

**SIMI News Issue #3 (December 2023)**

# Launch of CIIM Volume 8!

The book launch was officiated by Senior Parliamentary Secretary,  
Ministry of Health and Ministry of Law.



The 8th edition of Contemporary Issues In Mediation (CIIM), SIMI's thought-leadership publication, was officially launched on 24 October 2023 at the NUS Faculty of Law.

We were honoured to have Mdm Rahayu Mahzam, Senior Parliamentary Secretary, Ministry of Health and Ministry of Law, as our Guest-of-Honour at the book launch. This was the second time around for Mdm Rahayu Mahzam as she had also graced the launch of the inaugural issue of CIIM in August 2016!

***“The Government will continue our work in developing the mediation sector, by ensuring that our regime and environment support mediation, and promoting Singapore mediation services locally and internationally through events like the Singapore Convention Week. As mediation continues to gain traction, I look forward to more exchanges on it, and more***

**volumes of CIIM in years to come.” - Mdm Rahayu Mahzam, at the launch of CIIM Volume 8.**  
[\[Click here for the full speech\]](#)

**“It has been three years since the ratification of the Singapore Convention on Mediation (“SCM”). The SCM has arguably created a profound impact on thought leadership in the area of mediation and has since engendered rich discourse on its applicability and feasibility in the world of modern mediation practice. CIIM Volume 8 adds further food for thought to this rich discourse with essays that shed light on the diversity of issues and challenges that define the contemporary mediation landscape today,” said Prof Joel Lee, Chairman of SIMI and Co-editor of CIIM Volume 8.**

In his speech, Mr Melvin Loh, Senior Lecturer at SUSS Law and Guest Editor of CIIM Volume 8, underscored CIIM’s importance in seeking to empower students to be brave and to provide the mediation community with their hope, research and guidance in shaping the world they would soon be entering into as working professionals.

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**Endorsements from an experienced academic, as well as a professional mediator.**

“This is a terrific array of topics that is sure to provide useful information and thought-provoking reflections for its readers,” said Ms Andrea Kupfer Schneider, Professor of Law, Cardozo School of Law & Director, Kukin Program for Conflict Resolution.

“If I may offer one encouragement to all of us involved in mediation, it is to recognise the breadth of wisdom and learning across the whole mediation field - and beyond it - and to stay curious and open to what each of us can learn from others ... CIIM helps us to do just that,” echoed Bill Marsh, International Mediator, SIMI Certified Mediator.

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CIIM is a novel series with content that originates from SIMI’s annual mediation essay competition for law students. The CIIM series has found its way into the international academic publishing world through our partnership with World Scientific Publishing Co Pte Ltd. [\[Click here for more information on CIIM\]](#)

The publication of CIIM aligns with SIMI’s mission to promote the development of professional mediation practice through research and thought-leadership.



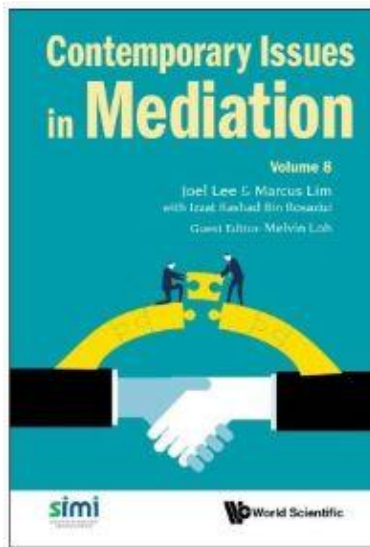
Find out more about the essays in CIIM Volume 8 in the article below.

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## TOP STORIES

## Through the Lenses of Young Minds



**“Contemporary Issues In Mediation (CIIM) is an important project that brings to the forefront, each year, the best essays by tertiary students from across the world on the topic of mediation.” - Mr Melvin Loh, Guest Editor, CIIM Volume 8, which was officially launched on 24 October 2023**

Covering a diverse range of issues, CIIM Volume 8, which was officially launched on 24 October 2023, touches on pertinent themes of mediation on the global stage as well as how it plays out closer to home.

