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Mediation Matters!

The quarterly newsletter of the
University of Strathclyde Mediation Clinic

Inside this issue

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Mediation Clinic
at University of Strathclyde

Editorial

Patrick Scott

I wish all our readers a happy and successful 2026, with positive outcomes in their mediations. It is quite a challenge to put the January issue of ***Mediation Matters!*** together as the contributions have to be submitted shortly after the festive period. But, once again, our contributors have not let us down and have come up trumps.

Confidentiality features in this issue, both in Charlie Irvine's ***From the Director*** and in my ponder. It is an important fundamental principle of mediation, but not easy to come to grips with. It is sometimes difficult to explain exactly what confidentiality means to parties and later determine what the boundaries of confidentiality are.

Mari Niemi, who is a postgraduate student in Criminal Justice and Penal Change at the University of Strathclyde, and who hails from Finland, gives us a good insight into mediation there. It is encouraging to see that a relatively small nation has a well-established mediation culture and infrastructure.

Mediation and its move to becoming mandatory in South Africa is discussed by Ettian Raubenheimer by way of reference to legislation and decided cases. He covers the period from 1994, when South Africa's Constitution came into being, to the present time by way of what he describes as "waves". I am aware that there are court challenges to the current mediation directives and protocols, which hopefully will not negatively impact upon the growth of mediation in South Africa.

In *From Village Halls to Virtual Rooms: How the Mediation Act 2023 is Shaping India's Culture of Conflict*, Deeraja explores the growth of mediation in India, and it is interesting to note that both India and South Africa appear to be moving in a similar direction.

Andrew Reid describes his journey, later in life, from being a soldier and police officer, to acquiring a Master's degree in Mediation and Conflict Resolution. In ***Research Reflections***, he shares some of his trials and tribulations in researching and writing his dissertation.

We have the usual contributions, ***From the Chair*** and ***Clinic News***. Alan Jeffrey, in ***Mediation Mulligans***, shares his holiday experiences (in his boxer shorts). Unable to resist the temptation, I had to try it as well. The TV series, not the boxer shorts. I only managed 6 minutes and 12 seconds of the first episode. And, yes, I agree with Alan – it is not time well spent.

Finally, Mariam Naeem has provided a report on the Mediation Clinic Network Global Mediation Conference 2025, which was held online towards the end of last year.

My thanks once again to Adrienne, our assistant editor, for all her hard work in helping to compile this newsletter. I hope that you enjoy this issue.

Patrick Scott
Editor

From the Director…..

Charlie Irvine

As we ease into another January, the Mediation Clinic seems to be as busy as ever. With courts referring over 400 cases a year, it's fair to say that mediation is becoming 'business as usual' for Simple Procedure cases. And with around 70% of mediations resulting in resolution, it's easy to take for granted the skill and patience that these cases require. I don't, and I would like to pay tribute to the Clinic's mediators for these impressive results.

Something that we tend to take for granted is that mediation's key principles will be grasped by the courts and the parties. One of these is confidentiality. Most mediators offer a confidential process and take time to explain to the parties what that looks like in practice. And we probably assume that the courts would agree and uphold the principle if it were to be challenged.

However, this has not yet been properly tested in Scotland's courts, although challenges are rare. I'm only aware of one decided case where a Scottish court required the mediator to give evidence about what took place during a mediation. That was an international child abduction case under the Hague Convention,

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so the circumstances were very particular. (I don't regularly scour court reports, so if anyone knows of other instances please get in touch.)

However, for numerous jurisdictions mediation is well and truly established, including for high value claims. And it's clear that in these locations, sooner rather than later, there is the likelihood that courts will override the principle of mediation confidentiality. The reasons vary, but they tend to overlap with exceptions to the legal concept of *without prejudice:* the idea that people ought to be able to try to settle a dispute without their words being used against them in subsequent hearings. The exceptions include:

- disputes over whether a settlement actually exists, and its meaning;
- allegations of fraud or undue influence;
- and something described in England and Wales as "unambiguous impropriety"[1] – things like blackmail, perjury or threats.

