

REFIRING THE STARTING PISTOL

The Second Step Towards Sports Mediation in Singapore

Mediation is a laudable tool for dispute resolution. Sports disputes, however, have unique features which make mediation challenging. The mediation framework launched by the Singapore Sports Council in 2008 no longer seems to be in force, though that has not stopped mediation from being proposed. In a recent dispute, the mediator was even suggested to be an official from the Ministry in-charge of sports development. It is thus timely to examine features of sports disputes, the state of sports mediation in Singapore and possible cultural influences on the mediation process. On the whole, sports disputes can be amenable to mediation.

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I. Introduction

1 Sports mediation in Singapore is virtually unheard of. Whilst mediation has succeeded in resolving sports disputes in several jurisdictions such as the US and Canada, it is not as widely used around the world as arbitration.¹ Nonetheless, sports mediation was brought into the spotlight in 2023 after the Singapore National Olympic Council (“SNOC”) decided to exclude marathoner Soh Rui Yong (“Soh”) from the Asian Games’ line-up for disciplinary reasons.² This was despite Soh breaking the national record and winning a silver medal in the men’s 10,000m race in the South East Asian Games (“SEA Games”) held earlier in the year. A month later, on 5 July 2023, the Workers’ Party tabled a motion in Parliament on Singapore’s sporting success and supporting athletes.³ Much of it concerned the SNOC and Soh, culminating in Mr Pritam Singh, Secretary-General of the Workers’ Party, proposing mediation.

2 This article starts with an overview of the state of sports mediation in Singapore. It then explores the benefits of sports mediation as well as its challenges arising from features unique to sports disputes. Mr Singh was

1 Paul Denis Godin, “Sport Mediation: Mediating High-Performance Sports Disputes” (2017) 33(1) *Negotiation Journal* 25 at 26.

2 Ang Hwee Min & Natasha Ganesan, “Pritam Asks SNOC to Adopt ‘Forgiving Attitude’ on Soh Rui Yong after Asian Games Exclusion” *CNA* (6 July 2023) <<https://www.channelnewsasia.com/singapore/pritam-singh-soh-rui-yong-snoc-parliament-forgiving-asian-games-3610891>> (accessed 1 November 2024).

3 The Workers’ Party is a political party in Singapore.

particularly concerned about power disparity, because Soh's participation (and that of all other athletes) at any regional or international meets lies in the SNOC's hands. To mitigate this concern, Mr Singh suggested for government intervention and that the mediator be an official from the Ministry of Culture, Community and Youth ("MCCY"). This suggestion raises two points for examination: (a) the culture in Singapore where government intervention is called for when there are irreconcilable differences; and (b) other areas of mediation which may be influenced by culture. With an understanding of sports mediation and cultural influences, this article continues with a discussion of Soh's dispute with the SNOC and contrasts it with the dispute between a Filipino athlete, Ernest John Obiena, and the Philippine Athletics Track and Field Association. Finally, the article concludes with the assertion that sports mediation can be conducted in Singapore even for disciplinary cases, bearing in mind the cultural influences on the mediation process.

II. Sports mediation in Singapore

3 The use of sports mediation in Singapore was a blip on the radar. Putting aside the fact that mediation is conducted in confidence, there seemed to be only one instance where mediation was adopted. Triathlete Gino Ng was unhappy over the Triathlon Association of Singapore's ("TAS") decision not to nominate him for the 2007 SEA Games, and the dispute was successfully resolved through mediation.⁴ Around the same period, the Singapore Sports Council ("SSC") developed a framework for alternative dispute resolution. In 2008, the SSC launched the Framework for Alternative Dispute Resolution for Sports ("Framework") in collaboration with the SNOC, the Singapore Mediation Centre, the Singapore International Arbitration Centre and the Singapore Institute of Arbitrators.⁵ All National Sports Associations ("NSAs") must adopt the Framework.⁶ For example, the Singapore Athletics Association ("SAA") is an NSA and currently provides in Art 28 of its Constitution that "[a]ny dispute arising amongst Members or between any Member and SAA shall be resolved in accordance with the Framework for Alternative Dispute Resolution for Sports or other dispute resolution framework jointly administered for the time being by

4 Teo Ser Luck, Parliamentary Secretary, Ministry of Community Development, Youth & Sports, speech at the Launch of the Alternative Dispute Resolution (ADR) Framework for Sports (7 January 2008) <<https://www.sportsingapore.gov.sg/files/Media%20Centre/Media%20Release/2008/January/07/Annex20C2020Speech20by20Mr20Teo20Ser20LuckParl20Sec20MCYS.pdf>> (accessed 1 November 2024).

5 "Alternative Dispute Resolution Framework for Sports Formed to Resolve Disputes" *Sport Singapore* (7 January 2008) <<https://www.sportsingapore.gov.sg/media-centre/media-release/alternative-dispute-resolution-framework-for-sports-formed-to-resolve/>> (accessed 1 November 2024).

6 "Alternative Dispute Resolution Framework for Sports Formed to Resolve Disputes" *Sport Singapore* (7 January 2008) <<https://www.sportsingapore.gov.sg/media-centre/media-release/alternative-dispute-resolution-framework-for-sports-formed-to-resolve/>> (accessed 1 November 2024).