The nine essays featured in the book were selected from 25 entries received in this year’s Annual CIIM Research Essay Competition.

In her essay, **“The Hesitation of the European Union in Adopting the Singapore Convention on Mediation: Perspectives from International Relations Theory”**, which won the runner-up prize, Elyssa Tan shared that mediation’s very crux and fundamental benefit – its ability to harmonize different perspectives – was what guided and inspired her essay.



After practising as a disputes lawyer in Singapore, Elyssa’s desire to acquire different perspectives saw her embarking on a graduate degree in International Relations in Sweden. Guided by three different perspectives in International Relations Theory, her essay endeavors to explain a puzzling phenomenon on the international sphere – why none of the 27 member states of the EU have signed the Singapore Convention on Mediation despite its global benefits. “It is my hope that the views expressed in my essay can provide an academic starting point for further consideration of this international phenomenon,” said Elyssa.

Elyssa’s interest in mediation was cultivated during her days at a law firm, where she witnessed the power of mediation to resolve disputes in a time and cost efficient manner while harmonising vastly different perspectives and preserving relationships, in a complex 7-party dispute which was resolved within one day at a mediation session, while another construction dispute which went to trial lasted for three years and had to be appealed.

*Elyssa is currently a Contract and Claim Manager with Siemens Gamesa Renewable Energy AB.*

Here's a snapshot of the other essays featured in CIIM Volume 8:

### **Operationalising Art 5(1)(e) of the Singapore Mediation Convention**

In this winning entry, Valerie Tan provides a critical analysis of Article 5(1)(e) of the Singapore Convention on Mediation (“grounds for refusing relief”). Among other issues, the essay mainly discusses the definition and threshold of particular terms used in the Article such as “serious breach” and “standards applicable to the mediator or the mediation”. It also considers whether evidentiary proof requirements under the Article may affect the confidentiality of the mediation process.

### **Keeping Confidentiality or Pursuing Transparency: The Dilemma of Transparency in Investor-State Mediation Mechanism**

Fan Xiaoyu highlights the prevalent need to establish the right balance between confidentiality and transparency in investor-state mediation (“ISM”), which involves public interests and therefore cannot conform to strict confidentiality as per conventional mediation processes. The article juxtaposes ISM with investor-state arbitration, explains why ISM requires transparency from a theoretical and practical perspective, and analyses the tension between confidentiality and transparency in great detail. Finally, it discusses possible ways on how to redesign existing guidelines to achieve this right balance between the two seemingly opposing concepts.

### **Healing the healer: It is okay to be not okay**

Exploring the phenomenon of “mediator burnout” in this essay, Gini Wong unpacks the components of mediator burnout, what causes it, as well as other related effects that mediators might encounter when they suffer from this phenomenon. The essay canvasses the implications of mediation burnout on both the mediator as well as the mediation process. Finally, it proposes possible solutions for mediators to tackle mediation burnout, such as practicing self-care and establishing mediator support groups.

### **Navigating two different truths in family mediation: one size will not fit all**

Neo Xin Xuan examines the role of a family mediator, focussing specifically on “high conflict personalities” (HCPs) and how the mediator has to adopt a slightly different approach when dealing with these individuals. The article analyses the role of the family mediator in such a context and offers possible techniques and strategies that they can employ to prevent HCPs from hindering the mediation process, such as influencing the power balance and embracing silence. It also briefly distinguishes the family mediator from the role of a therapist, though acknowledging that they do share similarities in certain aspects.

## **The Fundamental Concept of Voluntariness in Mediation: Is Mandatory Mediation an Oxymoron?**

Nicole Ng looks into the legitimacy and effectiveness of court-mandated mediation processes in Singapore. For the former, the article broadly considers two issues that may have implications on the legitimacy of such mandatory mediation processes. Firstly, whether voluntariness, a crucial tenet of mediation, is present in such court-mandated mediation processes, given that parties are compelled to enter into the mediation process to begin with. Secondly, whether mandatory mediation contravenes the right of parties to have access to a courtroom and therefore, the right to access of justice.

