

Is Mediation a Panacea When All Else Fails?

Presented by
Mr Loong Seng Onn
Executive Director
Singapore Mediation Centre

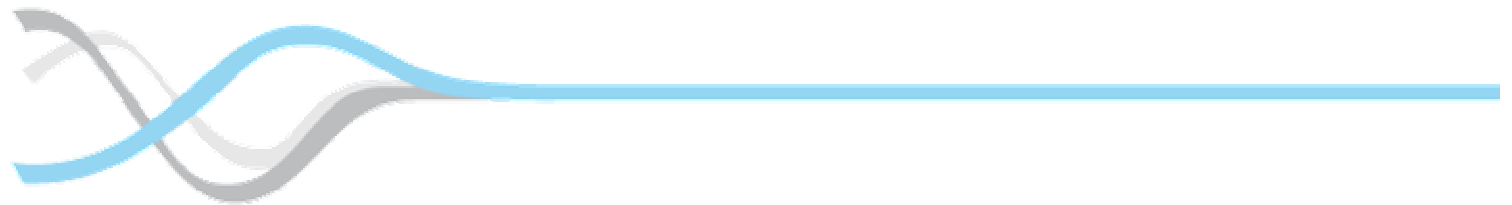


What is Mediation?



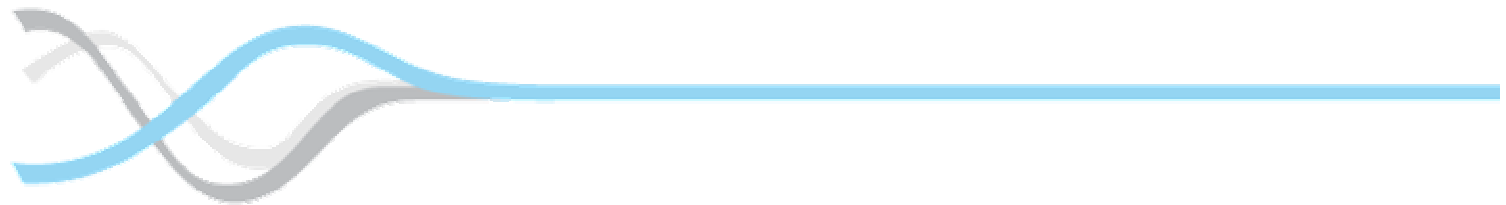
What is Mediation?

Mediation is a **voluntary** process in which the parties to a dispute engage the assistance of a **neutral third party** (called the **mediator**), to **facilitate negotiations** between them with a view to resolving their differences **amicably**.

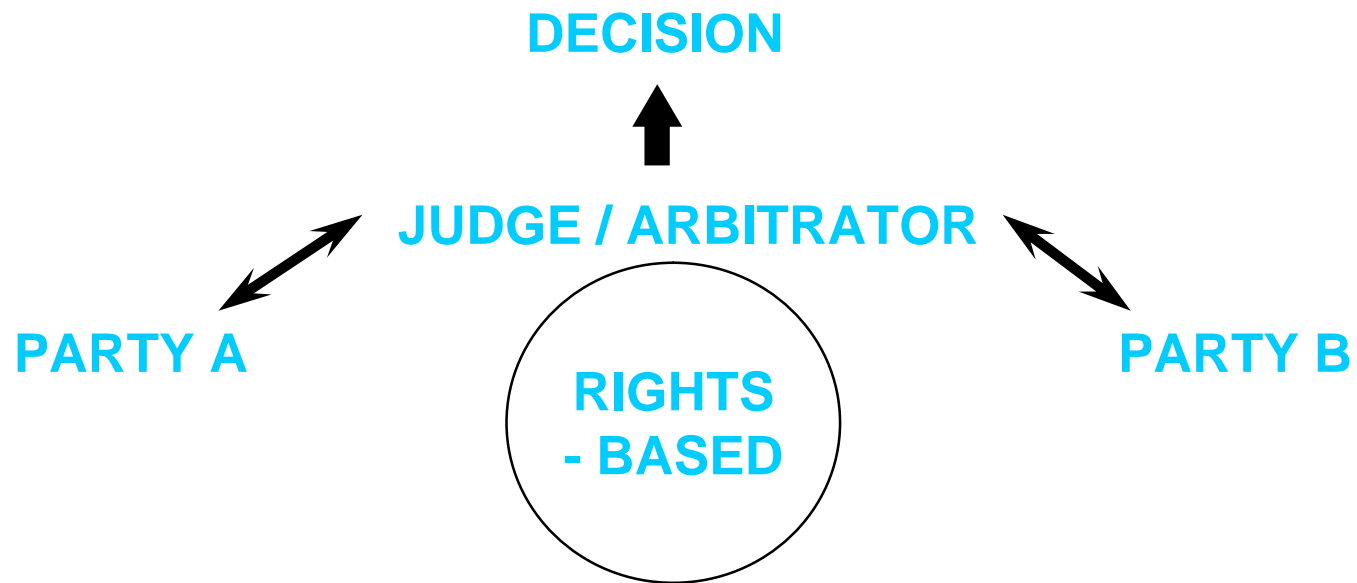


What is Mediation?

