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Book review: Contemporary issues in mediation (Volume 1)

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BOOK REVIEW

CONTEMPORARY ISSUES IN MEDIATION (VOL 1)*

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1 This book, a publication by the Singapore International Mediation Institute (“SIMI”), features the top ten entries of SIMI’s inaugural essay writing competition. It is probably the first publication in Singapore showcasing the insights of students on the practice of mediation. As William Ury, co-author of *Getting to Yes*,¹ has pointed out in his foreword to *Contemporary Issues in Mediation*, it is crucial to plant seeds in the young field of negotiation and mediation for the benefit of future generations. This book certainly represents a significant step in this direction.

2 As a mediator, this reviewer found it refreshing to read these essays covering a broad range of topics in the mediation field. Three chapters in this book examine the impact of Singapore culture on the practice of mediation, four essays analyse mediation theories and techniques, and three essays focus on the interface between mediation and the law.

3 As the editors have observed, the essays contain very fresh insights that are “untainted” by years of practice and entrenched opinions. It is particularly heartening to see how the authors have not avoided addressing some difficult issues that have perplexed and divided mediators, but have provided their personal perspectives on resolving these tensions. All the essays also seek to contextualise the existing mediation scholarship to the Singapore society. Singapore and Asian mediators should take their cue from these authors to contribute further to the development of contextualised and autochthonous scholarship on dispute resolution.

I. Culture and mediation

4 Culture is an area that has long preoccupied and perplexed mediators, particularly as inter-cultural disputes become increasingly

* Singapore International Mediation Institute & World Scientific, 2016.

1 R Fisher, W Ury & B Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (Penguin Books, 3rd Ed, 2011).

common. The winning SIMI essay by Ng Wan Qing makes a commendable effort to examine the concept of power imbalance through the lenses of cultural aspects such as “face” concerns, Confucianism and power distance. Ng cautions against simply adopting a Western-centric approach or accepting the simplified view that Asian cultures accept power imbalances. Her call for a more nuanced examination of power disparities and her suggestions for culturally appropriate mediator interventions deserve to be explored further by the mediation community. On a related note, another essay explores the concept of “face” within Singapore, arguing that it is a complex construct in our multiracial country and proposing practical ways to accommodate face concerns within a mediation. The discussion on culture is brought to an international level in a chapter discussing the socio-cultural norms that contribute to the ASEAN way of mediating regional disputes. The author makes some astute observations about how the ASEAN principles of sovereignty, non-interference and consensus-based decision-making are effectively underpinned by face concerns. In sum, these three chapters examining the impact of culture on mediation have provided rather novel insights and recommendations for the mediation profession.

II. Mediation theory and techniques

5 Four other chapters analyse concepts such as the facilitative-evaluative divide, the potential for manipulation within mediation, online dispute resolution and the concepts of neutrality and power imbalance. The first essay by Javier Yeo, awarded honourable mention, makes an in-depth analysis of the perennial debate between facilitative and evaluative mediators. This is a laudable piece that does not shy away from critiquing the views of some prominent mediation scholars and offers a unique perspective to resolve the apparent dichotomy. The other essay on manipulation creatively and effectively depicts the faint distinction between a mediator skillfully facilitating the negotiations of disputants and the mediator being manipulative. It is a very timely piece that should give mediators food for thought.

6 Another piece addresses the clash between a mediator’s neutrality and the need for the mediator to deal with power imbalances. It makes practical proposals on how to realistically understand the concept of neutrality such that it is no longer seen as the nemesis of the mediator’s ability to balance powers. The fourth essay, cheekily entitled “Shall We Medi@te?”, examines the very current topic of online mediation, which was incidentally the focus of this year’s Singapore Mediation Lecture. The author makes a commendable analysis of how mediation can be transposed to the online environment in a way that is consistent with the fundamental tenets of the process. These four essays address fundamental mediation concepts that the Singapore mediation profession is presently grappling with.

III. Mediation and the law

7 These essays are written by law students, and it is thus fitting that three essays explore legal issues arising from mediation. Valencia Soh's essay, awarded second prize, is a noteworthy piece that explores the highly challenging topic of a mediation advocate's duty. Examining the existing legislation and professional conduct rules, she discusses the potential mediation ethics that are applicable to a Singapore lawyer. She highlights the reality of counsel being the functional decision-maker in a dispute, and the great importance of lawyers in protecting the integrity of the mediation process.

8 The next essay concentrates on the disputants as it explores whether a statutory requirement of good faith participation within mediation should be introduced in Singapore. This well-researched essay demonstrates acute awareness of the impact of such a rule on the core values of the mediation process such as voluntariness and confidentiality. The final essay appraises the recent "arb-med-arb" protocol that was jointly introduced by the Singapore International Arbitration Centre and the Singapore International Mediation Centre. This essay contains a good analysis of the impact of the protocol on arbitration as well as the underlying values of mediation. Arguing that it is not the best-fitting mechanism for enforcement of mediated settlement agreements, the essay highlights the need for a bespoke international convention.

9 Overall, this is a most promising publication that contributes to mediation scholarship in Singapore. Despite the lack of mediation experience, the authors have shown an impressive ability to grasp and reflect on critical issues within the mediation profession. Practising mediators, educators, academics and policy-makers will benefit greatly from these fresh insights and in developing them further. As volume 1 in a series, this publication is a start to many more essays to come. SIMI should be congratulated for this excellent effort in nurturing the interest in mediation in our youth. This publication is a very unique and helpful step in driving change in the mediation profession.