## **In Pursuit of Therapeutic Justice: Mediation and Singapore's Family Justice System**

Christabelle Tan reviews the interrelatedness between mediation, the methodology of therapeutic justice and the family justice system in Singapore. The article provides that mediation comports well with the vision of Singapore's family justice system and has been widely utilised as an official course of action supported by the Singapore courts. It also provides a critique of the application of mediation in the Singaporean family justice context, and suggests various alternatives and improvements e.g., a possible opt-out option for parties who may be averse to the mediation process.

## **Children Should Be Heard To Be Seen: Including Children in Divorce Mediations**

Tan Pei Han examines the role that children may be able to play in divorce mediation, and whether this would be in the "best interests of the child". This is especially so in mediation sessions where the interests of the child and the parents may get conflated and entangled, making the child seem like a passive participant in the entire process. It then considers the legal right of children to be heard in legal proceedings, as well as the pros and cons of allowing children to have a direct voice in the divorce mediation process.

## **Challenges to Ratification and Practice of the Singapore Convention on Mediation in China**

Tao Chongyang delves into the potential difficulties that China faces in ratifying the Singapore Mediation Convention, in spite of its great practical applicability in the country. The article identifies several reasons, such as the hesitation of implementing the Convention's direct enforcement mechanism of such agreements in China and the lack of practical background for individual mediation in China. It also argues, from both a commercial and legal perspective, why China should ultimately adopt and ratify the Convention.

To purchase copies of CIIM Volume 8, please click [here](#).

# Ensuring Quality in Cross-Border Mediation: The Place of Standards

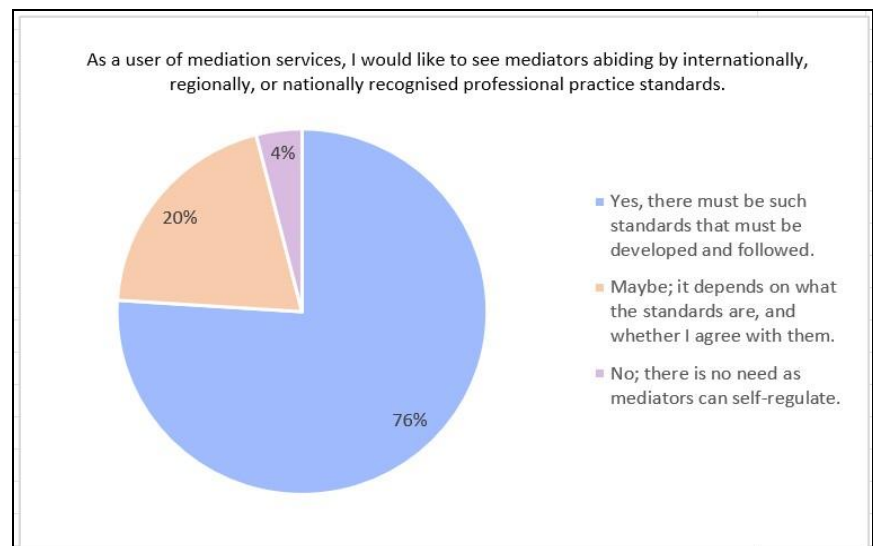
*Organised in conjunction with the Singapore Convention Week 2023*