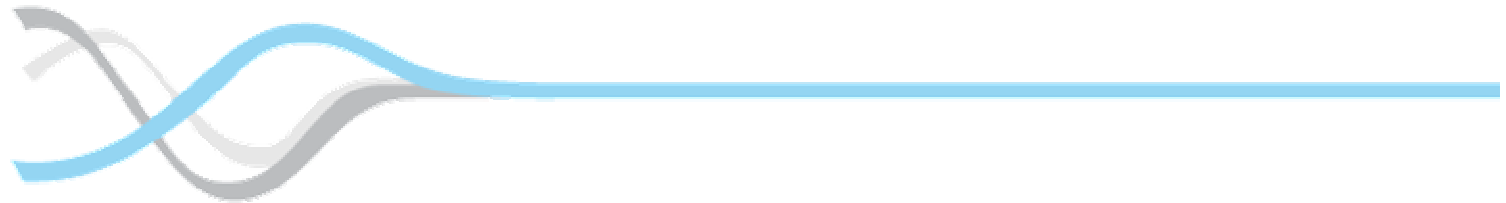
- Mediation is akin to a “without prejudice” negotiation session.
- However, the mediator will act as a facilitator to guide and regulate the process, so as to keep the parties from digging into their respective positions.
- The outcome of the mediation is determined by the parties.



Adjudicatory Processes

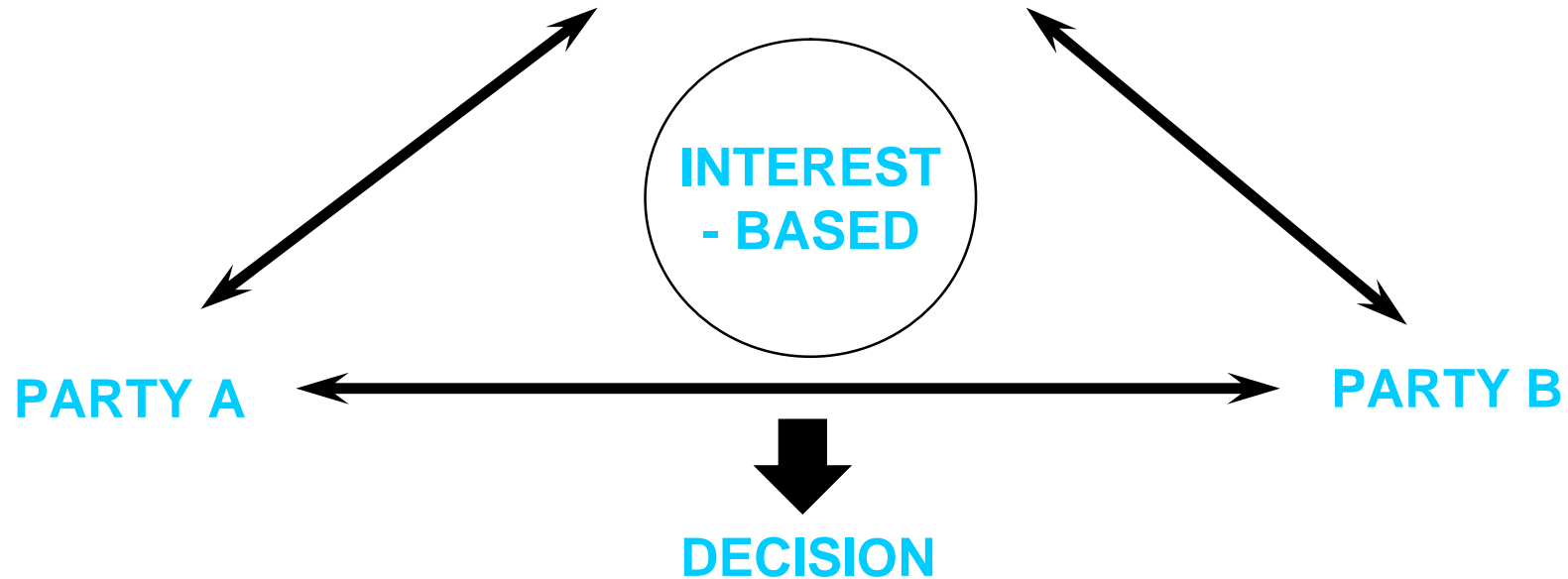


- Decision-maker: Neutral third party.
- Nature: Adversarial.
- Focus: Legal rights and past events.

