similarly provide legitimacy to a mediator's decision to refer a case for enforcement where egregious violations of statutory laws occur. Beyond a general understanding of a TADM's mediator's broader role to uphold labour norms, these norms should be expressed in institutional protocols that clearly define the thresholds and mechanisms for such referrals. Crystallising the norms in explicit written protocols, rather than leaving them as an amorphous and implicit understanding that enforcement referral may be possible, is preferable for building parties' trust in TADM mediations. Consistent and transparent referral decisions are more easily reconciled with this exception to a TADM mediator's duty of confidentiality.

76 Ultimately, express recognition of the standards and norms of the underlying legislative and regulatory frameworks in TADM mediation is a foundational step which must be realised through concrete protocols, training, and monitoring. For instance, Australian Dispute Resolution Advisory Council's 2021 report which defines conciliation, goes further to recommend conciliation-specific training, standards, and professional development, among other measures, to strengthen the practice of conciliation in Australia.[96]

77 The author sets out below some proposals to strengthen principled facilitation as an approach for TADM mediations.

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95 Ellen A Waldman & Lola Akin Ojelabi, "Mediators and Substantive Justice: A View from Rawls' Original Position" (2016) 30(3) *Ohio State Journal on Dispute Resolution* 391 at 418.

96 Australian Dispute Resolution Advisory Council, "Conciliation: Connecting the Dots" (November 2021) <https://f77b663a-db93-4dd8-823d-909937839d69.filesusr.com/ugd/34f2d0_0b0c4493e87b414f8b8eafb2865da6fa.pdf> (accessed 1 September 2025) at pp 33–34.

(1) Incorporate explicit recognition of substantive norms in Tripartite Alliance for Dispute Management Code

78 To formalise principled facilitation, the TADM Code should be revised to explicitly recognise that mediators are not only neutral facilitators but also have duties to uphold norms under Singapore's labour protection framework. Their role is to help parties reach an informed and fair agreement guided by principles and statutory norms. This would provide mediators with more legitimacy in parties' eyes when propounding norms under the relevant statutory frameworks.

79 To be clear, this does not mean that an agreed term cannot fall below the statutory requirements (in which case the proceedings would be akin to an adjudication by the ECT). Instead, where terms fall below the statutory minimum, the TADM mediator should note this and ensure that the compromise can be justified against other more compelling interests. Other balancing interests may include an early resolution allowing the employee to secure payment without protracted proceedings which run the risk of employer insolvency, or allowing a foreign employee on a special pass to seek new employment.

80 Taking reference from MOM's stated vision and mission, the TADM Code could provide that:[97]

> (a) This Code reflects the obligations of mediators towards mediation parties, TAL and TADM, the mediation profession, and the public. Mediators are expected to:
>
> > (i) exercise their role in accordance with the Code in a manner that maintains the standing of and public trust in the profession and process;
> >
> > (ii) avoid harming important social interests such as the rule of law and the institution of mediation; and
> >
> > (iii) maintain the standing of TAL and TADM, and tripartite partners comprising MOM, NTUC, and SNEF.
>
> (b) The mediator, while remaining impartial in facilitation, is allowed to and should raise awareness of statutory entitlements, public interest considerations, and principles of good employment standards such fairness, inclusiveness, and progressiveness, to assist parties in reaching informed and just agreements.

81 In addition to expressly affirming the mediator's duty to safeguard substantive norms, the TADM Code should also provide express guidance

97 Reference taken from "Revised Public Consultation Draft Prepared by IMI Ethics Committee, January 23, 2024 – Revised IMI Code of Conduct for Mediators" (23 January 2024) <https://imimediation.org/wp-content/uploads/2024/01/Consultation-Draft-IMI-Revised-Code-23.1.24-1.pdf> (accessed 1 September 2025).

on when and how mediators may appropriately address relevant substantive norms. In the context of employment mediation, it may also be prudent to guide mediators in dealing with power imbalances. The TADM Code can also give weight to substantive norms by clarifying situations where the TADM mediator may terminate the mediation after determining that continuing the process would harm or prejudice the participants.

82 One formulation could be as follows:[98]

(a) The mediator must conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, including possible imbalances of power and any wishes the parties may express, the rule of law and the need for a prompt settlement of the dispute.

(b) The mediator shall take steps to prevent an abuse of or substantial defect in the mediation process. Such steps may include discussions with the parties in joint or separate sessions, asking the parties to consult external experts, postponing the mediation, or terminating the mediation as a last resort. Abuse of process and substantial defect in the mediation may include:

(i) The use of mediation to further illegal conduct.