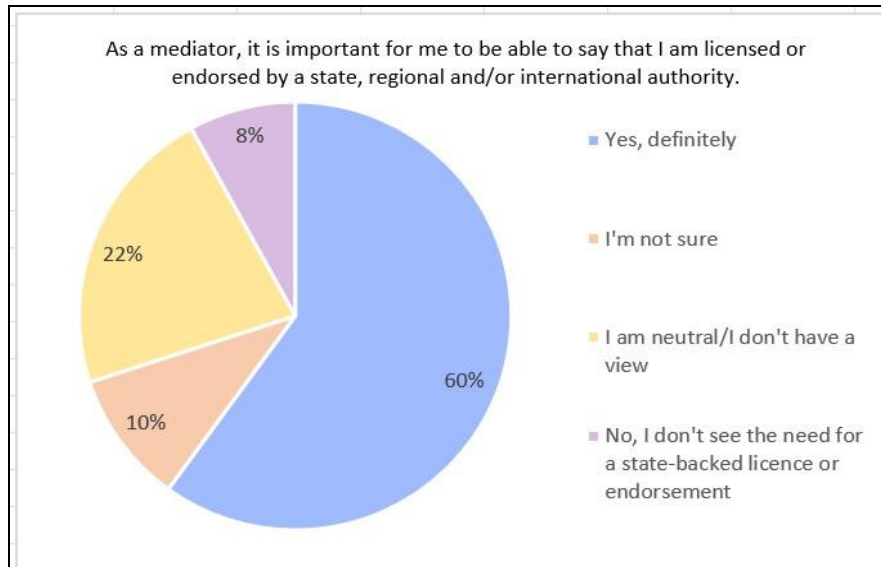


Bringing together a distinguished panel of speakers comprising leaders of the Alliance of Organisations for Mediation Standards, SIMI organised a webinar on the topic, "Ensuring Quality in Cross-Border Mediation: The Place of Standards", on 1 September 2023. Moderated by Mr Claude Amar, the session featured presentations by Prof Joel Lee, Ms Josphine Hadikusumo, Ms Ana Gonçalves and Mr Francis Law, who shared their invaluable knowledge and insights on the importance of global standards in mediation and how standards could be aligned and harmonised across jurisdictions.

The webinar was attended by participants from Asia and other regions across the globe.

In polls conducted during the webinar, 60% of respondents felt that it was necessary for a mediator to be licensed or endorsed by a state, regional and/or international authority; and 76% replied that, as users of mediation, they would like to see mediators abiding by internationally, regionally or nationally recognised professional practice standards.





These responses align with the work that SIMI is doing as the independent professional standards body for mediation in Singapore and the region, which aims to establish high quality standards in mediation through accreditation schemes for mediators, mediation service providers and training providers.

To re-visit the issues discussed, click [here](#).

## Standards in Cross-Border Mediation: Does It Matter?

*Delving into the whats and hows of harmonising standards in cross-border mediation*

What should be the "gold standard" for mediators in a cross-border mediation? Is it possible to have one common standard when each jurisdiction has its own unique culture, styles, norms, laws and regulations for mediators? Why does it even matter?

These issues were explored in the recent webinar on "Ensuring Quality in Cross-Border Mediation: The Place of Standards" (see article above). In this article, we summarize the main points from some of the presentations.

### **Standards and professionalism in cross-border mediation**

In her presentation, Ms Hadikusumo noted that while standards abound across countries, courts and centres, there was currently no universally accepted global standard, and several individual mediation centres impose their own standards with variance based on nationality, culture, legal setting, mediation style and preference.

There was, therefore, a diversity of approaches when it came to mediation, and Ms Hadikusumo highlighted several potential issues that could arise from this diversity. Firstly, different standards would inevitably lead to differing interpretations and applications of these aforementioned standards, which would be extremely relevant in cross-border

mediations. Secondly, the different standards could potentially cause uncertainty for first time users of the mediation process. Other potential issues she highlighted included the mismatched expectations between the mediator and the mediating parties, as well as the incongruence of mediation approaches by two mediators in a co-mediation.

Notwithstanding that, Ms Hadikusumo posited that Articles 5(1)(e) and (f) of the Singapore Convention on Mediation might provide some guidance as to some form of minimum standards that could be applicable to all cross-border mediations around the world. These particular SCM provisions centred around a “serious breach by the mediator of standards applicable to the mediator or mediation ... that raise justifiable doubts as to the mediator’s impartiality or independence”. The phrasing of these provisions assumed a certain presence and adherence to a set of standards but did not stipulate which “standards” were being referred to. This entailed some form of flexibility on what exactly these “standards” were.

Despite the absence of common standards, Ms Hadikusumo noted that there existed common elements of a mediation across countries and centres such as self-determination, neutrality/impartiality, confidentiality and competence of the mediator. However, there was still great variance on the qualifying pathways for someone to become a mediator in different institutions.

