

**Global Pound Conference Series Singapore 2016 (17-18 March 2016):
Shaping the Future of Dispute Resolution & Improving Access to Justice**

**Session 4 of GPC Core Questions – Interactive Voting & Discussion:
Promoting better access to justice: What action items should be considered and by whom?**

Voting Results

Question 1



Session 4 Question 1
Who has the greatest responsibility for taking action to promote better access to justice?
(Please rank your 3 preferred answers in order of priority: '1' = most responsible, '2' = 2nd most responsible, '3' = 3rd most responsible etc.)

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator,...	Influencer: A researcher, educator,...
1	3.Governments/ministries of justice 34%	3.Governments/ministries of justice 43%	3.Governments/ministries of justice 36%	3.Governments/ministries of justice 43%	3.Governments/ministries of justice 45%
2	1.Adjudicative Providers: judges and... 28%	1.Adjudicative Providers: judges and... 29%	1.Adjudicative Providers: judges and... 35%	1.Adjudicative Providers: judges and... 33%	1.Adjudicative Providers: judges and... 21%
3	2.External lawyers 18%	2.External lawyers 16%	2.External lawyers 16%	2.External lawyers 11%	2.External lawyers 15%
4	4.In-house lawyers 11%	5.Non-Adjudicative Providers: mediators and... 8%	5.Non-Adjudicative Providers: mediators and... 6%	5.Non-Adjudicative Providers: mediators and... 7%	5.Non-Adjudicative Providers: mediators and... 9%
5	5.Non-Adjudicative Providers: mediators and... 6%	6.Parties (non-legal personnel) 1%	4.In-house lawyers 2%	6.Parties (non-legal personnel) 2%	6.Parties (non-legal personnel) 1%
6	6.Parties (non-legal personnel) 1%	4.In-house lawyers 1%	6.Parties (non-legal personnel) 2%	4.In-house lawyers 1%	4.In-house lawyers 1%

Question 2

Session 4 Question 2

What is the most effective way to improve parties' understanding of their options for dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1' = most effective, '2' = 2nd most effective, '3' = 3rd most effective etc. Please use '0' to indicate options that are not obstacles)

2.Education in business and/or law schools and the broader business community about adjudicative and non-adjudicative dispute resolution options
27%

5.Requiring parties to attempt non-adjudicative options (i.e., mediation or conciliation) before initiating litigation or arbitration
20%

3.Procedural requirements for all legal personnel and parties to declare they have considered non-adjudicative dispute resolution options before initiating arbitration or litigation
19%

1.Creating collaborative dispute resolution centres or hubs to promote awareness
19%

4.Providing access to experts to guide parties in selecting the most appropriate dispute resolution process(es)
15%

Other
1%

Session 4 Question 2

What is the most effective way to improve parties' understanding of their options for dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1' = most effective, '2' = 2nd most effective, '3' = 3rd most effective etc. Please use '0' to indicate options that are not obstacles)

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator,...	Influencer: A researcher, educator,...
1	2.Education in business and/or... 30%	2.Education in business and/or... 31%	2.Education in business and/or... 25%	2.Education in business and/or... 25%	2.Education in business and/or... 25%
2	5.Requiring parties to <u>attempt</u> ... 19%	5.Requiring parties to <u>attempt</u> ... 25%	3.Procedural requirements for all... 22%	1.Creating collaborative dispute resolution... 22% 3.Procedural requirements for all... 22%	4.Providing access to experts... 23%
3	1.Creating collaborative dispute resolution... 18% 4.Providing access to experts... 18%	3.Procedural requirements for all... 20%	1.Creating collaborative dispute resolution... 20% 5.Requiring parties to <u>attempt</u> ... 20%	5.Requiring parties to <u>attempt</u> ... 19%	1.Creating collaborative dispute resolution... 22%
4	3.Procedural requirements for all... 14%	4.Providing access to experts... 12%	4.Providing access to experts... 11%	4.Providing access to experts... 12%	5.Requiring parties to <u>attempt</u> ... 15%
5		1.Creating collaborative dispute resolution... 11%	Other 1%		3.Procedural requirements for all... 14%

Question 3

Session 4 Question 3

To promote better access to justice, where should policy makers, governments and administrators focus their attention?