Sport Singapore, Singapore Mediation Centre, or Singapore Institute of Arbitrators”⁷

4 Unfortunately, nothing seemed to come out of this Framework. In 2012, Ho Mun Wai, who was then the Chairman of Framework for Alternative Dispute Resolution for Sports Committee, observed that there were few cases sent for mediation under the Framework.⁸ More recently in 2021, the former Chief Executive Officer of the SSC, Oon Jin Teik, noted that the Framework no longer seemed to be in force.⁹

5 Interestingly, despite binding the NSAs for any disputes, the Framework did not bind the SNOC on matters of athlete selection or related disciplinary matters if conclusive decisions had been rendered via arbitration.¹⁰ It also appears from the SNOC Constitution that mediation does not play a role in resolving sports disputes at all. Article 8.2.1 of the SNOC Constitution provides that an appeal against an SNOC decision may be made to an Appeals Committee.¹¹ Article 8.2.2(b) of the SNOC Constitution provides next that the decision of the Court of Arbitration for Sports (“CAS”) shall be final and binding on all parties. The CAS, located in Switzerland, is an arbitral institution under the International Olympic Committee that aims to resolve disputes directly or indirectly related to sports.¹² From these two provisions, it seems that a Singapore athlete ought to appeal to the SNOC’s Appeals Committee before instituting a case at the CAS. It is unclear whether the appeal to CAS involves mediation since it conducts both mediation and arbitration. Nonetheless, the phrase “final and binding” in Art 8.2.2(b) of the SNOC Constitution alludes to arbitration.

6 What the SNOC’s tiered dispute resolution mechanisms mean to a Singapore athlete is that if his appeal is rejected by the SNOC Appeals Committee, he would have to take an indubitably drastic step of instituting a case at the CAS in Switzerland. Doing so carries a high financial and emotional toll on the complaining athlete.

7 “SA Constitution” Singapore Athletics <<https://www.singaporeathletics.org.sg/about-us>> (accessed 1 November 2024).

8 Ho Mun Wai, “Framework for Alternative Dispute Resolution for Sports” [2012] Asian JM 77 at para 24.

9 “Sports and Mediation – Racing to Resolve Disputes [Event Summary]” *Society of Mediation Professionals (Singapore)* (10 April 2021) <<https://smp.org.sg/sports-mediation-racing-to-resolve-disputes-event-summary/>> (accessed 1 November 2024).

10 “Framework for Alternative Dispute Resolution for Sports in Singapore (ADR Sports)” *Singapore Sports Council* (7 January 2008) <<https://www.sportsingapore.gov.sg/files/Media%20Centre/Media%20Release/2008/January/07/Annex20B20Presentation20by20Mr20Ho20Mun20Wai20DPPM20SSCpptv2.pdf>> (accessed 1 November 2024) at p 20.

11 “Constitution” *Singapore National Olympic Council* <<https://www.singaporeolympics.com/constitution/>> (accessed 1 November 2024).

12 “History of the CAS” *TAS / CAS* <<https://www.tas-cas.org/en/general-information/history-of-the-cas.html>> (accessed 1 November 2024).

7 It is unknown why the Framework did not apply to the SNOC. It may be that the SNOC sits at the apex of local sports associations and that any concerns the athlete had should have been assessed by the NSAs. However, there are some decisions which only the SNOC makes. Another possible reason for the exclusion of the SNOC is that the SNOC's decision-making process is more thorough and an appeal to the SNOC's Appeals Committee is deemed adequate.

8 In any case, mediation at the SNOC level is not ruled out. In response to Mr Singh's proposal for other dispute resolution mechanisms for Soh, Nominated Member of Parliament Mr Mark Chay, who is also a member of the SNOC's marketing committee, said that "the door is probably not closed".¹³

III. Benefits and challenges of sports mediation

9 Commentators have noted the success of mediation in resolving disputes in major sports leagues in the US and Canada.¹⁴ The benefits of mediation are manifold, as it can "protect the common interests of the parties, reduce transactional and relational costs, provide parties with shared power over the process, as well as maintain flexibility, confidentiality, and efficiency".¹⁵ In sports, parties to the dispute have the common interest of wanting to bring glory to their country. On the reduction of relational costs, it should be noted that the sports fraternity is small,¹⁶ much less the sports fraternity within Singapore, a small country. The preservation or restoration of relationships is all the more beneficial.

10 Despite these benefits, sports disputes face a unique set of challenges *vis-à-vis* commercial disputes, and this has implications on the workability of mediation.

13 Ang Hwee Min & Natasha Ganesan, "Pritam Asks SNOC to Adopt 'Forgiving Attitude' on Soh Rui Yong after Asian Games Exclusion" *CNA* (6 July 2023) <<https://www.channelnewsasia.com/singapore/pritam-singh-soh-rui-yong-snoc-parliament-forgiving-asian-games-3610891>> (accessed 1 November 2024).

14 Robert Pannullo, "Facilitating Change: Addressing the Underutilization of Mediation in Professional Sports" (2019) 25(1) *Harvard Negotiation Law Review* 103 at 151 (on the National Hockey League's labour lockout); Timothy J Bucher, "Inside the Huddle: Analyzing the Mediation Efforts in the NFL's Brady Settlement and Its Effectiveness for Future Professional Sports Disputes" (2011) 22(1) *Marquette Sports Law Review* 211 (on the National Football League's labour dispute); and Paul Denis Godin, "Sport Mediation: Mediating High-Performance Sports Disputes" (2017) 33(1) *Negotiation Journal* 25 at 26.

