

# Understanding Mediation Practice, Negotiation and the Role of Culture

by

Mr. Danny McFadden, LL.M., FCI Arb,  
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Danny has been a CEDR Director since 2004 and is dually qualified as a lawyer both in Australia and the UK. He has been involved in negotiation, conflict resolution training, mediation and international business for over 20 years. After completing his Masters in Commercial Law he specialised in dispute resolution and international trade. Now based in Hong Kong, and as a CEDR Accredited Mediator, Danny mediates regularly in the commercial, international trade, property and workplace mediation sectors with a particular expertise in cross-cultural/multinational disputes.

Danny is a fluent speaker of both Mandarin Chinese and Indonesian. Before entering the legal profession he worked throughout Asia and has managed a number of businesses providing commercial services to international clients. The experience of running his own businesses in Australia and Asia means Danny fully appreciates the underpinnings of the business environment. He has worked with people of all nationalities and has a clear understanding of the dynamics of mediating and arbitrating across national boundaries.

He has worked to develop CEDR's capacity to offer cross-cultural mediation and his efforts have resulted in CEDR establishing an international mediation service in Beijing with the China Council for the Promotion of International Trade (CCPIT) Mediation Centre, which is the largest in Asia, and providing consultancy to the legislatures of Hong Kong and Vietnam.

In recent years Danny has delivered conflict resolution training courses in Azerbaijan, Cameroon, China, Guyana, Vietnam, the UK and Kazakhstan and is a member of CEDR's training faculty. He is in demand as a speaker and has presented papers on ADR and conflict resolution at conferences in China, Hong Kong, Ireland, USA, UK, Poland, Sweden, Taiwan, Australia and Spain.

In 2008, taking temporary leave of absence from CEDR, Danny joined the United Nations Ombudsman's Office in New York as an expert adviser on the establishment of a new Mediation Division. His report on the design integrated conflict resolution systems formed part of the terms of reference for mediation in the new UN Justice System. In 2009 he spent a further 3 months as the Interim UN Director of Mediation in New York, mediating cases and also assisting in the selection of staff for the new Mediation Division. Danny opened CEDR's first overseas office in Hong Kong in early 2011 and is developing its dispute resolution practice throughout South East Asia. In 2013 he is under contract to the UN and also the World Bank as an on-call mediator and consultant.

Danny is a member of the Hong Kong Steering Committee on Mediation, International Ombudsman Association, Law Society of England and Wales, Civil Mediation Council, International Bar Association, World Jurist Association, Asian Lawyers Association, 48 Group, British Expertise and a Fellow of the Chartered Institute of Arbitrators. He is currently serving on Mediator Panels: United Nations Mediation Division New York, ADR Chambers, CEDR Solve, World Bank Group and CCPIT Mediation Centre Beijing.



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## Understanding the Mediation Process

### ▪ **Effective Dispute Resolution Processes**

1. *By the end of this session the delegate will be able to provide a working definition of mediation and recognise the value of mediation as a legitimate method of case management.*
  1. Awareness/exposure to the characteristics and range of dispute resolution methods.
  2. The ability to identify when each type of dispute resolution process is appropriate.
  3. Understanding the special/unique characteristics of mediation.
  4. How to select the most appropriate dispute resolution process for a case.
  5. Providing the client value and confidence in the mediation process.

### ▪ **The Mediation Process - The Phases of Mediation**

1. *By the end of this session the delegate will understand the aims and objectives of the mediator, and the mediation, throughout the various stages of the mediation process.*
  1. Understanding the various phases of mediation and what to expect in each phase.
  2. Possessing an awareness of the mediator's role in each phase of the mediation.
  3. Overview of some of the major legal issues to consider in mediation.
  4. Knowing what to expect at each stage of the mediation.
  5. Identifying the major legal issues/concerns in mediation and how to deal with/respond to each of these issues.