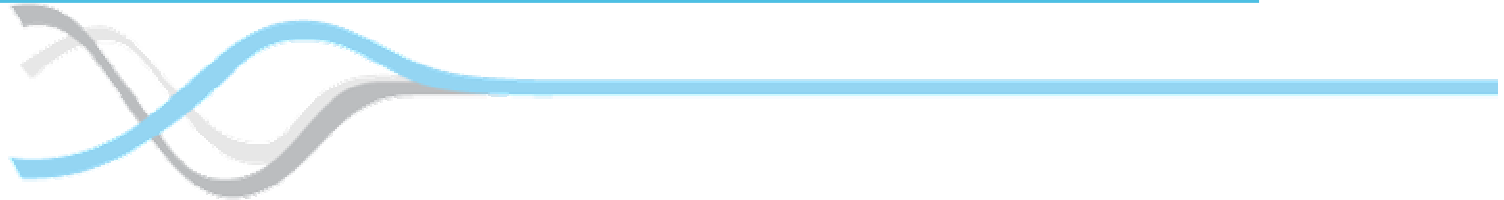


Mediation

- MEDIATOR

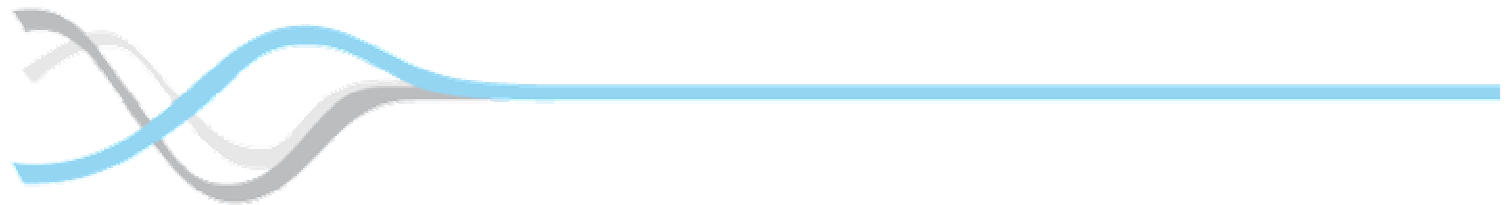


- Decision-maker: Parties themselves.
- Proceedings: Non-confrontational.
- Focus: Solving the problem, having regard to the parties' interests.



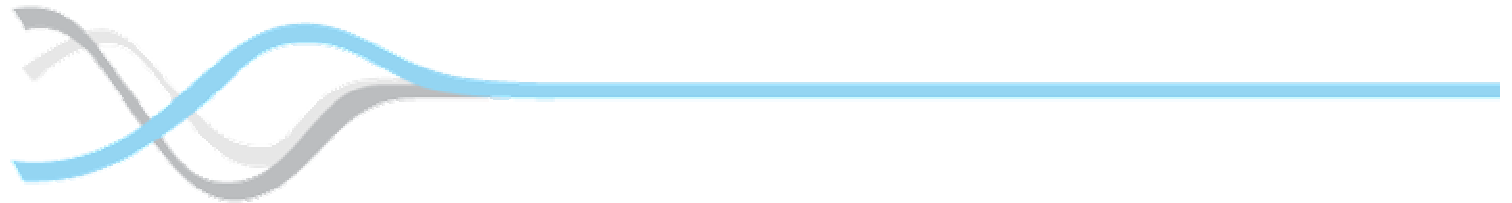
Benefits of Mediation

- Parties have control over outcome of dispute and settlement terms
- Saves costs
- Saves time- resolves disputes faster
- More opportunities to explore options and develop creative and pragmatic solutions



Benefits of Mediation

- Improves relationships
- Privacy and confidentiality
- Without prejudice to other dispute resolution processes



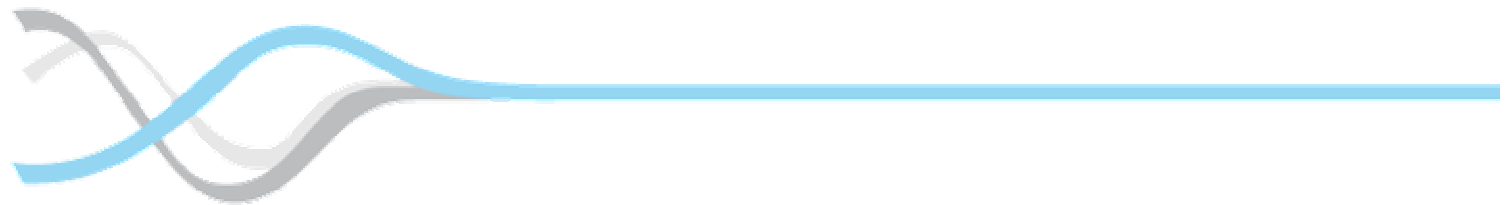
A Framework for Resolving Disputes

- First, attempt to settle the dispute through negotiation.
- If that fails, attempt to mediate the dispute with the assistance of a trained neutral third party.
- As a last resort, turn to arbitration or litigation.
- Mediation can be attempted at any time, including after the commencement of arbitration or litigation.