Ms Hadikusumo felt that mediation organisations could forge their own paths in this aspect by forming alliances for mediation standards. By harmonising their standards, this created uniformity of standards across the organisations which would ultimately benefit users of mediation. She also strongly championed for mediator training to be made mandatory, as was required by the Alliance, to ensure the competence level of mediators and to avoid a clash of standards in a situation which involved co-mediators from different organisations or jurisdictions.

### **Setting safeguards through standards**

Prof Joel Lee began by sharing the conundrum that the process of trying to harmonise standards into one universal standard would most likely simply result in the creation of yet another new standard! Nonetheless, the topic of universal standards was an important one that needed further deliberation.

He highlighted the importance of having a discussion on standards in the light of Article 5(1)(e) of the Singapore Convention on Mediation, where a party could refuse registration or enforcement under the Convention on the basis of a “serious breach” of applicable mediation standards. He went on to propose a non-comprehensive list of reference points for which these “standards” could follow - such as the standards of the Country in which enforcement was being sought, the standards specified in the agreement to mediate, the standards as indicated by the mediator, the standards applicable to the mediator by their associated mediation organisation, or even the standards as established by independent standards bodies such as SIMI.

Prof Lee also raised certain challenges that institutions could face in identifying the applicable standards to use. Firstly, the term “standard” could be interpreted differently by

different parties, depending on the role that they were intended to play in the mediation process. For instance, while standards should be pursued as the baseline (minimum) of each mediation, parties may take standards from an aspirational point of view (e.g., “gold” or “platinum” standards).

Secondly, and relatedly, the term “standards” was often used interchangeably with other terms such as “competencies” and “benchmarks”, which all referred to different things. In Prof Lee’s view, “standards” set the over-arching expectations of the mediation, while “competencies” would go into more granular details, and “benchmarks” would serve as tracking checkpoints.

Thirdly, Prof Lee opined that the notion of “universal standards” may be difficult to apply consistently across the board, as certain elements thought to be common, may actually not be common across all jurisdictions and cultures. For instance, some jurisdictions did not employ the practice of private sessions in mediations, even though it was commonly applied in most mediations around the world. The question would then arise as to whether an international mediator who used private sessions in such a jurisdiction, would be liable for a breach of standards.

Prof Lee acknowledged that the issue of universal standards was an important one, yet not without its complexities and challenges. It was certainly an issue that would require further and deeper conversations as mediation grows in importance as one of the key dispute resolution tools in commercial cross-border disputes.

### **Promoting Certainty, Credibility and Inter-operability in Cross-Border Mediation**

Quoting from a book, entitled “The Variegated Landscape of Mediation” by Manon Schonwille and Fred Schonwille, that carried out a survey of the mediation landscape across 60 countries, Ms Gonçalves pointed out the conclusion that the authors came to:

*“It is difficult to extract any clear standards or processes for mediation when 2 parties come from different jurisdictions, especially when the expectations, styles and approaches to mediation vary greatly from country to country.”*

She highlighted that while standards may contain a formula for the best way of doing something, this may not be the best approach in a cross-border mediation where flexibility and self-determination have been identified as essential success factors.

She then went on to touch on two approaches in dispute resolution:

- An adjudicative process based on a rules-based standard which involved laws, precedents, procedural rules, and rights and due process; and
- A needs-based framework characterised by party-centricity, confidentiality, informality and adaptability.

While the rules-based standard relied on an external authority to make a decision, the needs-based framework (which mediation was based on) prioritised the parties’ ability to shape the resolution process of their dispute according to their needs and preferences.

The challenge in mediation was in creating a framework that would bring more certainty to parties about the processes and approaches used by the mediator, while at the same time strengthening the platform for enforceability of cross-border mediation settlement agreements under the Singapore Convention on Mediation. She pointed to the Universal Disclosure Protocol for Mediation (“UDPM”), which was a broad framework requiring mediators to offer full disclosure on a list of six elements (the role of the mediator and the parties, general process, conflict of interest, confidentiality, technology and the impact of the venue) governing the mediation process before the start of the mediation.

The UDPM ([www.udpm.org](http://www.udpm.org)) essentially aimed to harmonise how mediators discussed their mediation process with the parties and therefore allow for recognition and adaptation of the processes to cater for cultural and national differences. This would serve to achieve a level of standardisation of the mediation process.

