

**musings  
of a mediation  
practitioner**

*3 march 2022*

**tat lim  
singapore**

AEQUITAS



# musings of a mediation practitioner

*Caveat!*

*Anecdotal. Reflection. Feedback.*

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# musings of a mediation practitioner

*4 real stories:*

*1<sup>st</sup> story - disputant*

*2<sup>nd</sup> and 3<sup>rd</sup> stories - counsel*

*4<sup>th</sup> story - mediator*

# musings of a mediation practitioner

## *As Disputant* *The Story*

# musings of a mediation practitioner

## *As Disputant*

- In 2009, I was a council member of a condominium.
- Disputes brewing in condominium – approval for improvement works requested by owner rejected by management corporation.
- Escalation – proceedings commenced by owner against management corporation.

# musings of a mediation practitioner

## *As Disputant*

- *STB 69 of 2009* - <https://www.stratatb.gov.sg/public-data/doc/judgements/2010/STB-69-of-2009-Yong-An-Park.pdf>
- *Yap Sing Lee v MCST Plan No. 1267 [2011] SGHC 24* - [https://www.singaporelawwatch.sg/Portals/0/Docs/Judgments/\[2011\]%20SGHC%2024.pdf](https://www.singaporelawwatch.sg/Portals/0/Docs/Judgments/[2011]%20SGHC%2024.pdf)
- *STB 77 and 95 of 2012* - <https://www.stratatb.gov.sg/public-data/doc/judgements/2013/STB-77-and-95-of-2012-Yong-An-Park.pdf>

# musings of a mediation practitioner

## *As Disputant*

- Further escalation of dispute – claims became personal.
- In 2011, defamation proceeding was commenced by owner against council members personally.
- In 2013, 4 council members countersued the owner for defamation.

# musings of a mediation practitioner

## *As Disputant*

Owner's suit against Council members:

- DC Suit No. 266 of 2011
- Ma Kar Sui Anthony and others v Yap Sing Lee and another appeal [2018] SGHC 30 -  
[https://www.elitigation.sg/gdviewer/s/2018\\_SGHC\\_30 /](https://www.elitigation.sg/gdviewer/s/2018_SGHC_30/)  
[https://www.singaporelawwatch.sg/Portals/0/Docs/Judgments/\[2018\]%20SGHC%2030.pdf](https://www.singaporelawwatch.sg/Portals/0/Docs/Judgments/[2018]%20SGHC%2030.pdf)



# musings of a mediation practitioner

## *As Disputant*

4 Council members suit against the Owner:

- HC Suit 112 of 2013 & HC Suit 549 of 2013
- Mediation took place @ December 2013

# musings of a mediation practitioner

## *As Disputant*

- My first trip to Mediationland as a litigant.
- My (then) mediation background - @50 cases.
- By then: (i) Verbal attacks during general meetings, (ii) Written attacks circulated to residents; (iii) Complaints to LSS.
  - Legal fees exceeded SGD 100,000.

# musings of a mediation practitioner

## *As Disputant*

- Mediation felt different. Small talk and waiting.
- Active listening? Different perspectives? Words spoken by opposing party and his counsel felt dishonest and disingenuous.
- Emotions ranged from uncomfortable, vulnerable and exposed to embarrassment, frustration to anger.

# musings of a mediation practitioner

## *As Disputant*

- Case didn't settle at mediation.
- After the mediation, my co-disputants and I felt a deep desire to seek retribution and vindication.
- We resolved to go to trial, no matter the costs.

# musings of a mediation practitioner

## *Reflections - as Disputant*

- Mediation process felt very unexceptional (even a let-down).
  - Mediator's fees felt overpriced.
- The trip to Mediationland was overall an unhappy one.

# musings of a mediation practitioner

## *Reflections - as Disputant*

- Christopher Moore - Triangle of Satisfaction
  - Substantive Needs and Interests?
  - Procedural Needs and Interests?
  - Psychological Needs and Interests?
- *The mediation did not deliver satisfaction.*
  - *What about the case?*

# musings of a mediation practitioner

## *Reflections - as Disputant*

- OTS dated 25 November 2013
- Acceptance on 7 January 2014
- *Was I glad and/or relieved that the case had concluded?*

# musings of a mediation practitioner

## *Reflections - as Disputant*

- 4 Council members case against owner settled.
- Owner's claim against all council members continued to trial (District Court).
  - 1<sup>st</sup> instance at DC – Owner won.
  - Reversed on appeal to the High Court.