15 Robert Pannullo, "Facilitating Change: Addressing the Underutilization of Mediation in Professional Sports" (2019) 25(1) *Harvard Negotiation Law Review* 103 at 143.

16 Ian S Blackshaw, *Sport, Mediation and Arbitration* (TMC Asser Press, 2009) at p 129.

11 The first point of difference between commercial and sports disputes is that the latter requires urgent resolutions.¹⁷ Selected athletes are typically announced a few months or even just weeks before they compete. Delay in resolving the dispute would cause mental strain on the disputing athlete and other athlete(s) who may be affected by the decision. Further delay may even cause any resolution to be moot because the event has ended. The need for urgent resolution had resulted in the CAS creating *ad hoc* divisions in the host country for the Olympics Games since 1996, where the *ad hoc* divisions would resolve disputes within 24 hours.¹⁸ The location of the CAS might be distant since countries take turns to host the Summer and Winter Games. Thus, the establishment of *ad hoc* divisions for significant sporting events exemplifies the need for speedy resolution of sporting disputes. This is in contrast with commercial disputes where urgency varies on a case-by-case basis. While mediation can achieve a speedy resolution in both sports and commercial disputes, the emphasis on shared interests and relational costs may impede decisiveness, a negative in resolution of sports disputes.

12 Secondly, sports disputes can be zero-sum in nature.¹⁹ “Individual athlete participation issues”, such as when two athletes have met the selection criteria in a category but the country can only send one representative, have limited middle grounds.²⁰ Such disputes are further aggravated in high-stakes events such as the Olympics, since no athlete would willingly give up a chance to compete at the highest level.²¹ This lack of compromise is unlike commercial mediation, where parties have flexibility in crafting a mutually-agreeable settlement.

13 Sports disputes might also be unsuitable for mediation if they concern disciplinary or doping sanctions.²² The CAS Mediation Rules clearly exclude matters related to disciplinary matters (eg, doping issues, match-fixing and corruption) though the CAS retains a discretion to admit such cases if parties consent and circumstances allow for it.²³ The rationale behind such exclusion is that an athlete should not be able to negotiate a

17 Paul Denis Godin, “Sport Mediation: Mediating High-Performance Sports Disputes” (2017) 33(1) *Negotiation Journal* 25 at 38.

18 “History of the CAS” *TAS / CAS* <<https://www.tas-cas.org/en/general-information/history-of-the-cas.html>> (accessed 1 November 2024).

19 Paul Denis Godin, “Sport Mediation: Mediating High-Performance Sports Disputes” (2017) 33(1) *Negotiation Journal* 25 at 37.

20 William K Slate II, “The Growth of Mediation and Arbitration in Sports Disputes in the US” in Ian S Blackshaw, *Sport, Mediation and Arbitration* (TMC Asser Press, 2009) at pp 66–68.

21 Paul Denis Godin, “Sport Mediation: Mediating High-Performance Sports Disputes” (2017) 33(1) *Negotiation Journal* 25 at 38.

22 Urvashi Naidoo & Neil Sarin, “Dispute Resolution at Games Time” (2002) 12(2) *Fordham Intellectual Property, Media & Entertainment Law Journal* 489 at 517.

23 “Rules” *TAS / CAS* <<https://www.tas-cas.org/en/mediation/rules.html>> (accessed 1 November 2024).

settlement to avoid sanctions.²⁴ These cases have a strong public policy element and an athlete who consumed banned drugs must face the sanction of the international sports federations or national Olympic Councils. These cases are also quasi-criminal in nature and require a ruling of guilt or innocence.²⁵ Presumably for similar reasons, the Framework did not bind the SNOG on matters of athlete selection or related disciplinary matters.

14 It may be argued the public policy rationale against mediation is weaker for disciplinary cases than for doping or match-fixing. Violations of codes of conducts vary in their severity so their unsuitability for mediation should not be regarded as a foregone conclusion. Humphrey suggested a mediated outcome where in return for a lighter penalty, the wrongdoer could pledge better behaviour, and agree to publicly demonstrate remorse and contribute positively to the sport in some way (eg, by assisting with education and community programmes).²⁶ Such an outcome is in line with the trend towards rehabilitation rather than retribution and deterrence in the criminal justice system,²⁷ and towards amicable resolution over a ruling in an adversarial setting.²⁸ As things stand, however, sports mediation bodies are unlikely to accept disciplinary cases.

15 Commercial disputes, on the other hand, are unlikely to be that categorical in assessing suitability for mediation. There might be factors which suggest that arbitration or litigation is a better course of action, but it is better for parties to assume that mediation is suitable.²⁹ In fact, Singapore's civil procedure imposes a duty on parties to consider amicable resolution prior to commencing an action and during the action or appeal.³⁰

16 The next area of difference between sports disputes and commercial disputes is the availability of the judicial system. There seems to be only one reported decision where leave was sought to subject the decisions of a national sports federation to judicial review.³¹ In *Ng Gino Ernest v Triathlon Association of Singapore*³² (“*Ng Gino*”), the applicant applied for leave for

24 Urvasi Naidoo & Neil Sarin, “Dispute Resolution at Games Time” (2002) 12(2) *Fordham Intellectual Property, Media & Entertainment Law Journal* 489 at 517.