Ms Goncalves noted that as of August 2023, UDPM had gained a strong momentum as many mediation institutions had already endorsed the protocol. She concluded with a wish for greater recognition and adoption of the UDPM by all stakeholders involved in commercial cross-border mediation.



## SIMI Welcomes the Law Society as our Newest Registered Service Provider (RSP)!

SIMI is pleased to welcome the Law Society as our newest Registered Services Provider as at 7 November 2023.

*“The Law Society of Singapore, established under the Legal Profession Act in 1967, proudly serves as a SIMI Registered Service Provider. Through our Law Society Mediation Scheme (“LSMS”), we offer a cost-effective and timely avenue for resolving disputes via mediation. All civil disputes can be mediated under LSMS, including family matters.*

*The Law Society is committed to providing excellent alternative dispute resolution services. Our panel consists of qualified lawyers with extensive expertise in conflict resolution. Their wealth of knowledge and experience ensures an unbiased assessment of disputes. We take pride in our commitment to impartiality, confidentiality, and professionalism.”*



## Join the WIPO Arbitration & Mediation Centre Panel

The WIPO Centre invites applicants, including SIMI-accredited mediators who have experience with intellectual property or technology disputes, to apply to join its panel of neutrals.

The World Intellectual Property Organisation (WIPO) is the global forum for intellectual property (IP) services, policy, information and cooperation. It is a self-funding agency of the United Nations, with 193 member states. WIPO's mission is to lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all.

The WIPO Arbitration and Mediation Center (WIPO Centre) offers time and cost efficient alternative dispute resolution (ADR) options, such as mediation, arbitration, expedited arbitration, and expert determination to enable private parties to settle their domestic or cross-border commercial disputes. The WIPO Center is international and specializes in IP and technology disputes. It is also the global leader in the provision of domain name dispute resolution services under the WIPO-designed UDRP.

The application process normally includes, among others, the following steps:

- The applicant contacts the WIPO Center requesting the inclusion in the WIPO List of Neutrals.
- If not provided by the applicant, the WIPO Center requests the applicant to complete the WIPO model profile.
- Applications are considered by the WIPO Center Neutrals Committee. Consideration notably includes factors such as legal or technical qualifications, professional experience (areas of intellectual property law, technical or business areas), professional experience in dispute resolution, including court litigation, arbitration, mediation, expert determination and other factors.

For additional information on WIPO Neutrals, kindly contact [arbiter.neutrals@wipo.int](mailto:arbiter.neutrals@wipo.int).

For more information about applying to join the panel, kindly click [here](#).

## SIMI Board Chairman Conferred NDP Award 2023



SIMI Board Chairman, Prof Joel Lee Tye Beng, was conferred the Public Service Medal [Pingat Bakti Masyarakat] at this year's National Day Awards 2023 . The National Day Awards recognise various forms of merit and service to Singapore.

Prof Lee was nominated for his efforts in strengthening the quality of Singapore's services for community, domestic and international mediation in his role as SIMI's Chairman.

Prof Lee was a member of the International Commercial Mediation Working Group (ICMWG), convened by the Chief Justice and MinLaw in 2013, which led to the establishment of SIMI. As Chairman of SIMI since November 2014, he was instrumental in setting the strategic direction of SIMI and developing its structure, processes, policies and initiatives.

Over the years, Prof Lee has made significant contributions to the development of the international commercial landscape in Singapore. As the Chairman of SIMI, he professionalised mediation through the development of a credentialing scheme for different tiers of mediators; worked with various organisations to provide mediation training; published reference materials for mediators to guide them on various aspects of mediation, as well as to update them on new developments; and promoted mediation, especially Singapore mediation.

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## Congratulations to our New CMs and Level 3 Mediators, and Newly-Accredited Mediators!



New Certified Mediator, Christopher Olsson Lønes from Norway, was introduced to mediation through the world of negotiation competitions as a law student at the University of Oslo.

“I found mediation to be where my skills and passions united and decided to work towards a career in mediation,” said Christopher. He also acknowledges the part that his mentors and coaches, Roar Thun Wægger, CEO of Wægger Negotiation Institute, and Sofia Giannopoulou, Director at the European Institute for Conflict Resolution, played in inspiring his interest in mediation.