# musings of a mediation practitioner

## *Reflections - as Disputant*

“The DCA 11 Appellants are volunteers serving the interests of YAP as a whole and do not stand to gain any individual benefit in obtaining re-election to the MCST. In this regard, *I accept the evidence of Mr Lim Tat*, one of the members of the MCST at the time of the dispute, that the true motivation of the MCST at the time was to act according to the direction given at the 18<sup>th</sup> AGM, that unauthorised structures must be addressed and removed. YSL has not pointed to any convincing reason for me to find otherwise;”

*Ma Kar Sui Anthony and others v Yap Sing Lee and another appeal [2018] SGHC 30 at [58(a)]*

# musings of a mediation practitioner

## *Lessons - as Disputant*

- As mediators and counsel, do you know how the disputant actually feel during the mediation?
- Some ice breaker rituals may not always be appropriate (or helpful to disputants) at the beginning of mediations.
- Restoration of or repairing the relationship may not be a priority for one of the parties. A mediated settlement may not be the best outcome for parties (consider BATNA).

# musings of a mediation practitioner

## *Lessons - as Disputant*

- A mediator who is fixated on achieving settlement (or worse, maintaining or improving his / her settlement rate) can harm parties (resulting in post-settlement disputes).
- Do not underestimate how important retribution and vindication can be to disputants.
- The best mediation policy is often one that gives parties space to leave the mediation, reflect and consult others, sleep and think over the options vs alternatives.

# musings of a mediation practitioner

## ***Lessons - as Disputant***

### *Useful Readings:*

- *“Bargaining with the Devil – When to Negotiate, When to Fight” (Robert Mnookin) - when pragmatic and moral demands conflict.*
- *“Difficult Conversations” (Bruce Patton; Douglas Stone; Sheila Heen) - The “What Happened”; The emotions; The Identity conversations.*
- *“Getting to Yes with Yourself” (William Ury) – 6 steps to getting to yes with yourself.*

# musings of a mediation practitioner

## *As Counsel*

### *The Story*

# musings of a mediation practitioner

## *As Counsel*

### *Story 1*

*Around lunchtime:*

*LT: "I would like to request for a private caucus."*

*M: "No, I think we should continue with the joint meeting."*

*LT: "There are some matters that my client would like to discuss in private with the mediators."*

*M: "I think these matters can be discussed openly."*

*LT: "I respectfully disagree and ask again for a private caucus."*

# musings of a mediation practitioner

## *As Counsel*

### *Story 1*

*Around lunchtime:*

*M: “I disagree and think we should continue with the joint meeting.”*

*LT: “If we cannot get to meet the mediators in a private caucus, my client may not wish to continue with this mediation.”*

*M: “Fine, so be it. We can conclude.”*

# musings of a mediation practitioner

## *As Counsel*

### *Story 2*

*A (client) claims contractual sum for work done, including late interest and contractual sum for early termination.*

*B counterclaims damages for breach of contract - assessed at \$600k, without providing evidence.*

*A (client) offered to waive late payment interests and claim half of the early termination sum + entire contractual sum = around \$42k.*



# musings of a mediation practitioner

## *As Counsel*

### *Story 2*

*B counterclaim reduced from \$600k to \$150k.*

*A (client) counter offered 50% of \$64k.*

*B counter offered – A to pay B \$30k in full and final settlement of both parties' claims.*

# musings of a mediation practitioner

## *As Counsel*

### *Story 2*

*Co-mediators (M1 (senior) & M2) stayed in their main room. Parties rotated coming into the rooms.*

*M1 told war stories unrelated to the subject matter, esp when the negotiations weren't going well.*

*M2 was mostly quiet. The only “notable” suggestion I recall made by M2 to my client was: "Shall I tell them that if they are not prepared to pay you, that you will not continue with the mediation?"*

# musings of a mediation practitioner

## *As Counsel*

### *Story 2*

*The last offer was presented by B at around 1.30 pm.*

*Mediators said its the final offer, thanked everyone for trying their best and concluded the mediation.*

# musings of a mediation practitioner

## *Reflections - as Counsel*

Be careful of:

- *Mediators who focus on their settlement rates.*
  - *Mediators who come unprepared.*
- *Mediators who behave like judges / arbitrators.*

# musings of a mediation practitioner

## *Reflections - as Counsel*

Take full advantage of:

- *Counsel who mistake the mediator for a judge / arbitrator.*
  - *Counsel who are obstructive.*
- *Being a professional mediation advocate - count the “cost” to you of a settlement as doing your utmost for the client.*

# musings of a mediation practitioner

## ***Lessons – as Counsel***

- *Prepare thoroughly as a mediation advocate - don't take short cuts (or be lazy): your "usual" approach to other mediation cases may not be good enough for the current one.*
  - *Being a settlement advocate is costly.*
- *Consider the personality of the mediator. Find ways to make the mediator work harder for your client.*
- *Importance of self awareness – are you working against yourself?*

# musings of a mediation practitioner

*Self Awareness –  
My conflict resolution personality*

# musings of a mediation practitioner

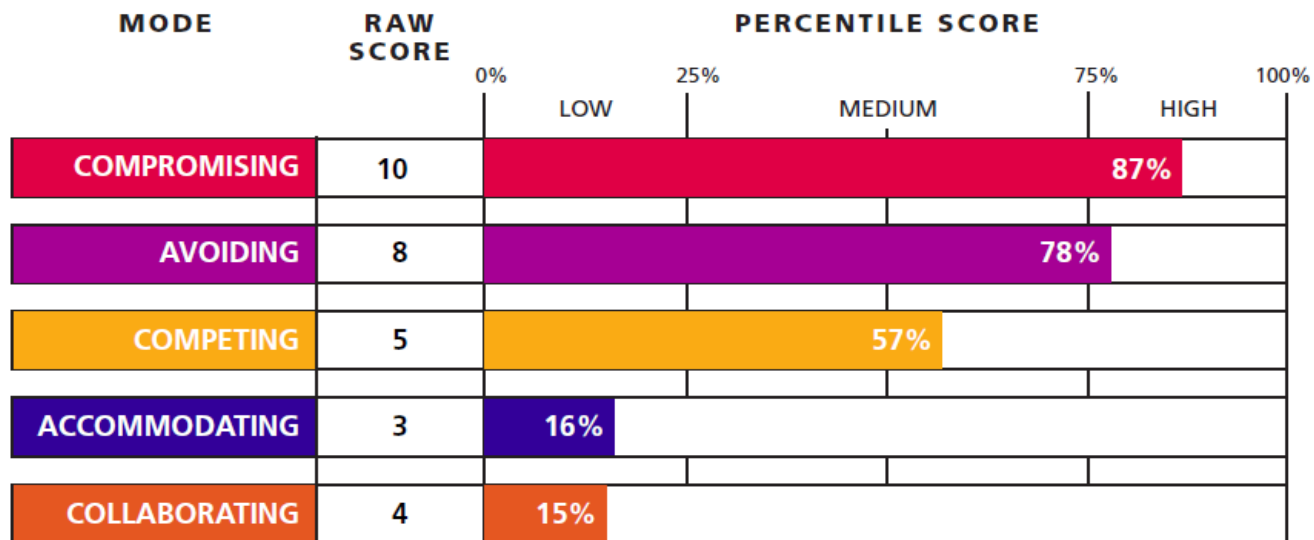
*My conflict resolution personality –  
using TKI  
(as disputant)*



# musings of a mediation practitioner

## Your TKI Profile

Your profile of TKI scores, shown below, indicates the repertoire of conflict-handling modes you use in the kinds of conflicts you face. Your scores are arranged in descending order by percentile, with your highest score indicating your most frequently used conflict mode.