(ii) The use of information revealed to a mediator during the mediation for any purpose not connected with the mediation, unless agreed to by the parties.

(iii) Participants' conduct that exhibits bad faith, is inconsistent with the purposes of the mediation, or makes the conduct of mediation impossible. Indications of bad faith could include undue pressure, exploitation, duress, and deceit.

(iv) Where the mediated agreement appears to severely jeopardise the standing of and public trust in mediation. For example, a mediator reasonably believes that the settlement agreement's terms appear to be illegal, having regard to the circumstances of the case and the competence of the mediator to make such an assessment, or are unconscionable or grossly unfair, shocking the conscience of a reasonable person and violating accepted social norms.

98 Reference taken from "Revised Public Consultation Draft Prepared by IMI Ethics Committee, January 23, 2024 – Revised IMI Code of Conduct for Mediators" (23 January 2024) <https://imimediation.org/wp-content/uploads/2024/01/Consultation-Draft-IMI-Revised-Code-23.1.24-1.pdf> (accessed 1 September 2025) and "Australian National Mediator Standards for Mediators Operating Under the National Mediator Accreditation System" (September 2007) <https://www.ama.asn.au/Final_%20Practice_Standards_200907.pdf> (accessed 1 September 2025).

83 These principles and practices should also be incorporated into the training programme for TADM mediators.

(2) Institutional protocols for referring cases for investigation and enforcement

84 The TADM Code should make express that TADM mediators may refer cases to MOM for investigation and enforcement, and TADM should develop clear institutional protocols for case referrals.

85 The protocol should establish objective thresholds for when a matter moves beyond a private dispute into the realm of public concern for investigation and enforcement by MOM. The protocol would also formalise escalation procedures, including assigning responsibility for the referral decision to a designated supervisor or case manager rather than leaving it solely to individual mediators, to standardise referral decisions. This is consistent with the TADM Code's existing oversight structure which requires a TADM mediator to disclose conflicts of interest to a supervisor. The author makes some proposals that could be incorporated into such an institutional protocol.

(a) Principles

86 The protocol should be grounded in the following principles:

(a) *Fairness and integrity*: safeguarding employee rights and welfare under legislation, including the Employment Act and Employment of Foreign Manpower Act 1990.[99]

(b) *Confidentiality with exceptions*: respecting mediation confidentiality while complying with the exception under para 3 of the TADM Code which permits disclosure to MOM or TAL for case management or legal compliance.

(c) *Proportionality*: escalation only where breaches are significant, systemic, or have serious implications on employee welfare or public interest.

(d) *Transparency*: parties are informed at the outset of mediation that certain issues may be referred to MOM if they meet statutory or ethical thresholds.

(b) Threshold for escalation

87 A matter should be escalated to MOM if one or more of the following criteria are met:

99 2020 Rev Ed.

(a) *Serious violations, or ongoing/systemic non-compliance*: serious violations in a single case or patterns of similar breaches by the same employer (*eg*, involving the same entity or same individual) across multiple cases, especially where there are indications of recalcitrant non-compliance.

(b) *Risk to health, safety, or basic welfare*: current or imminent risk to the physical safety, health, or basic living conditions of employees (*eg*, eviction from dormitory and denial of urgent medical care).

(c) *Criminal conduct*: reasonable suspicion of criminal acts related to employment (*eg*, human trafficking, physical abuse and document confiscation).

(c) Escalation procedure

(i) Identification

88 The mediator or case manager identifies a potential breach during case intake, mediation session, or follow-up. Red flags are documented factually, without subjective conclusions.

(ii) Internal review

89 The matter is referred to a supervisor to assess whether the threshold criteria are met.

(iii) Decision and referral

90 If the criteria are met, the case is transmitted to MOM's designated liaison unit (*eg*, Assurance, Care & Engagement Group for welfare issues and Enforcement Division for legal breaches).

91 For urgent welfare or safety risks, the mediator should confer with a supervisor and transmit the case to an emergency MOM contact point through an expedited process.

(d) Training and monitoring

92 TADM mediators and case officers should receive training on case triage (including identifying breaches and applying escalation thresholds), ethical boundaries and confidentiality exceptions. MOM should provide regular feedback to TADM on referral outcomes. TADM should regularly review the effectiveness of its protocols, including number and types of cases referred, accuracy of referrals (number of cases where concerns were substantiated), and any unintended impact on mediation participation or trust.

