

Singapore Management University

Institutional Knowledge at Singapore Management University

Research Collection Yong Pung How School Of Law

Yong Pung How School of Law

12-2018

Contemporary issues in mediation (Vol 3) Joel Lee & Marcus Lim gen eds

Eunice CHUA

Singapore Management University, eunicechua@smu.edu.sg

Follow this and additional works at: https://ink.library.smu.edu.sg/sol_research



Part of the [Dispute Resolution and Arbitration Commons](#)

Citation

CHUA, Eunice. Contemporary issues in mediation (Vol 3) Joel Lee & Marcus Lim gen eds. (2018). *Asian Journal on Mediation*. 111-114.

Available at: https://ink.library.smu.edu.sg/sol_research/2864

This Book Review is brought to you for free and open access by the Yong Pung How School of Law at Institutional Knowledge at Singapore Management University. It has been accepted for inclusion in Research Collection Yong Pung How School Of Law by an authorized administrator of Institutional Knowledge at Singapore Management University. For more information, please email cherylds@smu.edu.sg.

BOOK REVIEW

CONTEMPORARY ISSUES IN MEDIATION (VOL 3)*

Joel Lee & Marcus Lim gen eds

Eunice CHUA

*LLB (National University of Singapore), LLM (Harvard);
Assistant Professor of Law, School of Law,
Singapore Management University.*

1 *Contemporary Issues in Mediation*, published by the Singapore International Mediation Institute (“SIMI”), is now in its third volume. As with earlier books in the series, this volume contains the best entries from the SIMI Annual Mediation Essay Competition. The purpose of this series is to provide a platform through which students can meaningfully contribute to the development of the mediation field by showcasing their research. This is in itself laudable. In the words of William Ury in the foreword to the series, it is an “opportunity to plant seeds for the benefit and enjoyment of future generations”. I would add that since the beginning of the series, these seeds have taken root and the emerging saplings have benefited this generation of mediators by providing inspiration and fresh perspective.

2 This volume has seen growth not only in the number of essays published, but also in their scope of coverage. As pointed out by the editors, this is also the first volume to welcome an overseas contribution from Brazil, in addition to students from the National University of Singapore and Singapore Management University. Another heartening development is seeing authors in this volume citing works from past volumes in the series, a testament to the contribution the series makes to the mediation literature. This third volume is divided into three parts: (a) Mediation Landscape; (b) Mediation and Social Justice; and (c) Mediation Skills.

I. Mediation Landscape

3 The two essays relating to the mediation landscape touch on the relationship between mediation and arbitration as well as recent legislative changes in Singapore to strengthen our mediation framework.

4 The first is the first runner-up entry by Daniel Fielding, which briefly examines the strengths of mediation and arbitration before suggesting how mediation can be incorporated into the arbitration process and how the problems of mixing processes, namely those arising from

having the same or different neutral, may be addressed. This entry also

* Singapore International Mediation Institute, 2019 (forthcoming).

© 2018 Contributor(s) and Singapore Academy of Law.

No part of this document may be reproduced without permission from the copyright holders.

shines a spotlight on the Singapore International Arbitration Centre and Singapore International Mediation Centre's Arbitration-Mediation-Arbitration Protocol as a mixed process that gets "as close as possible to the best of both worlds without compromising too much".¹ Despite having limited practice experience, Daniel's entry commendably presents helpful ideas and solutions that practitioners can adapt to their circumstances.

5 The second essay by Leow Yu Jun offers a useful commentary on the impact of the new Mediation Act 2017² and the Civil Law (Amendment) Act 2017³ on the Singapore mediation landscape. The former is examined from the perspective of expedited enforceability and confidentiality, and the latter from its allowing of third party funding for mediation proceedings arising out of or connected with international arbitration proceedings. The author suggests that although these pieces of legislation bring improvements in some respects, there is still a need for Singapore to endorse the United Nations Convention on International Settlement Agreements Resulting from Mediation,⁴ as well as continued public education efforts and the promotion of alternative dispute resolution within the legal industry.

II. Mediation and Social Justice

6 Part 2 of the volume contains five essays on the theme of mediation and social justice, including the winning entry by Lidia Syahindah Binti Mohd Maliki. Lidia's piece considers the relationship between mediation and restorative justice. She argues that a restorative justice perspective can help to introduce new and legitimate notions of an effective response to conflict that can respond more flexibly to individual cases. More specifically, importing restorative justice principles into mediation could improve mediation's ability to empower individuals, deal with highly sensitive and emotional cases, and consider more and broader interests like community interests. Finally, Lidia considers how limitations such as efficiency concerns and determining the suitability of cases can be addressed. This piece demonstrates maturity of thought and boldness in dealing with both theoretical and practical aspects of mediation.