25 Thomas Humphrey, “Dust in the Balance: The Use of Mediation to Resolve Disputes in Australian Sport” (2008) 1 *International Sports Law Review* 2 at 9.

26 Thomas Humphrey, “Dust in the Balance: The Use of Mediation to Resolve Disputes in Australian Sport” (2008) 1 *International Sports Law Review* 2 at 9.

27 Community-based sentences were introduced in 2010: “Types of Sentences” *SG Courts* <<https://www.judiciary.gov.sg/criminal/types-sentences>> (accessed 1 November 2024).

28 Rules of Court 2021 O 5.

29 Nadja Alexander, Jean-Francois Roberge & Fatma Ibrahim, *Mediation Essentials: The Definitive Deskbook* (World Bank, May 2016) at p 9.

30 Rules of Court 2021 O 5 r 1.

31 Searches on LawNet would show a dated case of *Haron bin Mundry v Singapore Amateur Athletic Association* [1991] SGHC 127. However, the court held that the cause of action was more accurately that of contractual breach, and not that of an application for judicial review (at [22]).

32 [2007] SGHC 183.

judicial review of administrative action. The applicant wanted the court to review two of TAS's decisions: (a) not nominating him for the Singapore national team of triathletes in the 2007 SEA Games; and (b) its Appeal Committee's rejection of his appeal. The Attorney-General submitted that leave should not be granted because the TAS was a private association, and its tribunal was not exercising any public function. The applicant rebutted that there was some public function since the TAS selected athletes to represent Singapore and that it did so using public funds from the SNOC. The High Court appeared to agree with the applicant. In relation to the second TAS decision, the High Court noted that the Appeal Committee's conduct, if proved, would be breaches of natural justice. Overall, the High Court found that the threshold for judicial review had been met. This case shows that judicial system is available to athletes, though there is no further reported decision on *Ng Gino*.

17 Can athletes apply for leave for judicial review of the SNOC's decision? Students of administrative law will recall that there are three conditions for leave to be granted: (a) the subject matter must be susceptible to judicial review; (b) the applicant has sufficient interest (*ie, locus standi*) in the matter; and (c) the material before the court discloses an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the applicant.³³ Further, under the second condition, the law also requires the applicant to have exhausted all alternative remedies before coming to court.³⁴ The SNOC Constitution provides that any dispute will be first heard by its Appeal Committee, failing which the athlete may submit himself before the CAS.³⁵ This suggests that an athlete has to seek recourse in Switzerland before he can apply for leave for judicial review in Singapore. There are some cases suggesting a more sensible understanding of alternative remedies, so it may well be that the disputing athlete can apply for leave right after the SNOC's Appeals Committee rejects his or her appeal.³⁶ In any case, there is much uncertainty since judicial review for sports disputes is not an area of law that is well-traversed.

18 In contrast, in commercial disputes, private parties can take legal action against each other whenever they see fit. There are less hurdles to cross compared to that of judicial review.

19 Another challenge facing sports mediation is the power imbalance between national Olympics councils and athletes. Mr Singh pointed out that the SNOC "does not just hold all the cards but is, clearly, the party in which

33 *Gobi a/l Avedian v Attorney-General* [2020] 2 SLR 883 at [44].

34 *Borissik Svetlana v Urban Redevelopment Authority* [2009] 4 SLR(R) 92.

35 "Constitution" *Singapore National Olympic Council* <<https://www.singaporeolympics.com/constitution/>> (accessed 1 November 2024).

36 *Eg, in Chiam See Tong v Singapore Democratic Party* [1993] 3 SLR(R) 774, the Singapore Democratic Party argued that Chiam had not exhausted internal remedy of appeal to ordinary party conference. The court held that this was not an adequate alternative remedy due to time constraint.

the power relationship between athlete and state representation resides”³⁷ and what he said is likely true. The International Olympic Committee controls the overall development and regulation of high-performance sports and delegates the specifics to national Olympic Committees, such as the SNOC, as well as international sport federations.³⁸ This means that with respect to high-performance athletes in Singapore, the SNOC wields much power over their growth and development.³⁹

20 Power imbalance is present in commercial mediation too and has been noted to be an obstacle to successful mediation.⁴⁰ Parties may be reluctant to enter into mediation, for fear of being forced to agree to unfavourable terms. Parties in mediation may act aggressively or coldly, resulting in an environment that is not conducive to mediation.

21 In sports mediation however, power imbalance is further exacerbated by three factors. Firstly, the career of a professional athlete is relatively short. The demands each sport heaps upon its athletes result in most retiring by their late twenties. Participation in competitions is an avenue for professional growth. Non-participation may curtail an athlete’s progress, and there are a finite number of years and competitions for athletes.

22 The second factor is the athlete’s lack of an alternative if he fails to come to an agreement with the SNOC. In negotiation parlance, this is known as “BATNA”, *ie*, the best alternative to a negotiated agreement. The dissatisfied athlete may seek recourse at the CAS or the courts, though CAS Mediation excludes certain categories of cases. More importantly, any of these recourses would take time and energy which could have been better used for training and rest.