93 By codifying clear, transparent, and consistent referral protocols, TADM can enhance its role as an early detection mechanism in Singapore's broader employment protection ecosystem.

(3) Monitoring, evaluation, and continuous improvement

94 Substantive justice in mediation also requires consistency in how the proposed standards and processes are applied. TADM could introduce a light-touch review mechanism to monitor and evaluate TADM mediators' performance. Courts have been urged to establish mechanisms that monitor mediations and provide parties with opportunities to give post-mediation feedback.[100] Quek Anderson also noted that while the professionalisation of mediation in Singapore has led to the creation of more robust systems to ensure accountability, it is still rare for mediation organisations in Singapore to incorporate internal review mechanisms to deal with complaints against their mediators.[101]

95 Measures of mediation success should therefore include not only settlement rates but also the monitoring of users' feedback. In this regard, District Judge Joyce Low ("DJ Low") has suggested that the assessment of mediators should be linked to standards in the ethical codes. DJ Low proposed that this includes survey forms to be filled out by parties and counsel involved in the mediation that measure the extent to which the mediator has complied with ethical standards. Complaints received should be properly reviewed and accounted for.[102]

96 The collection of user feedback is not unusual in a mediation setting. User feedback is routinely collected by mediation service providers or required by mediation accreditation bodies in assessing mediators for accreditation.

97 At SMC, feedback from parties is regularly collected post-mediation to assess the competence, neutrality, and professionalism of mediators, as well as the user-friendliness and efficiency of the process. Similarly, the Singapore International Mediation Centre (SIMC) collects participant feedback to assess how well mediators perform.

98 As for SIMI, which is Singapore's national body for mediator standards and accreditation, user feedback plays a critical role in various

100 Nancy A Welsh, "Magistrate Judges, Settlement, and Procedural Justice" (2016) 16 *Nevada Law Journal* 983 at 1043–1044; Nancy Welsh, "Do You Believe in Magic?: Self-Determination and Procedural Justice Meet Inequality in Court-Connected Mediation" (2017) 70(3) *SMU Law Review* 721 at 731.

101 Dorcas Quek Anderson, "The Evolving Concept of Access to Justice in Singapore's Mediation Movement" (2020) 16(2) *International Journal of Law in Context* 128 at 138.

102 Joyce Low, "Promoting Ethical Practice in Mediation" (25 February 2011) <https://barcouncil.org.my/conference1/pdf/20.PROMOTINGETHICALPRACTICE.pdf> (accessed 1 September 2025).

aspects.[103] Feedback is relevant in accrediting mediators. SIMI-accredited mediators who wish to progress to higher tiers must submit feedback using a specified form. To apply to become a SIMI Certified Mediator, feedback based on at least ten mediations must be submitted.[104] Feedback is also used to monitor and enforce the SIMI Code, as parties can apply through the SIMI Assessment of Professional Conduct for SIMI Mediators to review whether a mediator has adhered to the SIMI Code.[105]

99 TADM mediation would similarly benefit from established feedback mechanisms. Feedback from parties and mediators can inform ongoing refinement of training and codes, ensuring that TADM mediation remains responsive and appropriate for employment relations and dispute resolution in Singapore.

IV. Conclusion

100 The international mediation practitioner and academic Howard Bellman once said, "Mediators do not encourage the lamb to stand up to the lion; rather the imbalance created by the lion's strength and the lamb's vulnerability is part of the setting within which the parties and the mediator negotiate".[106] Bellman goes on to defend mediation neutrality on the grounds that after the mediation, the lion remains a lion, the lamb remains a lamb, and the mediator's job is to "make the lion-lamb relationship clear to the lamb".[107]

101 With respect, beyond accepting inequality and structural power imbalances, institution-linked TADM mediations can and must go further in remediating these imbalances. Neutrality cannot be an excuse for sidestepping the tensions that arise from TADM mediators' functions as a mediator, norm advocate, and enforcer. It would better serve all parties that the codes and frameworks expressly acknowledge the substantive

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103 Singapore International Mediation Institute, "SIMI Credentialing Scheme" <https://www.simi.org.sg/What-We-Offer/Mediators/SIMI-Credentialing-Scheme> (accessed 1 September 2025).