(Please rank your 3 preferred answers in order of priority: 1= best focus, 2= 2nd best focus, 3 = 3rd best focus)

3.Pre-dispute or early stage case evaluation or assessment systems using third party advisors who will not be involved in subsequent proceedings
26%

1.Legislation or conventions promoting recognition and enforcement of settlements including those reached in mediation
25%

2.Making non-adjudicative processes (mediation or conciliation) compulsory and/or a process parties can "opt-out" of before adjudicative processes can be initiated
23%

5.Use of protocols promoting non-adjudicative processes (mediation or conciliation) before adjudicative processes
21%

4.Reducing pressures on the courts to make them more efficient and accessible
4%

Other

1%

Session 4 Question 3

To promote better access to justice, where should policy makers, governments and administrators focus their attention?

(Please rank your 3 preferred answers in order of priority: 1= best focus, 2= 2nd best focus, 3 = 3rd best focus)

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator,...	Influencer: A researcher, educator,...
1	1.Legislation or conventions promoting... 31% 3.Pre-dispute or early stage... 31%	3.Pre-dispute or early stage... 27%	1.Legislation or conventions promoting... 28%	1.Legislation or conventions promoting... 27% 3.Pre-dispute or early stage... 27%	5.Use of protocols promoting... 26% 3.Pre-dispute or early stage... 26%
2	2.Making non-adjudicative processes (mediation...) 21%	2.Making non-adjudicative processes (mediation...) 23%	2.Making non-adjudicative processes (mediation...) 25%	2.Making non-adjudicative processes (mediation...) 25%	1.Legislation or conventions promoting... 22% 2.Making non-adjudicative processes (mediation...) 22%
3	5.Use of protocols promoting... 16%	5.Use of protocols promoting... 22%	5.Use of protocols promoting... 20%	5.Use of protocols promoting... 19%	Other 1% 4.Reducing pressures on the... 1%
4	4.Reducing pressures on the... 1%	1.Legislation or conventions promoting... 20%	3.Pre-dispute or early stage... 19%	4.Reducing pressures on the... 1%	
5		4.Reducing pressures on the... 7%	4.Reducing pressures on the... 7%		

Question 4

Session 4 Question 4

Which of the following will have the most significant impact on future policy-making in dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1' = most significant, '2' = 2nd most significant, '3' = 3rd most significant)

1.Demand for certainty and enforceability of outcomes

36%

2.Demand for increased efficiency of dispute resolution processes, including through technology.

31%

5.Demand for increased uniformity and standardisation

10%

6.Demand for processes that allow parties to represent themselves, without lawyers

9%

4.Demand for increased transparency

8%

3.Demand for increased rights of appeal/oversight of adjudicative providers

6%

Other

1%

Session 4 Question 4

Which of the following will have the most significant impact on future policy-making in dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1' = most significant, '2' = 2nd most significant, '3' = 3rd most significant)

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator,...	Influencer: A researcher, educator,...
1	1.Demand for certainty and... 34%	1.Demand for certainty and... 39%	1.Demand for certainty and... 36%	1.Demand for certainty and... 38%	2.Demand for increased efficiency... 34%
2	2.Demand for increased efficiency... 34%	2.Demand for increased efficiency... 29%	2.Demand for increased efficiency... 30%	2.Demand for increased efficiency... 28%	1.Demand for certainty and... 32%
3	4.Demand for increased transparency 11%	5.Demand for increased uniformity... 9%	6.Demand for processes that... 12%	6.Demand for processes that... 12%	5.Demand for increased uniformity... 11%
4	6.Demand for processes that... 9%	3.Demand for increased rights... 9%	3.Demand for increased rights... 9%	3.Demand for increased rights... 9%	4.Demand for increased transparency 11%
5	3.Demand for increased rights... 6%	4.Demand for increased transparency 8%	5.Demand for increased uniformity... 11%	5.Demand for increased uniformity... 9%	6.Demand for processes that... 8%
6		6.Demand for processes that... 5%	4.Demand for increased transparency 4%	4.Demand for increased transparency 7%	3.Demand for increased rights... 11%
		Other 1%		3.Demand for increased rights... 5%	

Question 5

Session 4 Question 5

What innovations/trends are going to have the most significant influence on the future of dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1' = most significant, '2' = 2nd most significant, '3' = 3rd most significant)

3.Greater emphasis on collaborative instead of adversarial processes for resolving disputes

33%

1.Changes in corporate attitudes to conflict prevention

21%

5.Harmonisation of international laws and standards for dispute resolution systems

17%

6.Technological innovation (e.g. on-line dispute resolution)

13%

2.Enhanced understanding regarding how people behave and resolve conflict (e.g. from brain and social sciences)

13%

4.Greater emphasis on personal wellbeing and stress reduction of parties

4%

Other

0%

Session 4 Question 5

What innovations/trends are going to have the most significant influence on the future of dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1' = most significant, '2' = 2nd most significant, '3' = 3rd most significant)