23 The third factor is whether the athlete involved is an individual athlete. Successful mediations, at least those known to the public, involved sports teams negotiating with sports leagues. These teams arguably have greater bargaining power *vis-à-vis* their respective leagues, given the presence of fans who purchase stadium tickets and/or cable TV channels to watch their team’s matches, and who buy merchandise.⁴¹ Individual athletes likely require more to bolster their positions.

37 Singapore Parl Debates; Vol 95; [6 July 2023] (Mr Pritam Singh, Leader of the Opposition).

38 Susan Haslip, “A Consideration of the Need for a National Dispute Resolution System for National Sport Organizations in Canada” (2001) 11(2) *Marquette Sports Law Review* 245 at 257.

39 Susan Haslip, “A Consideration of the Need for a National Dispute Resolution System for National Sport Organizations in Canada” (2001) 11(2) *Marquette Sports Law Review* 245 at 257.

40 Ian S Blackshaw, *Sport, Mediation and Arbitration* (TMC Asser Press, 2009) at p 133.

41 Lerae Ettienne, “It’s Time to Pay up, the Justification for Higher Salaries for WNBA Players: An Analysis of the WNBA’s Success and Employing Mediation between the WNBA and NBA to Leverage Future Success” (2019) 19(2) *Pepperdine Dispute Resolution Law Journal* 175 at 189.

24 Overall, the main challenge to a successful mediation between an athlete and the SNOC would be high power imbalance, and it is to this issue we now turn.

IV. Cultural influences on sports mediation

25 To mitigate the power imbalance between the parties and the perceived prejudice held by the SNOC against Soh, Mr Singh had suggested for government intervention and that the mediator be an official from the MCCY. By way of background, the MCCY is the ministry in-charge of sports development in Singapore and should be an interested party in any dispute between an athlete and the SNOC.⁴²

26 Mr Singh's suggestion for an MCCY official to be a mediator is interesting. The choice of the mediator is important as the mediation is "only as effective as the mediator who manages it".⁴³ The ideal mediator ought to have experience, process skills and reputation of neutrality. However, Mr Singh did not seem to have in mind the required skills of a mediator when he spoke in Parliament. Instead of utilising experienced mediators from the Singapore Mediation Centre,⁴⁴ the proposed mediator, a government official, may not have any experience in mediation.

27 It is submitted that the proposal for government intervention was inspired by two aspects of Singapore's national culture: (a) high power distance;⁴⁵ and (b) paternalism. On power distance, it has been observed that Asian societies tend to emphasise social hierarchy.⁴⁶ Singapore's former Chief Justice Chan Sek Keong had also noted that litigants favoured the use of judges as mediators because judges commanded public confidence and respect.⁴⁷ Another reason for the use of government officials as mediators may be due to paternalism. Paternalism can be characterised as "government knows best",⁴⁸ and high power distance may have driven paternalism as

42 "Our Ambition" *Ministry of Culture, Community and Youth* <<https://www.mccy.gov.sg/about-us/our-ambition>> (accessed 1 November 2024).

43 Ian S Blackshaw, *Sport, Mediation and Arbitration* (TMC Asser Press, 2009) at p 25.

44 The nature of this dispute is not covered by other institutional mediation centres in Singapore such as the Community Mediation Centre and Singapore International Mediation Centre.

45 "Power distance" has been defined as the degree of inequality in power between a less powerful individual ("I") and a more powerful individual ("O"), in which I and O belong to the same (loosely or closely knitted) social system: Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations across Countries* (Sage Publications, 2nd Ed, 2001) at p 83, referencing Mark Mulder's earlier works on power distance.

46 Dorcas Quek Anderson, "The Evolving Concept of Access to Justice in Singapore's Mediation Movement" (2020) 16 *International Journal of Law in Context* 128 at 134.

47 Dorcas Quek Anderson, "The Evolving Concept of Access to Justice in Singapore's Mediation Movement" (2020) 16 *International Journal of Law in Context* 128 at 134.

48 Habibullah Khan, "Social Policy in Singapore: A Confucian Model?" [2001] *World Bank Institute* at p 4.

well. In the result, Singaporeans are generally less resistant to government interventions than other countries.⁴⁹

28 The combination of these two factors increases the likelihood of the athlete and the SNOC accepting intervention by the Singapore government by having an MCCY official be the mediator. A government official who can command the respect of both the athlete and the SNOC would thus have an advantage over other non-affiliated mediators. This mediator should note that if the aforementioned cultural factors have influenced his or her appointment, he or she is “expected to lead and guide the parties as well as express opinions and give input”.⁵⁰ The mediator will thus be undertaking evaluative mediation and not facilitative mediation.

29 Apart from high power distance and paternalism, another cultural influence on the mediation process is the collectivistic inclination of Singaporeans. It affects the confidentiality of the mediation process.⁵¹ The saving of “face” matters, so parties prefer to settle disputes behind closed doors.⁵²

30 Even in non-Asian contexts, confidentiality has been highlighted as a key factor to a successful mediation. Athletes had at times tried to gain public attention on their cases through the media but doing so had an unfortunate consequence of the parties entrenching themselves in their respective positions.⁵³ In the US, three rounds of mediation were conducted over the National Football League’s player lockout before the dispute was resolved. In the first two rounds, the parties had continued to speak to the press, disclosing the details of finger-pointing and the parties’ positions. The third round succeeded partly because of the parties’ commitment to keep the process confidential.⁵⁴ The importance of confidentiality cannot be overemphasised.