104 Singapore International Mediation Institute, "Feedback Digest" <https://www.simi.org.sg/What-We-Offer/Mediators/Feedback-Digest> (accessed 1 September 2025).

105 Singapore International Mediation Institute, "SIMI Credentialing Scheme" <https://www.simi.org.sg/What-We-Offer/Mediators/SIMI-Credentialing-Scheme> (accessed 1 September 2025).

106 Ellen A Waldman & Lola Akin Ojelabi, "Mediators and Substantive Justice: A View from Rawls' Original Position" (2016) 30(3) *Ohio State Journal on Dispute Resolution* 391 at 400, citing Howard Bellman, "Mediation as an Approach to Resolving Environmental Disputes, Environmental Conflict Practitioners Workshop, Proceedings" (1982) at fn 38.

107 Ellen A Waldman & Lola Akin Ojelabi, "Mediators and Substantive Justice: A View from Rawls' Original Position" (2016) 30(3) *Ohio State Journal on Dispute Resolution* 391 at 400, citing Howard Bellman, "Mediation as an Approach to Resolving Environmental Disputes, Environmental Conflict Practitioners Workshop, Proceedings" (1982) at fn 38.

norms that should guide TADM mediators in discharging these functions in a principled manner. At this 70th year since the Ministry of Labour and Welfare was established, we are a mature legal and political system capable of designing a dispute resolution system that has at its heart principles, not power.

Book Review

CONTEMPORARY ISSUES IN MEDIATION (VOL 10)[1]

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I. Introduction

1 The tenth and final volume of *Contemporary Issues in Mediation* offers a compelling cross-section of the field's evolving practice. Across its diverse contributions, one finds both rigorous theoretical inquiry and personal reflections on mediation's place in an increasingly complex world.

2 Each essay draws the reader to an awareness of diverse philosophies and sensibilities, collectively spanning a remarkable breadth: from analyses of neutrality, confidentiality, and narrative ethics to the roles of each stakeholder plays in peacemaking and the access to justice; from comparative anthropological explorations of culture and human behaviour, to analyses of regulatory frameworks, professional standards, and international instruments. The volume celebrates how mediation has made a difference and how each writer envisions its evolution within and beyond established orthodoxies.

II. Mediation as a pathway to peace and justice

3 Opening the volume is *Peacemakers: Individuals as Mediators of International Conflicts*, where Quek Jia Ying Rachel turns the analytical lens toward the individual mediator in international contexts, challenging the assumption that effective peacebuilding must be institutionally anchored. Quek frames her discussion through Saadia Touval and William Zartman's typology of mediators in international conflicts, identifying three approaches: the mediator as communicator, formulator, and manipulator. She demonstrates that individuals can wield significant influence in peace processes despite lacking the authority or resources of states and international organisations. Often assumed to be the least effective actors in both high- and low-intensity conflicts, these mediators nonetheless succeed through credibility and adaptability, adopting strategies that blend and transcend conventional categories of mediator action.

4 The essay's secondary claim that mediator effectiveness should not be measured solely by settlement outcomes but by the mediator's mandate

1 World Scientific, 2025.

and assigned objectives stands out as one of Quek's thoughtful contributions. Martti Ahtisaari's directive management of the Aceh peace process, George Mitchell's procedural innovation, and Abdulsalami Abubakar's post-agreement stewardship collectively illustrate that success may lie in sustained peacebuilding rather than the mere achievement of a settlement.

5 Building on these examples, Quek invites a broader rethinking of how mediators' profiles, mandates, and process design intersect, emphasising the importance of selecting mediators suited to the specific dynamics of a dispute. Implicit in her analysis is the suggestion that effective mediation need not always be conducted by state- or institution-based actors; individuals may, by virtue of their personal credibility and relational skill, be uniquely positioned to broker peace.

6 Expanding the discussion of peacebuilding to justice systems, Dr Emadeldien Hussein's *Beyond the Courtroom: Mediation and the Pursuit of Justice* shifts focus from international to institutional contexts, situating mediation within the broader discourse on access to justice. Drawing on Mauro Cappelletti and Bryant Garth's framework of barriers to justice, cost, relative party capability, and diffuseness of interests, Hussein posits that mediation, with its flexibility and informality, can overcome these barriers by reducing costs, shortening timelines, and enhancing participation for disadvantaged parties. Through empirical studies of community and trauma-informed models, he demonstrates how mediation's value lies not only in efficiency but in its capacity to empower marginalised voices through autonomy and inclusivity.