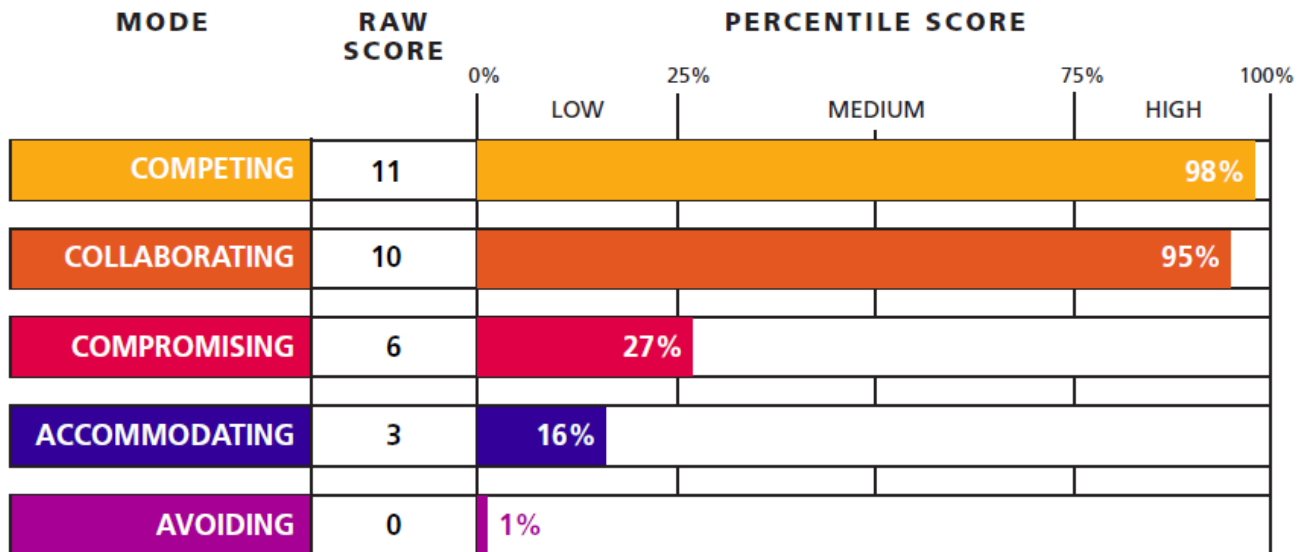
# musings of a mediation practitioner

*My dispute resolution personality –  
using TKI  
(as counsel)*

# musings of a mediation practitioner

## Your TKI Profile

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# musings of a mediation practitioner

## *Lessons – from TKI*

- Importance of self-awareness as a mediation practitioner.
  - Importance of role playing.
- Jekyll & Hyde personalities are possible (perhaps even desirable) for mediation practitioners.

# musings of a mediation practitioner

## *As mediator*

### *The Story*

<https://www.cao-ombudsman.org/cases/myanmar-myanma-awba-group-company-ltd-01myanmar>

# musings of a mediation practitioner

## *Chronology of the CAO case:*

- October / November 2017 – Assessment
  - May / June 2018 – Capacity Building
    - July 2018 – 1<sup>st</sup> joint meeting
- July to December 2018 – 4 separate and joint meetings
  - December 2018 – Ground Rules Agreement signed
- January 2019 – meeting with complainant and NGOs
  - February 2019 – joint meetings
- March to May 2019 – exchange of documents

# musings of a mediation practitioner

## *Chronology of the CAO case:*

- May 2019 – separate meetings
- June to July 2019 – further exchange of documents
- August 2019 – joint meeting – formation of joint committee
  - September 2019 – 1<sup>st</sup> meeting of joint committee
  - September 2019 – 2<sup>nd</sup> meeting of joint committee
    - November 2019 – separate meetings
- December 2019 – further consultation and closure

# musings of a mediation practitioner

## *Challenges – as Mediator*

Rapport and trust building in the midst of:

- Multiparty disputes
- Mandate of Representatives (18 representatives, 9 villages)
  - Foreign language and culture
  - Disputes involving non-monetary concerns
    - NGOs



# musings of a mediation practitioner

## *Reflections / Lessons – as Mediator*

Top 5 lessons:

- Use of interpreter
- Stepping out of comfort zone & stepping into the shoes of the parties
  - Importance of capacity building
- Self-awareness (EQ, Cultural IQ, DR personality, biases)
  - Interaction with NGOs

# musings of a mediation practitioner

## *Final Reflections* *as* *A Mediation Practitioner*

# musings of a mediation practitioner

## *Final Reflections*

- *Challenges of being remembered.*
- *Efforts, sacrifices, good work, professionalism, and relationships cannot overcome scheduling / preferences.*
  - *Mistakes aplenty – honesty and humility.*
  - *Community – good and not so good.*
  - *Counsel's egos and preparedness.*
- *Competing for cases, and mediators' ego.*
  - *Developing a Mediation Practice.*

# musings of a mediation practitioner

## *Final Lessons*

- *Humility*
- *Gratitude*
- *Grace*

# musings of a mediation practitioner

*On Humility, Gratitude & Grace ...*

# musings of an ordinary practitioner

*My Family @MaxwellMediators*



# musings of a mediation practitioner

*Thank you for joining me today!*

*Contact me at:*

***TAT@MAXWELLMEDIATORS.COM***