49 Benjamin H Detenber, “Nudging in Singapore: Current Implementation in Three Key Areas” (2021) 3(1) *Journal of Asian Economic Integration* 74 at 85.

50 Dorcas Quek Anderson, “The Evolving Concept of Access to Justice in Singapore’s Mediation Movement” (2020) 16 *International Journal of Law in Context* 128 at 134.

51 Dorcas Quek Anderson, “The Evolving Concept of Access to Justice in Singapore’s Mediation Movement” (2020) 16 *International Journal of Law in Context* 128 at 134.

52 Deepak Nair, “Saving Face in Diplomacy: A Political Sociology of Face-to-Face Interactions in the Association of Southeast Asian Nations” (2019) 25(3) *European Journal of International Relations* 672 at 691–692.

53 Susan Haslip, “A Consideration of the Need for a National Dispute Resolution System for National Sport Organizations in Canada” (2001) 11(2) *Marquette Sports Law Review* 245 at 251.

54 Timothy J Bucher, “Inside the Huddle: Analyzing the Mediation Efforts in the NFL’s Brady Settlement and Its Effectiveness for Future Professional Sports Disputes” (2011) 22(1) *Marquette Sports Law Review* 211 at 230–231.

V. Soh and SNOC

31 Soh was first excluded from Singapore's line-up for the 2019 SEA Games when the SNOC rejected the Singapore Athletics Association's ("SAA") nomination of Soh.⁵⁵ The SAA is the local governing body for track and field.⁵⁶ The SNOC had rejected Soh because it found Soh to have breached the SAA's Code of Conduct on several occasions, though it was not made clear in the news articles what these breaches were. The SAA subsequently accepted the SNOC's decision. Soh responded to his exclusion by serving lawyers' letters on the SNOC and SAA.⁵⁷ He claimed that he was not given the opportunity to present his stand on the alleged breaches and that the SNOC had "disregarded the fundamental principles of merit-based selection".⁵⁸ The SAA then offered to attend mediation with Soh, but Soh declined because the SAA had yet to clarify their comments on accepting the SNOC's decision. Soh did not wish to attend a closed-door meeting before the parties clarified their positions publicly. The SAA and SNOC then issued statements saying that they had referred this matter to their respective lawyers. There was no update on this matter.

32 In the 2022 iteration of the SEA Games, Soh was excluded for the second time from the line-up for similar reasons.⁵⁹ He then made a Facebook post stating that the SNOC's decision had potentially cost Singapore a gold medal given his performance at past SEA Games. Soh also mentioned that he had met the Minister for MCCY Mr Edwin Tong the month before, where the latter had offered to mediate between the SNOC and Soh. Soh was not privy to the communications between the SNOC and Minister Tong but was nonetheless thankful to the latter. It did not seem that any mediation had occurred and there was no further update.

33 In 2023, Soh was part of Team Singapore during the SEA Games, but was excluded from the Asian Games held later in the year.⁶⁰ He was

55 Nicole Chia, "Athletics: Soh Rui Yong Rejects Singapore Athletics' Offer of Mediation" *The Straits Times* (15 August 2019) <<https://www.straitstimes.com/sport/athletics-soh-rui-yong-rejects-singapore-athletics-offer-of-mediation>> (accessed 1 November 2024).

56 "About Us" *Singapore Athletics* <<https://www.singaporeathletics.org.sg/about-us>> (accessed 1 November 2024).

57 Low Lin Fhoong, "Athletics: SEA Games Champ Soh Rui Yong Sends Legal Letters to SNOC, Singapore Athletics" *The Straits Times* (7 August 2019) <<https://www.straitstimes.com/sport/athletics-sea-games-champ-soh-rui-yong-sends-legal-letters-to-snoc-singapore-athletics>> (accessed 1 November 2024).

58 Low Lin Fhoong, "Athletics: SEA Games Champ Soh Rui Yong Sends Legal Letters to SNOC, Singapore Athletics" *The Straits Times* (7 August 2019) <<https://www.straitstimes.com/sport/athletics-sea-games-champ-soh-rui-yong-sends-legal-letters-to-snoc-singapore-athletics>> (accessed 1 November 2024).

59 Natasha Ganesan, "Top Marathoner Soh Rui Yong Excluded from SEA Games as Conduct 'Continued to Fall Short': SNOC" *CNA* (17 February 2022) <<https://www.channelnewsasia.com/sport/soh-rui-yong-top-marathoner-excluded-sea-games-hanoi-snoc-2504066>> (accessed 1 November 2024).