7 The essay's strength lies in its measured perspective. Hussein neither idealises mediation as a panacea nor reduces it to a pragmatic substitute for adjudication. Instead, he charts a middle course that recognises mediation's potential to complement, rather than replace, formal justice mechanisms, particularly where procedural barriers or social stigma hinders access to remedies. While acknowledging that mediation cannot fully neutralise entrenched power asymmetries, Hussein emphasises the importance of mediator skill, training, and thoughtful process design in mitigating them. As societies continue to strive for fairer and more inclusive legal systems, Hussein argues that the strategic integration of mediation will be central to ensuring that justice remains accessible, participatory, and responsive to human need.

III. Party agency and anthropological dimensions of mediation

8 Continuing the discussion on how peace may be cultivated, Gauri Yadav shifts attention to the parties themselves in *Mediating with Mahabharata: Investigating the Parties' Influence on Success and Failure in Mediation*, examining their psychological readiness to engage in resolution. Yadav frames peace as both relational and self-determined and situates the parties, rather than the mediator, at the centre of mediation's success or

failure. It is argued that even a skilled mediator, as explored in Quek's piece, may not always overcome entrenched hostility or bad faith when decision-making power ultimately rests with the parties.

9 Using the Mahabharata's failed peace attempt between the Pandavas and Kauravas as a narrative lens, Yadav illustrates how factors such as intention, willingness to compromise, trust, and respect for process determine the outcome of mediation. Lord Krishna's unsuccessful effort to avert war becomes an allegory for how mistrust and external influence can derail negotiation, a pattern she parallels with modern conflicts such as the Israel-Palestine conflict, the Russia-Ukraine war, and the Syrian civil war.

10 While Yadav's analysis leans toward the prescriptive in outlining what parties ought to do, it nonetheless provides a valuable framework for understanding how human behaviour and power dynamics shape mediation outcomes. The essay also raises an underlying question about a continuum of responsibility: Who guides the parties to think and act constructively in mediation? Is it the mediator, the counsel, or both? Regardless, Yadav reinforces a central insight: mediation, whether ancient or modern, succeeds only when the will to resolve outweighs the need to prevail.

11 Extending the discussion from mindsets to cultural frameworks, *Cultural Dynamics in International Mediation: Anthropological Insights for Effective Conflict Resolution* by Ng Hui En, Helene situates international mediation within an anthropological frame, demonstrating how this perspective can render mediation outcomes more culturally sensitive, equitable, and sustainable. Drawing on empirical evidence that disputes shaped by cultural difference are often harder to resolve, Ng argues that effective conflict resolution must account for culture as both context and a determinant of human behaviour. Referencing Harold Abramson's four-step model for cross-cultural mediation, she puts forth identity affirmation as a cornerstone of trust-building in intercultural disputes, where a mediator's role depends as much on empathy as on procedural skill.

12 At the heart of Ng's analysis is the idea of cultural intelligence: the capacity to recognise one's own biases, understand others' worldviews, and bridge differences without falling into the pitfalls of cultural imperialism or relativism. Ng explains cultural imperialism with a discussion of the Dayton Accords where, by ignoring Bosnia's ethnic complexity, the agreement produced division rather than reconciliation. Conversely, cultural relativism, or the uncritical acceptance of all cultural practices, risks legitimising injustice. Ng cites Myanmar's treatment of the Rohingya as an example where appeals to cultural sovereignty deflected scrutiny of human rights abuses.

13 Ng proposes ethnography as a means of navigating between these extremes, suggesting mediators to immerse local contexts in order to grasp underlying cultural logics and craft processes that are both respectful and principled. Examples such as the Bougainville Peace Process and Rwanda's

Gacaca Courts illustrate how culturally embedded practices foster more durable peace than externally imposed solutions. Recalling Ruth Benedict's observation that "the purpose of anthropology is to make the world safe for human differences", Ng's essay also indirectly responds to the problem raised by Yadav: how mediators might work with resistant or distrustful parties. By engaging with the cultural and identity-based dimensions of conflict, Ng's anthropological lens complements Yadav's psychological one, suggesting that for mediation to foster lasting peace, both mindset and culture must be addressed.