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator,...	Influencer: A researcher, educator,...
1	3.Greater emphasis on collaborative... 32%	3.Greater emphasis on collaborative... 38%	3.Greater emphasis on collaborative... 32%	3.Greater emphasis on collaborative... 30%	3.Greater emphasis on collaborative... 32%
2	1.Changes in corporate attitudes... 20% 5.Harmonisation of international laws... 20%	1.Changes in corporate attitudes... 21%	1.Changes in corporate attitudes... 23%	1.Changes in corporate attitudes... 23%	2.Enhanced understanding regarding how... 18%
3	6.Technological innovation (e.g. on-line... 12%	5.Harmonisation of international laws... 17%	6.Technological innovation (e.g. on-line... 17% 5.Harmonisation of international laws... 17%	5.Harmonisation of international laws... 15%	1.Changes in corporate attitudes... 17%
4	2.Enhanced understanding regarding how... 11%	6.Technological innovation (e.g. on-line... 11%	2.Enhanced understanding regarding how... 9%	2.Enhanced understanding regarding how... 14%	5.Harmonisation of international laws... 16%
5	4.Greater emphasis on personal... 4%	2.Enhanced understanding regarding how... 10%	4.Greater emphasis on personal... 1%	6.Technological innovation (e.g. on-line... 12%	6.Technological innovation (e.g. on-line... 14%
6		4.Greater emphasis on personal... 4%		4.Greater emphasis on personal... 6%	4.Greater emphasis on personal... 1%

Summary of Discussion by Panelists:

Speakers:

- **Justice Belinda Ang (Moderator)**, Chair, Singapore Mediation Centre (Provider)
- **Dr Eman Mansour**, Director, Investors' Dispute Settlement Centre for General Authority for Investment and Free Zones (Provider)
- **Deborah Masucci**, Chair, International Mediation Institute (User)
- **Gitta Satryani**, Senior Associate, Herbert Smith Freehills LLP (Advisor)
- **Judicial Commissioner See Kee Oon**, Presiding Judge, State Courts of Singapore (Provider)

1. On Question 1:

- 1.1 In respect of who had the most responsibility for taking action to promote better access to justice, all categories of stakeholders agreed with the voting results that ranked governments/ministries first (41%), followed by adjudicative providers (judges and arbitrators or their organisations) (29%) and external lawyers (15%).
- 1.2 Ang J asked panelists for their thoughts on what access to justice involved. Ms Masucci, from the perspective of a user, thought that because courts are pushing ADR, the distinction between ADR and litigation may not be so evident. From corporations' views, what they need is dispute management, in terms of getting the right process to resolve the dispute by weighing what is least expensive and economical, as well as preserves relationships.
- 1.3 JC See, when asked about how courts makes dispute resolution processes available, stated that the majority of cases in the State Courts involve smaller claims (below \$60,000 or at the Small Claims Tribunals). In whichever route they go through, ADR is promoted at every avenue. Well-established court ADR mechanisms are provided by not merely by judge mediators but stakeholders such as volunteer mediators. Reiterating CJ Menon's view about appropriate dispute resolution, JC See stated that the State Courts' approach is to stream cases through the right track in a cost and time efficient manner, and in way that arrives at fair outcomes for the parties.
- 1.4 Ang J observed that when options are offered, it is not a case of one-size-fits-all. Hence parties need to go to their legal advisors for the management of dispute. Ms Satryani agreed, stating that the core role of an advisor is to recognise this reality. Advisors must always bear in mind which jurisdiction and industry a company operates in, and work out dispute management with them at an early stage.
- 1.5 Dr Mansour, when asked about the practice in her jurisdiction, said that her country needs to think about what parties need to achieve in their disputes. From investors' point of view, it is usually a matter of saving time and money. She personally prefers to try mediation before going to the courts. Her country has a system of obligatory mediation for family law, but not for the investor system.