60 Ang Hwee Min & Natasha Ganesan, "Pritam Asks SNOC to Adopt 'Forgiving Attitude' on Soh Rui Yong after Asian Games Exclusion" *CNA* (6 July 2023) <<https://www.channelnewsasia.com/sport/pritam-asks-snoc-to-adopt-forgiving-attitude-on-soh-rui-yong-after-asian-games-exclusion>> (accessed 1 November 2024).
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excluded because the SNOC had found that despite signing an undertaking to abide by the SAA's Code of Conduct prior to the 2023 SEA Games, Soh made disparaging remarks about the SNOC and his teammates after the SEA Games.⁶¹ The SNOC sent two documents to the SAA detailing the various remarks made by Soh on social media and other platforms. Although Soh deleted the posts and remarks and appealed to the SNOC's Appeals Committee, he was still unsuccessful. About a month after the Appeals Committee's decision, Mr Singh raised the prospect of mediation in Parliament.

34 The chronology of events shows mediation was brought up as a mode of dispute resolution every time the SNOC excluded Soh from representing Singapore. However, to date, it does not seem that the parties have attempted mediation.

35 Mediation could have been beneficial for Soh and the SNOC. As highlighted by Mr Singh in Parliament, both parties had the common interest of bringing glory to Singapore through sporting achievements.⁶² Mediation is also likely cheaper than the legal costs which the parties had incurred during their first spat in 2019. Even though Soh's case was disciplinary in nature, it has been argued earlier that such cases can be amenable to mediation. Moreover, it does not seem to be the situation that the SNOC had to decide between Soh and another athlete.

36 Power imbalance does seem to have forestalled mediation. With regards to Soh's exclusion from the Asian Games, the SNOC's Appeals Committee decision was announced on 8 June 2023, about three months before the commencement of Asian Games on 23 September 2023. The lack of viable alternatives may explain why Soh opted to head to Switzerland to train for the Valencia Half Marathon after the decision was rendered.⁶³ Furthermore, Soh being an individual athlete did not have much to bolster his position. The SAA appeared to be sympathetic to Soh as it continued nominating Soh over the years, but the SAA is after all a member of the SNOC and may not be as independent as a club team in a sports league.⁶⁴

www.channelnewsasia.com/singapore/pritam-singh-soh-rui-yong-snoc-parliament-forgiving-asian-games-3610891 > (accessed 1 November 2024).

- 61 Deepanraj Ganesan, "Why SNOC has not Selected Soh Rui Yong for Asian Games" *The Straits Times* (10 June 2023) <<https://www.straitstimes.com/sport/why-snoc-has-not-selected-soh-rui-yong-for-asian-games>> (accessed 1 November 2024).
- 62 Ang Hwee Min & Natasha Ganesan, "Pritam Asks SNOC to Adopt 'Forgiving Attitude' on Soh Rui Yong after Asian Games Exclusion" *CNA* (6 July 2023) <<https://www.channelnewsasia.com/singapore/pritam-singh-soh-rui-yong-snoc-parliament-forgiving-asian-games-3610891>> (accessed 1 November 2024).
- 63 Ervin Ang, "Newly-wed Soh Rui Yong Breaks Two Singapore Records at Valencia Half Marathon" *The Straits Times* (24 October 2023) <<https://www.straitstimes.com/sport/newly-wed-soh-rui-yong-breaks-two-singapore-records-at-valencia-half-marathon>> (accessed 1 November 2024).
- 64 "Members" *Singapore National Olympic Council* <<https://www.singaporeolympics.com/members/>> (accessed 1 November 2024).

37 Taking into account the cultural influences on mediation, Soh may have made a misstep in demanding a public account from the SAA after he failed to make the team in the 2019 SEA Games. Whilst the parties at that time had not commenced mediation, Soh's behaviour, together with his general outspokenness and active media presence, may have caused the SAA and/or SNOC to have been wary of the confidentiality of the process. It would be helpful if there was a pre-mediation meeting between the mediator and the affected parties where the mediator underscores the importance of confidentiality.

38 As to the choice of mediator, Mr Singh's suggestion of an MCCY official as a mediator is well-considered in Singapore's context. It may also be effective to mitigate the power imbalance and perceived prejudice held by one party against the other, as seen by Soh seeking the assistance of Minister Tong when he was excluded from the 2022 SEA Games. Nonetheless, to carry out mediation successfully, this official should acquire the skills required for evaluative mediation. The official can do so through attending training or sitting in for other mediation sessions to observe the proceedings.

39 Mediation need not be conducted only when the next dispute arises. Soh's disagreements with the SNOC over the past few years resulted in his absence from recent regional competitions. These events have passed; arbitration and other adversarial methods would not have helped since they were backward-looking in the sense that they would have investigated the basis of the SNOC's decision.⁶⁵ It would have been ideal for the SNOC and Soh to have undergone mediation, where the parties would take a forward-looking approach to improving their working relationship.