IV. Advocate's role in assuaging settlement regret

14 Besides the parties and the mediator, Tay Theng Shuen in *The Risk of Settlement Regret: A Critical Factor in Counsel's Decision-Making Process?* turns attention to another pivotal actor in mediation, the advocate. Through an examination of "settlement regret," or what dissatisfaction parties may feel after agreeing to settle, Tay argues that counsel plays a decisive role in anticipating and mitigating this risk. Neglecting this responsibility can result in an abuse of the process, as in *Chan Gek Yong v Violet Netto*,[2] or even professional negligence claims, as in *Johnson v Firth*.[3]

15 Tay situates her discussion within Singapore's evolving alternative dispute resolution ("ADR") landscape, noting that the push toward amicable settlement under the Rules of Court 2021 reinforces lawyers' duties to manage client expectations and ensure genuinely informed consent. While clients ultimately decide whether to settle, they seldom do so in isolation, often relying on counsel's framing of risks and outcomes. This underscores the lawyer's dual role as both strategist and safeguard.

16 The essay further highlights the emotional dimension of dispute resolution, drawing on therapeutic jurisprudence and the "human element" of the law. By helping clients articulate their needs and emotional concerns, counsel can foster fairer, more sustainable outcomes and reduce post-settlement dissatisfaction. While Tay stops short of proposing an ethical duty for lawyers to assess settlement regret, she reframes it as a professional responsibility intrinsic to effective advocacy and client care. In this way, this essay underscores that thoughtful advocacy not only advances the courts' goal of achieving lasting resolutions, but also upholds the therapeutic ideals of ADR by preserving parties' sense of agency and satisfaction.

17 Together, these essays by Quek, Hussein, Yadav, Ng and Tay trace mediation's effectiveness to the human element: whether in the mediator's strategy, the parties' own readiness to engage or the cultural understanding of the conflict.

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2 [2019] 3 SLR 1218.
3 [2021] NSWCA 237.

V. Rethinking party autonomy and neutrality through principled pluralism

18 Tan Yuxuan's *Advocating for the Narrative Approach to Mediation* extends the discussion of the advocate's role beyond risk management to meaning making. While Tay emphasises the lawyer's duty to safeguard client agency and emotional well-being, Tan considers how advocates might also advance narrative and restorative aims within mediation. Together, both essays map the evolving identity of the mediation advocate.

19 Tan offers a concise yet conceptually rich treatment of narrative mediation and its tension between the foundational principles of party autonomy and mediator neutrality. Rather than rejecting the narrative approach as doctrinally inconsistent, Tan proposes a pragmatic reallocation of roles: If narrative interventions risk undermining the mediator's impartiality, could narrative-oriented interventions be performed instead by mediation advocates? Tan's proposal is careful and measured, preserving the mediator's procedural neutrality while permitting advocacy roles to pursue substantive or restorative aims.

20 This proposal has both empirical and normative significance. Empirically, it leverages on advocates, counsellors, and coaches to deliver narrative benefits such as reframing, identity work, and meaning reconstruction without the transgression of mediator impartiality. Normatively, it offers participants a broader toolkit in how their stories are told and understood. Tan's essay thus models how seemingly incompatible schools of facilitative neutrality and narrative justice can be reconciled through design rather than by privileging one philosophy over another.

21 Lee Jia En Chloe's *Unravelling Neutrality: Examining Neutrality as a Core Mediation Principle in Facilitative and Evaluative Models* continues this reflection by interrogating one of mediation's most enduring ideals: neutrality itself. Drawing from both theoretical and cross-cultural perspectives, Lee questions whether absolute neutrality is either feasible or desirable. Mediators, she suggests, inevitably bring their own perspectives and biases into the process, shaping outcomes whether acknowledged or not. True professionalism, then, lies not in the denial of subjectivity but in self-awareness and reflective engagement.

22 Lee also reconsiders the moral dimension of neutrality. Referencing Desmond Tutu's critique that neutrality in situations of injustice aligns one with the oppressor, she argues that empathy and connection may, in certain contexts, serve justice better than detachment. From American community mediation to Navajo peacemaking traditions, legitimacy often stems not from impartial distance but from trusted relationship and social standing. Neutrality, in this view, is less a state of detachment than an ethical posture of fairness, empathy, and accountability.

23 Both Tan and Lee offer a nuanced reappraisal of mediation's foundational principles. Their essays shift the focus from strict adherence to neutrality and autonomy toward a more flexible, context-sensitive understanding of mediation practice.