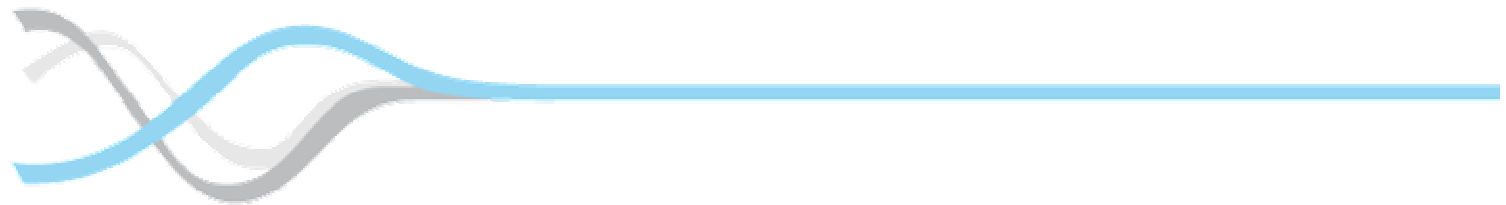
Suitable Cases

- Not having a clear-cut case (e.g. law is unclear, evidential problems)
- Value of claim does not justify costs / time involved
- Client willing to have a give & take attitude
- Client desires to settle matter confidentially
- Client desires to maintain relationship with other party



