

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.

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.

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 2016⁸ (“Employment Claims Act”) and the Employment Claims Regulations 2017.⁹ This is supported by provisions from the Employment Act 1968¹⁰ (“Employment Act”), the Industrial Relations Act 1960¹¹ (“Industrial Relations Act”), the Retirement and Re-employment Act 1993¹² (“Retirement and Re-employment Act”), and the Child Development Co-Savings Act 2001¹³ (“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;

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

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

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 cl 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 2017⁴⁵ (“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 2017⁵⁵ 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.

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 concerned 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

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.

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 Standards⁹⁰ 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.

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 as 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://imimmediation.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

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.