VI. From philosophy to policy: prudence in safeguards

24 Mervyn Lin Zheng Hong in *Safeguards or Overregulation? A Dive into Mediator Standards Under the Singapore Convention* offers a measured examination of Art 5(1)(*e*) of the Singapore Convention on Mediation[4] ("SCM"), which permits courts to refuse enforcement of mediated settlements where there has been a "serious breach" of mediator standards. Lin questions whether codifying such standards enhances legitimacy or risks overregulating a process valued for its flexibility and party autonomy. He finds merit in both perspectives: clear standards build confidence by ensuring impartiality and competence, yet overly rigid ones could erode mediation's contextual and adaptive nature. The essay captures this balance, noting that accountability and flexibility can coexist, and that clearer standards are key to the Convention's credibility and the continued trust in mediation as a global practice.

25 Neo Win Kyi's *Should Third-Party Funding Be Extended to Standalone Mediation?* turns to another interesting policy question in the context of Singapore. Tracing the evolution of the Civil Law (Amendment) Act 2017,[5] which first legalised third-party funding ("TPF") for arbitration, Neo argues that expansion to mediation remains premature. The analysis is principled and pragmatic: while TPF may promote access to justice, it also risks compromising confidentiality, autonomy, and the non-adversarial ethos central to mediation. Funders' financial interests could distort bargaining dynamics or constrain parties' freedom to settle. Beyond the conceptual risks, Neo highlights practical barriers where mediation's unpredictability makes it commercially unappealing, and extending the TPF would only invite complex ethical and regulatory burdens. The essay concludes that preserving mediation's integrity and trust must take precedence over premature financialisation, even as the framework continues to evolve.

26 Shifting from domestic regulation to the international arena, Ng Xin Yu's *Charting Twin Pursuits – Reconciling the Tension Between Confidentiality as a Procedural Feature and the State's Interest in Pursuing Transparency in Mediating Investor-State Disputes* addresses one of the most nuanced challenges in investor-state mediation ("ISM"): reconciling confidentiality with demands for transparency. Framed within UNCITRAL's ongoing reforms and broader critiques of ISM, Ng redefines confidentiality

4 United Nations Commission on International Trade Law, United Nations Convention on International Settlement Agreements Resulting from Mediation (2018).

5 Act 2 of 2017.

not as secrecy but as a procedural safeguard essential to candid negotiation and diplomatic trust. Yet she acknowledges the modern expectation of public accountability, proposing calibrated transparency through selective disclosure, institutional guidelines, and consensual publication of non-sensitive outcomes. Drawing from examples such as the Snake River Basin case and the International Bar Association's mediation rules, Ng demonstrates that confidentiality and transparency, when properly balanced, can reinforce both trust and legitimacy in international mediation.

27 While the preceding essays examine principled pluralism in mediation philosophy, the essays by Lin, Neo, and Ng turn to the question of prudence in policy, highlighting the balance that extends beyond theory into such governing frameworks.

VII. Evolution of international mediation

28 Meghna Jandu's *Two Pieces of a Puzzle: A Collaborative Reading of the Singapore Convention and the New York Convention* examines the broader architecture of international enforcement through a comparative reading of SCM and the New York Convention[6] ("NYC"). She positions the SCM as a necessary counterpart to the NYC, filling the gap in enforceability for mediated settlements while retaining mediation's consensual character. Although the SCM's progress has been gradual where only a fraction of signatories has ratified it, Jandu argues that its value lies in potential rather than parity. Mechanisms like Singapore's Arb-Med-Arb protocol illustrate how arbitration can temporarily scaffold enforcement until wider adoption takes hold. Framing the two conventions as distinct yet interdependent, Jandu reminds readers that mediation's institutional growth depends as much on practitioner adaptation as on legal architecture. Nonetheless, the SCM symbolises a significant milestone, reflecting a coordinated initiative to establish a dedicated framework for the enforcement of mediated settlements across borders.

VIII. Conclusion

29 The collection invites readers to view mediation as both reflective and generative, a living practice that evolves in tandem with the societies it serves. Within this dynamic interplay of stakeholders, mediators, advocates, and parties each contribute to a shared process of resolution, in which ethical, cultural, and institutional dialogue remains a vital source of growth across all domains.

30 Marking a decade of scholarship, this concluding volume of *Contemporary Issues in Mediation* stands as both culmination and invitation.

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6 United Nations Conference on International Commercial Arbitration, Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

It consolidates past inquiry while opening space for new reflection, affirming mediation's enduring capacity to foster dialogue, deepen understanding, and build a fairer, though always evolving, peace.

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