VI. A Philippines case study

40 Having discussed the challenges of sports mediation in Singapore, it may be useful to look at how other countries with high power distance resolve their sporting disputes.⁶⁶

41 The Philippines has embarked on sports mediation in recent years. In 2021, representatives from the Philippine Sports Commission ("PSC") and the Philippine Dispute Resolution Center, Inc signed a memorandum

65 Ian S Blackshaw, *Sport, Mediation and Arbitration* (TMC Asser Press, 2009) at p 129.

66 "High Power Distance Countries" *World Population Review* <<https://worldpopulationreview.com/country-rankings/high-power-distance-countries>> (accessed 1 November 2024).

of agreement (“MOA”) on the establishment of sports arbitration and mediation.⁶⁷ The MOA was recently renewed in January 2024.⁶⁸

42 In 2022, the PSC handled its first-ever sports mediation relating to a dispute over coaching fees.⁶⁹ In November 2021, the Philippine Athletics Track and Field Association (“PATAFA”) alleged that Olympic pole vaulter Ernest John Obiena (“Obiena”) had mishandled his coach’s salaries.⁷⁰ Both PATAFA and Obiena were supposed to attend mediation. However, on 24 January 2022, Obiena withdrew after claiming that PATAFA’s president Philip Ella Juico (“Juico”) had acted in bad faith.⁷¹ Two days later, the Philippine Olympic Committee’s (“POC”) general assembly ratified its executive board’s decision to declare Juico *persona non grata*.⁷²

43 In early March 2022, despite Juico and Obiena agreeing before the Philippine Senate to go for mediation, Juico filed a case before the CAS against Obiena and the POC.⁷³ The POC then criticised Juico for not acting in good faith given that parties had agreed to go for mediation just four days earlier. It seemed that the PSC intervened thereafter as on 30 March 2022, the PSC announced that the PATAFA and Obiena had reached an agreement through mediation.⁷⁴ The PSC Chairman was the mediator, and he praised both parties for their humility in ending this dispute. There were several other distinguished persons involved in the mediation, such as the assistant solicitor general Bernard Hernandez of the Office of the Solicitor General, executive director Arleo Magtibay and member Charlie Ho of the Philippine Dispute Resolution Center Inc, and PSC executive director Guillermo Iroy, who headed the PSC mediation team.

67 “PSC, PDRCI Sign MOA on Sports Arbitration” *Philippine News Agency* (10 December 2021) <<https://www.pna.gov.ph/articles/1162446>> (accessed 1 November 2024).

68 Jean Malanum, “PSC Renews Tie-up with PDRCI on Sports Arbitration” *Philippine News Agency* (18 January 2024) <<https://www.pna.gov.ph/articles/1217202>> (accessed 1 November 2024).

69 Ivan Stewart Saldajeno, “PATAFA Endorses EJ Obiena for SEA Games as Mediation Ends” *Philippine News Agency* (20 March 2022) <<https://www.pna.gov.ph/articles/1171061>> (accessed 1 November 2024).

70 Ivan Stewart Saldajeno, “Obiena Probe Based on Coach’s Statement: PATAFA” *Philippine News Agency* (22 November 2021) <<https://www.pna.gov.ph/articles/1160566>> (accessed 1 November 2024).

71 Reuben Terrado, “EJ Obiena Withdraws from PSC Mediation, Says PATAFA Acting ‘In Bad Faith’” *spin.ph* (24 January 2022) <<https://www.spin.ph/athletics/ej-obiena-withdraws-from-psc-offer-for-mediation-a795-20220124>> (accessed 1 October 2024).

72 Ivan Stewart Saldajeno, “POC Ratifies ‘persona non grata’ Tag on PATAFA Chief” *Philippine News Agency* (26 January 2022) <<https://www.pna.gov.ph/articles/1166442>> (accessed 1 November 2024).

73 “POC Lashes out at Juico for Bringing Obiena-PATAFA Case to CAS” *spin.ph* (2 March 2022) <<https://www.spin.ph/multisport/olympics/poc-lashes-out-at-juico-for-bringing-obiena-patafa-case-to-cas-a1373-20220302>> (accessed 1 November 2024).

74 Reuben Terrado, “EJ Obiena, PATAFA Reach Agreement During PSC Mediation” *spin.ph* (30 March 2022) <<https://www.spin.ph/athletics/ej-obiena-patafa-reach-agreement-during-psc-mediation-a795-20220330>> (accessed 1 November 2024).

44 There are some parallels between Obiena's situation and Soh's exclusion from the SEA Games in 2019. The early stage of the disputes was fraught with tension, where both men did not wish to attend mediation because they distrusted their counterparts. What possibly worked in the Philippines' and in Obiena's favour was the POC's clear endorsement of Obiena, which likely helped to equalise Obiena's bargaining power *vis-à-vis* the PATAFA's. Perhaps more importantly, the dispute had attracted the Philippine Senate's attention, where the senators urged both sides to attend mediation. The people involved in mediating the dispute were of a certain stature as well. All these factors had likely contributed to a successful mediation.

VII. Conclusion

45 From what is known to the public, sports mediation is rarely conducted in Singapore, or broadly in Asia save for the Philippines. Commentaries on successful sports mediation also tended to involve sports teams and not individual athletes.

46 Despite the nature of the dispute and the power imbalance between the parties, a successful sports mediation can be held. The suggestion for the mediator to be an MCCY official (or a respected person with an extensive background in sports and dispute resolution) has its merits in Singapore's context, with the Philippine's equivalent seeing some success. It is important for the parties to be committed to mediation and for the process to remain confidential. At the institutional level, the relevant organisations may consider reviewing the Framework for Alternative Dispute Resolution for Sports to ensure its continued relevance in Singapore.

47 At the end of the day, the SNOC, various NSAs and their athletes want to push Singapore's sporting achievements to greater heights. It is hoped that parties can look to mediation as a powerful tool resolve their disputes and to improve their working relationships.