Since he began practising as a mediator in 2021, Christopher has conducted 180 mediations in the past two years, with 80 percent of his cases resulting in a settlement. He has

mediated a range of family and cross-border commercial cases with parties from different cultures and languages. Christopher is currently Mediator & Legal Adviser at the Rent Dispute Tribunal, and Mediator & Facilitator at the Wægger Negotiation Institute

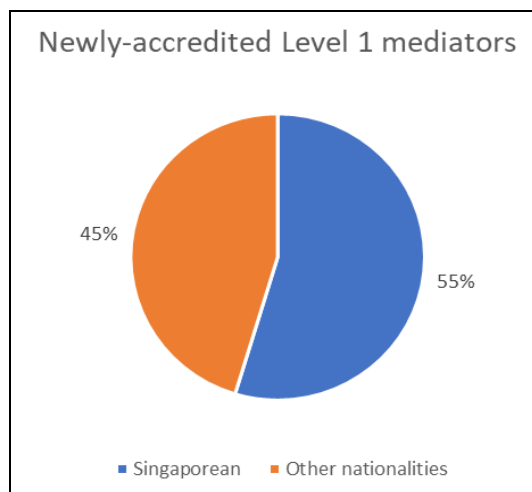
His advice to new mediators on building up a mediation practice is to “get accredited, get practice, and find ways to get experience, eg mentorships etc”.

**“My experience is that mediation is a “you need experience to get experience” kind of deal. At the start, it’s difficult to get cases walking in from the street. So, getting accredited and connected to institutions/companies/panels is important,” advises Christopher.**

Christopher believes that accreditation is crucial as it establishes the trust and credibility of the mediator when potential users know that the mediator’s skills, competences and professionalism have been endorsed by an independent mediation body.

Christopher’s credentialling journey began after he received training from ADR ODR International, one of SIMI’s Registered Training Program partners. Now that he has achieved SIMI Certified Mediator status, he will be seeking equivalent status with International Mediation Institute (IMI) through the [cross-recognition scheme](#) that SIMI has with IMI as this could help to strengthen his credentials as a mediator in Europe.

SIMI is the premier independent professional standards body for mediation in Singapore and the region. The SIMI tiered credentialling system enables individuals at different levels of experience to receive recognition. SIMI accreditation at various levels attests to the high quality of service of a SIMI-accredited mediator. For more information on the requirements to achieve the different levels of accreditation, click [here](#).



### Certified Mediators

Our heartiest congratulations to Ms Sashikala Rajah Indhiran (SG) and Mr Christopher Olsson Loenes (Norway) for attaining the highest level of accreditation as SIMI Certified Mediators in 2023!

### **Level 3 Mediators**

Congratulations also to Ms Lavitah Goh and Mr Anthony Koo Nam Kok for achieving SIMI Mediator Level 3 in 2023!

### **Newly-accredited Mediators**

We warmly welcomed 64 newly-accredited Level 1 mediators into the SIMI community in 2023! These new mediators comprise Singaporeans, as well as Americans, British, Filipinos, Indians, Malaysians, Sri Lankans and many others.

Click here for the list of [Level 1](#), [Level 2](#) and [Level 3](#) mediators.

## *Kudos to our CDR Award Winners!*

The National SMU-SIMI Collaborative Dispute Resolution Award 2023



Our heartiest congratulations to Felicia Leong and Prakhunwicha Sararaksh, joint winners of this year's National SMU-SIMI CDR Award 2023!

“Receiving the National SIMI-SMU CDR Award has further reinforced my commitment to continuously refine my skills, learn from others and contribute to the advancement of CDR to shape future Singaporean teams.” - Ms. Felicia Leong

“I am truly honored to receive the National SMU-SIMI CDR Award this year. This recognition serves as a reminder that my journey in CDR is not just a personal pursuit but a commitment to inspire and mentor the next generation of mediators and negotiators.” - Mr. Prakhunwicha Sararaksh

Read more about Felicia and Prakhunwicha [here](#).