2. **Question 3** concerns which area to pay attention to promote better access to justice.
 - 2.1 Ang J noted that pre-dispute evaluation or assessment systems including ranked highly among voters, and asked the panelists about their views on using early neutral evaluation.
 - 2.2 Ms Masucci responded that there needs to be education so that individuals know the nuances of different processes and are able to make educated choices on the most suitable process. Early neutral evaluation is useful as the expert can help predict the outcome, and parties will have a better understanding on available options for their next steps.
 - 2.3 Ms Satryani added that sophisticated clients do ask their lawyers to include expert evaluations in their contracts. Early neutral evaluation can be used as the first port of all in escalation clauses. It may help parties to know what process to use next, such as mediation.
 - 2.4 Regarding the issue of education, Dr Mansour observed that there was hardly any awareness of mediation in her jurisdiction. One must introduce mediation in universities and legal clinics. Ms Satryani said that advisors work closely with providers and influencers, and so what is needed is continuing education on how disputes can be resolved effectively. We cannot stop at education at the university level.
 - 2.5 One of the options in Question 3 receiving 23% of votes was making non-adjudicative processes compulsory and/or having an opt-out system. Ang J asked whether we should mandate mediation.
 - 2.6 JC See noted that the State Courts currently have the concept of a presumption of ADR, and there is Order 59 of the Rules of Court empowering the court to make an adverse costs order if the judge is of the view that case should have gone to mediation.
 - 2.6 Ms Masucci was of the view that mandating mediation is a way for people to break down inhibitions and gain experience of mediation. However, we should consider that some issues or options be split off from the main dispute and proceed to mediation, while the rest of it continues to litigation. The users' preferences are important as a guide.
 - 2.7 As an advisor, Ms Satryani agreed. If parties have an unpleasant mediation experience, mediation is given a bad name. It is important that users are informed of the pros and cons involved. If mediation is to be mandated, the jurisdiction must make sure it will be processed efficiently so that it will not turn parties off from ADR
 - 2.8 JC See highlighted the need to move away from a "one size fits all cases" approach. Mandatory mediation may be suitable for certain types of cases like matrimonial disputes, but not all cases.

3. Regarding private and court-annexed mediation:
 - 3.1 Ang J asked JC See about the distinction between private mediation and judge-led mediation, noting that parties have to pay fees in private mediation but judge-led mediation in the State Courts is almost free.
 - 3.2 JC See responded that it is free for majority of cases which are Magistrate Court disputes, but not almost free for other cases. Quite recently a small fee of \$250 has been imposed for District Court civil claims of up to \$250,000. He recognised that mediation outside the courthouse comes at a fee, but for higher value fees, courts charge a certain fee as well in order to enhance the professionalism. By way of comment, JC See observed that voters in question 3 did not think that the focus should be on reducing pressures in courts to make them more efficient and accessible. This was a good sign, but JC See stated that it must be recognised that there are still pressures faced by the courts.
 - 3.3 Ang J commented that disputants who are taken through private mediation are given time for things to unfold, whereas judge-led mediation has time constraints. JC See responded that 95% of parties surveyed by the State Courts gave feedback that court mediation helped them to save time and costs, and they were mostly satisfied. He added that his colleagues in the Centre for Dispute Resolution will be able to say that they often give multiple sessions of mediation, and cases are not necessarily quickly resolved in one session.
 - 3.4 Ms Masucci queried whether parties in a settlement conference may be afraid to disagree with the judge's recommendations. JC See answered that most cases in the State Courts' Centre for Dispute Resolution undergo the facilitative style of mediation. the courts do adopt different approaches in mediation, but the style is largely facilitative. The parties' responses thus far have not presented an issue, and many disputants are receptive to the idea that the court is involved in dispute resolution. There is the safeguard being imposed that the judges involved do not preside over the trials of the cases.
4. **Question 5** was in relation to the innovations that are likely to be influential in the future of dispute resolution.
 - 4.1 One of the options was technological innovations, which garnered 13% of the votes. Ang J posed the question of the impact of information technology (IT) on the future role of lawyers.
 - 4.2 Ms Masucci thought that an event like the GPC would push innovation and more information about the available options. Over time, the use of Zoom or Skype to mediate may increase. Technology will be an enabler.
 - 4.3 JC See was of the view that we may not be far off from developments in the horizon, with the current use of IBM Watson. Artificial intelligence is helpful for less complex cases, in which lawyers need not be involved.
 - 4.4 Ms Satryani commented that advisors need not be deterred, as we have seen how technology has disrupted industries but has also given lawyers the opportunity to embrace other opportunities. IT is useful to reduce the number of complex disputes.

4.5 Ang J also asked for views on whether online mediation affects the mediation experience. Several members of the audience responded. Most agreed that face to face conversation was most preferable to observe dynamics, however IT could be used in certain types of dispute when claims are not centered on relationships, or used to complement face to face meetings.

Summarised by Singapore International Mediation Institute (SIMI):

- Associate Professor Joel Lee
- Assistant Professor Dorcas Quek Anderson
- Kelly Zhang
- Walter Seow
- Jun Jin Sei
- Lim Shen-nen