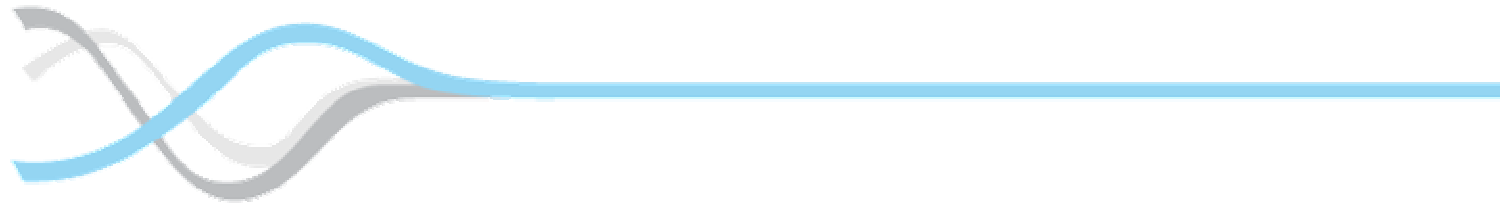
Advantages: Myths and Truths

- Cheaper and Faster:
 - Can be arranged quickly
 - Cost is lower



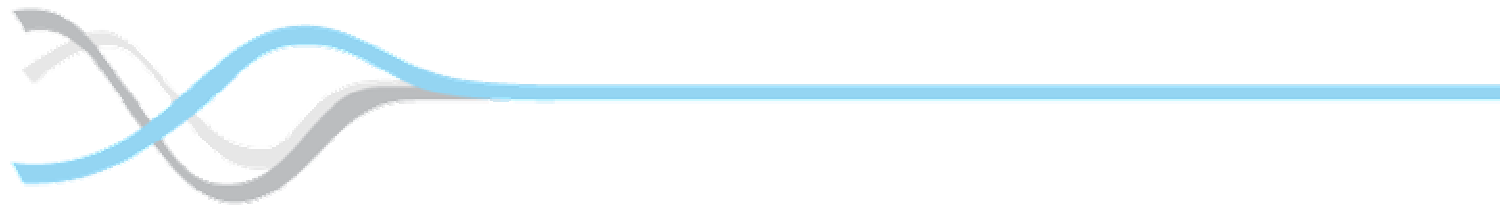
Advantages: Myths and Truths

- Cheaper and Faster Only If:
 - Agreement is reached
 - Utilized early enough



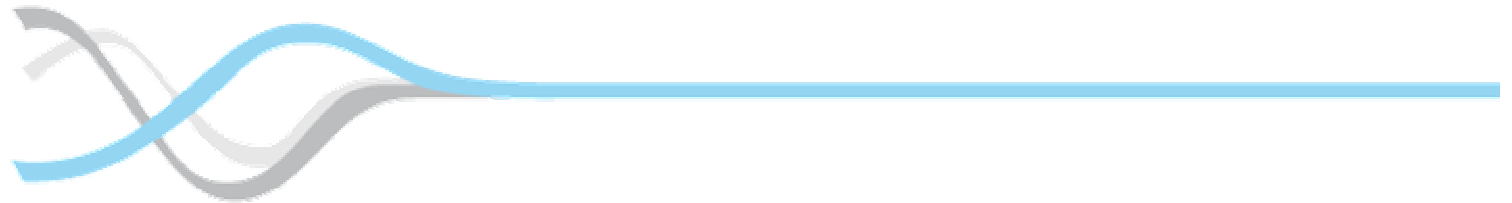
Advantages: Myths and Truths

- Dispute Resolution Paradigm:
 - Forward looking
 - Generative and Creative



Advantages: Myths and Truths

- But Ignores:
- Precedent Value
- Rights and obligations



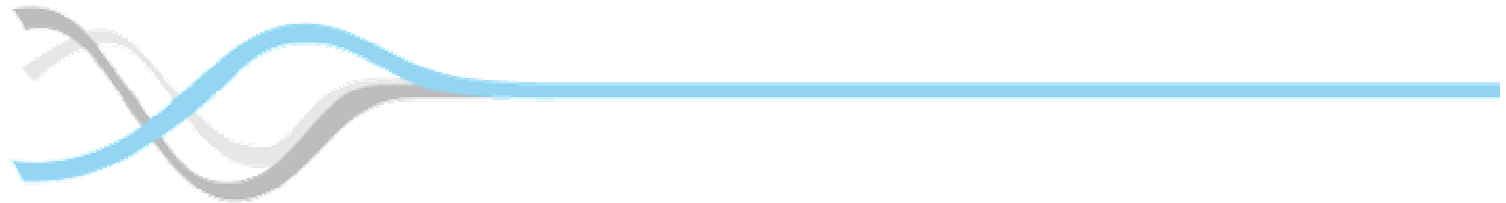
Advantages: Myths and Truths

- Flexibility of Procedure:
 - Parties own Problem and Solution
 - Can deal with extra-legal issues



Advantages: Myths and Truths

- However:
- Shadow of the Law
- Flexibility depends on the Mediator

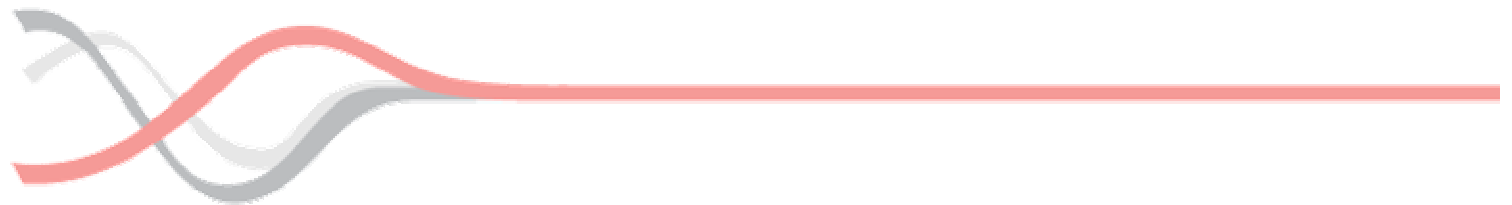


Singapore Mediation Centre



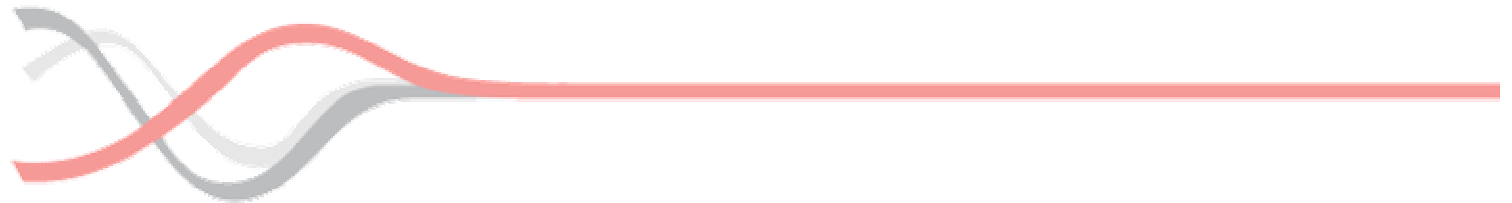
Structure

- Non- profit organisation supported by the Ministry of Law
- Structured as a company limited by guarantee of the Singapore Academy of Law



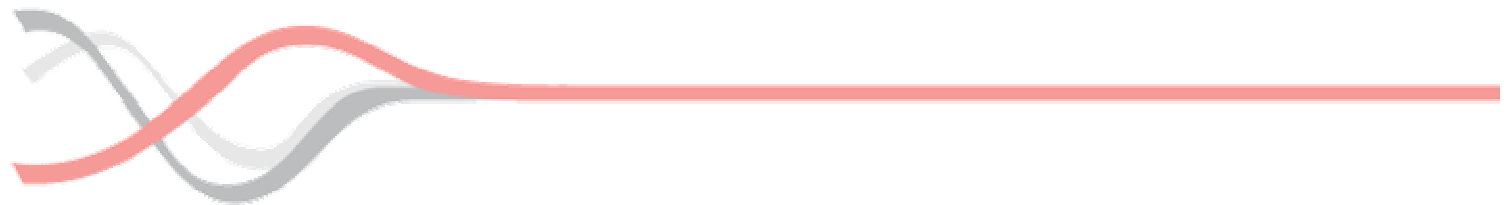
History

- Attorney-General's Speech at Opening of Legal Year in 1996
- Sub-Committee set up by the Singapore Academy of Law
- Pilot Project - Commercial Mediation Service - joint exercise by Singapore Academy of Law and Supreme Court - first case mediated on 16 January 1997
- Incorporated on 8 August 1997
- Launched on 16 August 1997