7 The four other essays in Part 2 examine community mediation in Singapore, victim-offender mediation of sexual offences, international peace mediation in the context of the African Union and mediation in the context of migrant workers in Singapore. Mediation practitioners or lawyers may not operate within these specific contexts, but these well-researched essays may provide insights that could apply more generally.

1 *Contemporary Issues in Mediation* vol 3 (Joel Lee & Marcus Lim gen eds) (World Scientific Publishing, 2019) at p 10.

- 2 Act 1 of 2017.
- 3 Act 2 of 2017.
- 4 *Report of the United Nations Commission on International Trade Law: Fifty-first Session (A/73/17)* (25 June 2018–13 July 2018) Annex I.

© 2018 Contributor(s) and Singapore Academy of Law.

No part of this document may be reproduced without permission from the copyright holders.

8 Let me provide two examples. First, Clara Lim Jiaying's piece on community mediation draws comparisons between Singapore's Community Mediation Centre with community dispute resolution in the Netherlands and Toronto. These comparisons shed some light on how cultural context influences dispute system design. The piece also makes a suggestion in relation to assessing community mediation's success rates. It recommends moving away from a focus on settlement rates to measuring party satisfaction using factors such as perceived improvements in the relationships between parties, and improvements in the parties' abilities to deal with conflict. This suggestion will likely resonate with mediation service providers searching for more meaningful ways to measure their impact. It is also a theme dealt with in greater detail by Leonard Chua Jun Yi in Part 3 of the volume where he discusses what settlement rates can and cannot be indicative of and makes suggestions for how mediation surveys may be adapted to evaluate the mediator.

9 Second, Jennifer Lim Wei Zhen's piece on mediation in the context of migrant workers can inform the issue of power imbalance in mediation more broadly. In particular, Jennifer recommends some strategies to manage power imbalance in mediation, including promoting trust in the objectivity and neutrality of the mediator, ensuring information symmetry between the parties and providing language assistance, using caucuses to level the playing field, directing and organising the mediation strategy, using open-ended questions to explore interests, and using leading questions to steer the direction of the conversation. These are practical and helpful suggestions that all mediators can consider. This piece can also be read together with Lua Chang Jie's piece in Part 3 of the volume, which examines philosopher Michel Foucault's conception of power and its implications for mediation practice in a facilitative model of mediation.

III. Mediation Skills

10 Interestingly, the most substantial part of this volume is that relating to mediation skills. Although the students do not have extensive experience with mediation, they have not shied away from engaging with tricky issues in the practice of mediation. The third part of the volume contains five essays relating to the application of priming in mediation (to prime parties for settlement), cognitive biases at the mediation table, settlement rates and the pressure to settle, mindfulness in mediation, and the concept of power in mediation. I found two pieces particularly interesting.

11 First, Andy Yeo Yong Chuan's piece on priming in mediation helpfully summarises the research on the psychological effect of priming and suggests that a mediator may rely on certain priming cues to prime

certain attitudes and behaviours in the parties for settlement during the mediation process. He also expresses what many mediators and mediation service providers know through experience – that the surroundings in which one mediates matters. These indirect priming cues from the

© 2018 Contributor(s) and Singapore Academy of Law.

No part of this document may be reproduced without permission from the copyright holders.

surroundings include providing psychological comfort, and physical cues (through the naming of mediation rooms after famous peacemakers, using pastel colours, the type and arrangement of furniture, and refreshments).

12 Second, Timothy Tan's piece with the wonderful title "The Camel and the Lotus: Where Mindfulness Meets Mediation". This piece brought to mind the oft-encountered confusion between "mediation" and "meditation", which most mediators will have at least one humorous story about, and turns it into a point of learning. In particular, Timothy considers two aspects of mindfulness practice that are of relevance to the mediation context: (a) providing parties and mediators with more effective control over their emotions; and (b) placing mediators in a better position to view and manage the dispute through prismatic and unbiased lenses. As an aside, those interested in the topic of cognitive bias should also read Joyce Magdalena's piece calling for mediators to be more aware of cognitive biases at the mediation table and recommending how they should respond to these biases.

13 In conclusion, I can do no better than echo the words of the editors from an earlier volume in the series: "[W]isdom is not necessarily a function of age or experience and pieces that meaningfully contribute to the development of the field can come from students".⁵ The third volume of *Contemporary Issues in Mediation* continues to testify to the truth of that statement. Perhaps in future editions of the essay competition students could be tasked to address one or more themes so that their collective wisdom can be brought to bear on some of modern mediation's thorniest issues. Regardless, I can only imagine the promise and potential of the fourth volume if the series continues on the same growth trajectory.

5 *Contemporary Issues in Mediation* vol 3 (Joel Lee & Marcus Lim gen eds)
(World Scientific Publishing, 2019) at pp xi–xii.

© 2018 Contributor(s) and Singapore Academy of Law.

No part of this document may be reproduced without permission from the copyright holders.