### ▪ **Convincing Others to Mediate - Promoting the Process to Clients, Other Parties and the Court**

1. *By the end of this session the delegate will be able to understand some of the potential barriers to the use of mediation and will possess the necessary tools to overcome some of these objections.*
  1. Developing persuasion techniques
  2. Understanding CJR implications and court sanctions for non-compliance
  3. Understanding ADR clauses
  4. Introducing the benefits of mediation to assist parties in reaching a decision about using the process
  5. Techniques in persuading hostile parties the need/benefit of mediation

### ▪ **Preparation - People - Preparing the Team for Mediation**

1. *By the end of this session the delegate will be able to consider the main points that they need to bear in mind when preparing for mediation.*
  1. How preparation for mediation differs from that for litigation
  2. Identifying the main preparation issues for parties and lawyers in mediation
  3. Being able to select the most appropriate decision-makers

### ▪ **Preparation - Strategy - Preparing the Private Session**

1. *By the end of this session the delegate will be able identify/recognize the change in dynamics and the responsibilities/role of parties in private session.*
  1. Aims of private sessions
  2. Role of lawyer and client in private sessions
  3. BATNA, WATNA and RATNA
  4. Strategies for mediation
  5. To prepare a negotiation plan for use in private session
  6. To develop an overall strategy for mediation

### ▪ **Negotiation in Mediation**

1. *By the end of this session the delegate will be able to understand the roles of both the client and the lawyer, during negotiations in mediation, by exploring negotiation styles and strategies, and developing competence as a skilful negotiator in mediation.*
  1. Understand parties behaviour tendencies in the bargaining phase
  2. How to recognize positional negotiation
  3. Recognize the mutual goals of each party
  4. Overcoming positional negotiation
  5. Understanding party motivation
  6. Problem-solving techniques
  7. Helping parties to avoid losing face

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▪ **Dealing with Deadlock**

1. *By the end of this session the delegate will be able to recognize and identify the potential for deadlock and have the ability to implement strategies to overcome these potential barriers.*
  1. Recognizing the potential for deadlock
  2. Having the understanding to introduce creative solutions/problem solving to move beyond the perceived deadlock
  3. Being able to explore how a mediation may reach deadlock
  4. Identifying the emotional barriers/stressors that need to be addressed
  5. Using a wide range of creative techniques to overcome deadlock

**Role of Culture in Mediation and Negotiation**

▪ **Culture and its Importance in Mediation**

1. *The delegate will learn how to recognize and allow for differences in communication styles during intercultural negotiation and mediation. They will learn the relevance of cultural theory as it impacts on facilitating an inter-cultural mediation. They will gain a broad understanding of some of the similarities and differences among cultures.*
  1. What is culture?
  2. The effect of culture on communication
  3. Different styles of communication
  4. Self-knowledge in cultural communication and negotiation
  5. Being able to explore how different cultural preferences can affect the mediation
  6. Identifying the key cultural barriers/stressors that need to be addressed
  7. Using a wide range of creative intercultural techniques to facilitate the mediation

▪ **Working with Intercultural Communication and Negotiation Styles**

1. *The delegate will learn in this session some of the most common factors that impact on intercultural negotiation/mediation practice where parties have different communication styles and how to manage these types of interactions. This session will focus on the more practical skills needed to work as an intercultural negotiator or mediator.*
  1. Direct-indirect communication
  2. Emotional behaviour
  3. Physical - Non-physical
  4. Sequential and circular reasoning
  5. Trust and time
  6. Space
  7. Decision making
  8. Managing the negotiation or mediation
  9. Roles of mediator and participants
  10. Process
  11. Social awareness

Scan to Calendar



Code:	<b>EVT000000004</b>	Level:	<b>Intermediate</b>
Date:	<b>19 October 2013 (Saturday)</b>	Language:	<b>English</b>
Time:	<b>14:30 - 17:45</b>	Accreditation(s):	<b>LSHK 3.0 CPD Points HKIAC 3.0 CPD Points for Accredited Mediators</b>
Venue:	<b>9th Floor, The Chinese Club Building 21-22 Connaught Road Central Central, Hong Kong</b>	Request for Run:	<b>Please Contact Us for Details</b>



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