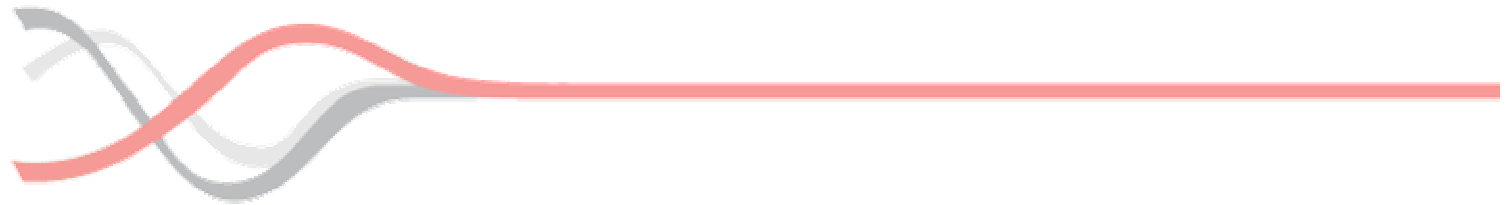
Functions

- Provide mediation and other alternative dispute resolution (“ADR”) services
- Provide training in negotiation, mediation and other ADR mechanisms
- Accredite and maintain a panel of mediators
- Provide consultancy services
- Promote mediation and other ADR services



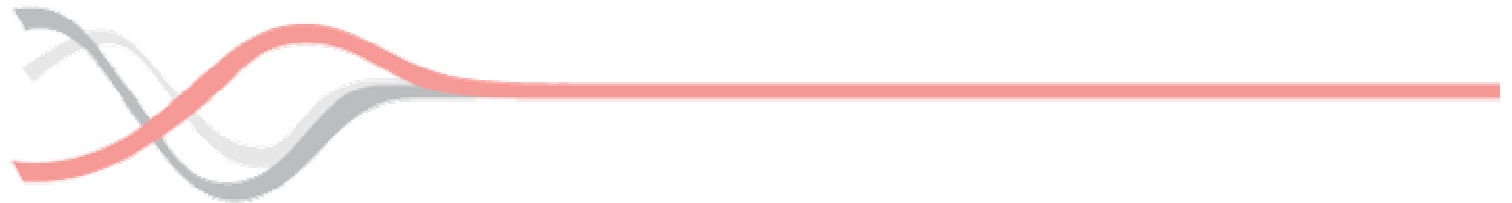
Support From the Singapore Judiciary

- Referral of appropriate cases for mediation
- Provision of interpreters to assist non-English speaking disputants
- Provision of venue for mediation



Other Institutional Support

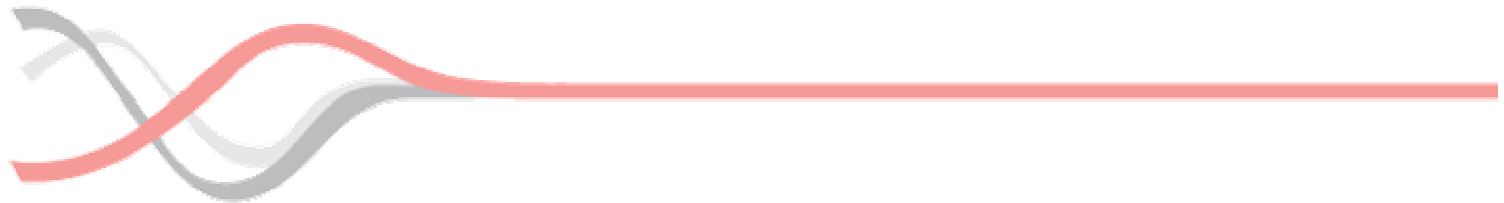
- Advisory Committees
- Advisory Committee on Construction Mediation (ACCOM)
- Singapore Information Technology Dispute Resolution Advisory Committee (SITDRAC)
- Memoranda of Understanding



Case Statistics

(as at 31 March 2008)

