

5 Things I learnt as a Junior (Shadow) Mediator

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At a glance – As a mediator looking to do your part in any mediation well:

- It matters that you prepare well before the mediation.
- The logistics to an online mediation is as important in a physical one. Choose your platform wisely.
- Mediation is about creativity – think outside the box
- Listen with the intent to understand, not to respond
- A mediator is never a judge

Despite having only been in practice as a lawyer for slightly over two years, I have had the privilege of participating as a shadow mediator in two multi-jurisdictional IP mediation sessions conducted by [Joyce A. Tan](#).

The first was a gruelling, albeit fruitful, 19.5 hours long in-person mediation session at our offices. The second and more recent session was conducted online exclusively as it was amid the COVID-19 pandemic. Detailed write-ups by IPOS on these mediation sessions can be found [here](#).

After experiencing the entire process – from pre-mediation preparation and planning to the conduct of the actual session – I gleaned nuanced insights that involved managing and tailoring the mediation experience to the parties' needs and specifics of the case.

In retrospect, based on the two mediation sessions, here are five things that I have learnt while working alongside Joyce as a shadow mediator:

1. **What you do before the mediation matters:** Going beyond basic preparatory work, take the extra effort to understand the position of each party through pre-mediation sessions; it can make a measurable difference in the mediation outcome.

The benefits are manifold: it allows the mediator to establish a connection of trust and familiarity with the parties involved, allay fears and misconceptions, identify impediments to settlement, as well as assess the gap to be bridged between the parties. This translated to a more targeted and productive session during the actual mediation, as all parties have been acclimatised with the mediator and process.

2. **Logistics are important too:** This is commonly taken for granted for in-person mediation. However, the new normal of mediation is held online – something which we were unaccustomed to. It forced us to adapt our logistics in order to replicate an in-person mediation experience seamlessly through an online medium.

Examples of additional logistical decisions are: deciding on the video conference platform, familiarizing ourselves with said platform features, and ensuring language translation support through special

arrangements for parties to be with their lawyers (including me with Joyce) all while complying with COVID-19 safe-distancing measures.

- 3. Mediation is a creative process:** Mediation sessions are commonly held in a relatively informal setting and are not as rule-driven in comparison to court proceedings. This gives room for flexibility in the mediation process to both the parties involved and the mediator to think outside the box in the process of solution resolution. The mediator can adapt the conduct of each mediation session based on the surrounding unique circumstances.

For example, we were alerted by colleagues to the phenomenon known as ‘Zoom fatigue’ (yes, it’s real!) due to extended hours of virtual engagement. To accommodate this, the online mediation meetings were tweaked to be conducted via multiple short private sessions, with parties taking turns to convene online at scheduled timeslots.

- 4. Listen with the intent to understand and not to respond:** Also known as empathic listening, I have observed first-hand how parties become more invested and cajoled to open up when the mediator addressed the points raised by asking good questions and providing reassurances, in addition to positive reinforcement through body language such as nodding and not interrupting. By doing so, the parties involved is influenced that the mediator is genuine in attempting to relate and understand their views. In our case, the parties became more comfortable and open to sharing their thoughts where they eventually shared compelling information, helping us to build the case for a suitable compromise to reach a settlement.

- 5. Note to self – A Mediator is Never a Judge:** When Joyce asked whether I will now be able to conduct my own mediation after having shadowed her twice, I immediately knew the answer was ‘no’, although I could not quite put my finger on a specific reason other than the fact that I needed much more exposure than two sessions.

After some reflection, I feel that the most challenging part of being a mediator is maintaining impartiality and not let inherent biasness seep in to take sides or get caught up with the merits of the case – even when the outcome seems so palpably apparent. A perspective that Joyce shared is to unswervingly remind yourself that your role as a mediator is not to be a judge on who is right or wrong, but to lead towards a resolution that both sides would be contented with.

To end off, here is a screen capture of Joyce and me in our sitting arrangements, which we have determined to be the most optimal after numerous rounds of reshuffling the furniture and ourselves, all dressed-up and ready for the online mediation session 😊



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