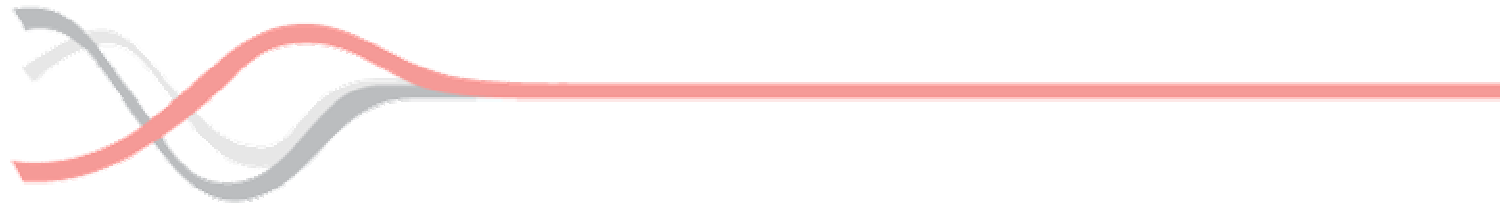
- Number of matters referred
 - 1,487 in total.
 - 546 (36.72%) by the courts.
- Number of matters mediated
 - 1,326 in total.
 - 499 (37.63%) of which were referred by the courts.
- Success rate (matters settled)
 - 984 in total (74.21%).
 - 361 (66.12%) of 546 matters referred by the courts settled.



Case Statistics

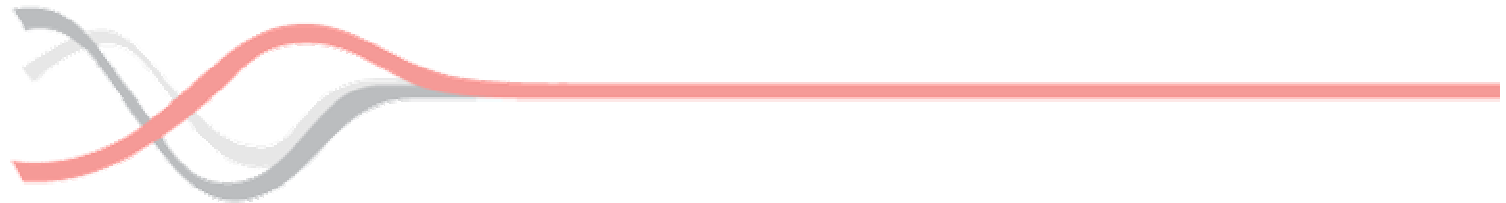
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- About S\$ 1.5 billion worth of disputes have been mediated at SMC
- The highest quantum of claim is about S\$90 million



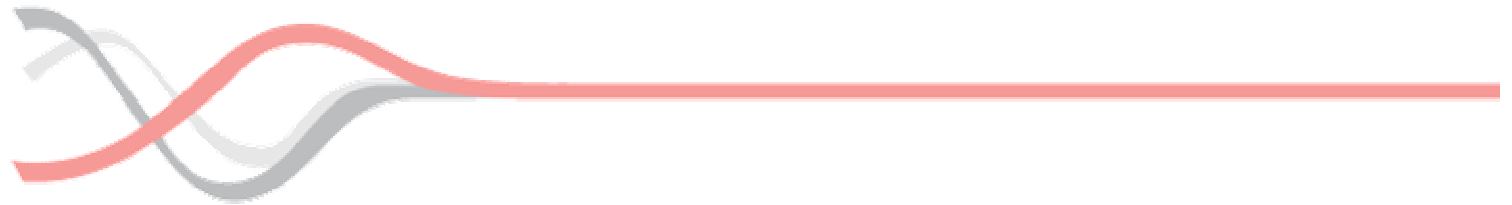
Savings

- About 80% of the 970 matters settled pertain to matters which have to be commenced in the High Court.
- An average of 4 to 5 days are required to dispose of a case in the High Court.
- Each court day in the High Court costs the Judiciary about \$6,500 - \$7,500.
- Significant cost savings to parties and judiciary.



Panel of Mediators

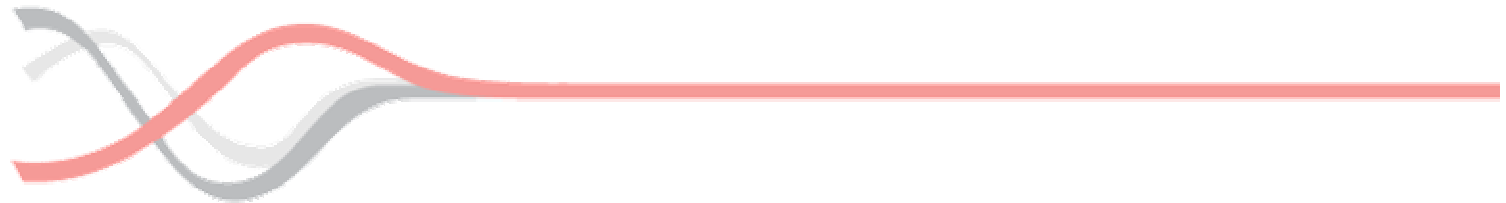
- 120 accredited mediators
- Specialist mediators nominated by professional bodies in the industry
- Trained and assessed to have requisite qualities and temperament



Mediation Fees

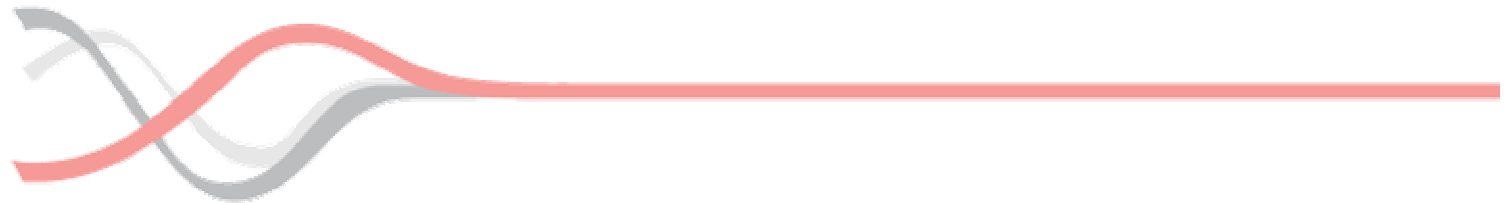
Generally, the mediation fee will be charged accordingly to the following scale:

Quantum of Claim	Mediation Fee (Single Mediator)
Up to \$100,000	\$900 per party per day
Above \$100,000 up to \$250,000	\$1,200 per party per day
Above \$250,000 up to \$500,000	\$1,800 per party per day
Above \$500,000 up to \$1,000,000	\$2,200 per party per day



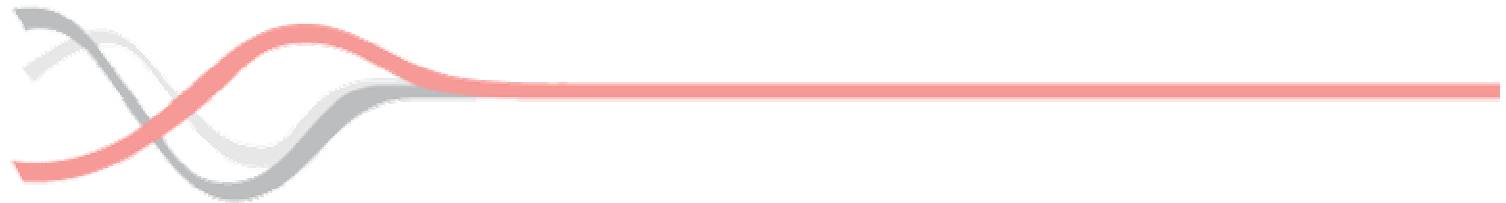
Mediation Fees

Quantum of Claim	Mediation Fee (Single Mediator)
Above \$1,000,000 up to \$2,500,000	\$2,600 per party per day
Above \$2,500,000 up to \$5,000,000	\$2,800 per party per day
Above \$5,000,000	\$2,900 per party per day plus pro-rated portion of 0.05% of the quantum above \$5m



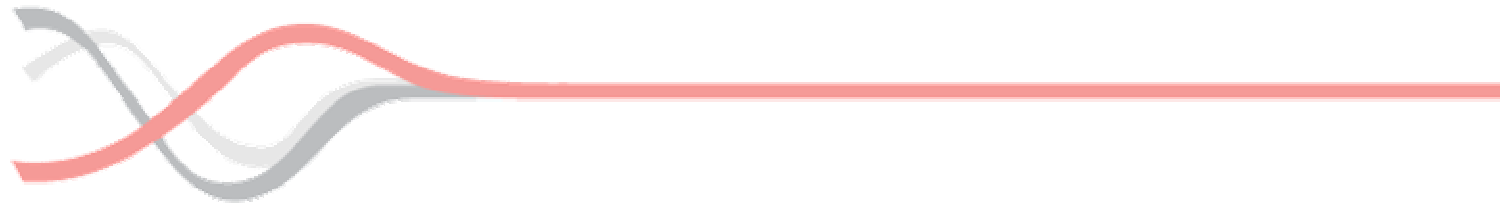
A Sample Mediation Clause

“All disputes, controversies or differences arising out of or in connection with this agreement shall first be submitted to the Singapore Mediation Centre for resolution. The disputes, controversies or differences shall be referred within 14 days from the time they arose, in accordance with the Mediation Procedure for the time being in force, unless any of the parties serves a written notice on all the other parties and the Singapore Mediation Centre stating that it does not agree to submit the dispute for mediation, or that it will be submitting the dispute for arbitration or litigation. The parties agree to participate in mediation in good faith and undertake to abide by the terms of any settlement reached.”



A Sample Med-Arb Clause

“All disputes, controversies or differences arising out of or in connection with this agreement shall be submitted to the Singapore Mediation Centre and the Singapore International Arbitration Centre for resolution by med-arb in accordance with the SMC-SIAC Med-Arb Procedure for the time being in force, which procedure is deemed to be incorporated by reference into this clause.”



Enquiries

Address: Singapore Mediation Centre
1 Supreme Court Lane
Level 4
Singapore 178879

Telephone: (65) 6332 4366

Facsimile: (65) 6333 5085

E-mail: enquiries@mediation.com.sg

Website: <http://www.mediation.com.sg>