It isn't hard to imagine Scotland's courts being persuaded to take a similar path. In fact, as Bill Wood argues, if behaviour is bad enough we may not want our mediations to be regarded

[1] Somerville, R. (2025). *Mediation privilege: does it exist, and why should business care?* https://www.robinsomerville.co.uk/is-there-a-specific-mediation-privilege/

as a black box which can never be opened: "if a fraudulent representation was alleged to have been made through a mediator would he or she not feel a moral obligation to assist with his recollection?"[2]

Wood's article (now hard to get hold of) helped me realise that what we commonly call mediation confidentiality is actually a blend of five different ideas:

1) Confidentiality – an undertaking not to share information about what took place;
2) Privilege – legal privilege applies to certain conversations, such as between lawyers and their clients, but seems unlikely to extend to mediation at present;
3) Without prejudice – can be applied to any negotiation, but generally has to be spelled out explicitly;
4) Non-compellability – mediators can't be compelled to give evidence about what took place in the mediation, again relying on an explicit clause in the agreement to mediate;
5) Admissibility – whether courts will allow evidence from the mediation to be used in subsequent hearings.[3]

If this all sounds like a maze, it is, and the last thing most of us want is to start delivering a "complex lecture"[4] about confidentiality at the start of each case.

I therefore want to offer some thoughts about what we safely *can* say that is a little more precise than a blanket assurance about confidentiality. My spiel goes something like this.

"I regard this mediation as private and confidential. In practice that means:

a) I won't share information about what happens today with anyone, unless you both agree that I should;[5]
b) you can't call me as a witness in any subsequent hearing; and
c) if either of you attempts to refer to something said in the mediation, the other can ask the court to disregard it."

Naturally this changes and adapts from case to case, but I try to confine myself to what I can talk about with reasonable confidence – my own behaviour (and crossing my fingers about the courts). Once I start extending this to the parties I raise the spectre of enforcement – if someone breaches confidentiality, what can be done about it? And by whom? Is it the mediator's duty to sue for breach of the agreement to mediate? More likely one of the parties would have to apply to the court, and in order to obtain any compensation would have to demonstrate that they were harmed by the disclosure.

Returning to my own confidentiality intro, above, as soon as I put it in writing I'm aware of the limitations. It would be more accurate to say at b) "you *generally* can't call me as a witness in any subsequent hearing;" or to add at the end of c) "and we assume the sheriff will agree." However, to return to Bill Wood's point, how much nuance is useful? Mostly, we just want to get started on a "conversation in brackets," where people can speak freely, confident that if mediation doesn't resolve their dispute, at least they will be no worse off.

[2] Wood, W. (2008) When Girls Go Wild: The Debate Over Mediation Privilege. *The Mediator Magazine*, pp. 1–15, p. 15
[3] Irvine, C (2012) Mediation confidentiality: limitations and a proposal. *Kluwer Mediation Blog* Available at https://legalblogs.wolterskluwer.com/mediation-blog/mediation-confidentiality-limitations-and-a-proposal/
[4] Wood, 2008 (n. 2) p. 9.
[5] I usually set out certain exceptions here, such as risks to the safety of participants and information about a crime.

I end these thoughts with an invitation to others to reflect on how they describe mediation confidentiality and share that with me if you have a moment. Given the uncertainty about what the courts will do, particularly in Scotland, it's hard to imagine that there is one correct way. And for most of the Mediation Clinic's work in relatively low value disputes, the last thing parties want is to listen to us droning on before they have even begun to talk.

Charlie Irvine
Director, Mediation Clinic

Dr Charlie Irvine is the Course Leader on the University of Strathclyde's MSc/LLM in Mediation and Conflict Resolution, and Director of Strathclyde Mediation Clinic. He is an experienced mediator specialising in organisational and workplace disputes. Charlie's academic work focuses on mediation in the justice system, and he was awarded his Doctorate for his PhD research into mediation participants and their reasons for settling.

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Finland: Small Country, Big Mediation Culture

by Mari Niemi

Mari Niemi

Finland, a small Nordic nation with a population similar to that of Scotland, has a well-established mediation culture and infrastructure. Every year, between 12,000 and 14,000 criminal and civil cases are referred to mediation under the law. Victim-Offender Mediation (VOM) is the most prevalent form of mediation. With a strong restorative justice focus, VOM is a widely practised component of the criminal justice system. Successive governments, regardless of their political makeup, have supported the growth of mediation, and the field continues to develop. However, the mediation community faces its own issues. In particular, the question of whether violence in close relationships should be mediated has recently divided scholars, practitioners and politicians, leading to a decision to cease that practice from the beginning of 2025.

Mediation on offer nationwide – for free

In Finland, the basis of the nationwide mediation service was established about forty years ago. In the 1980s and 1990s, municipalities and NGOs established mediation services, leading to a range of practices. One key goal was addressing youth crime in a non-punitive manner. The move towards mediation and restorative justice was driven by a desire to reduce imprisonment and seek alternatives to punishment. However, concerns emerged that the fundamental rule-of-law principle of 'equality before the law' might be compromised due to inconsistent practices and disparities in access. It became evident that legislation was necessary to ensure uniformity and quality in mediation, and access to it throughout Finland. The Act on Conciliation in Criminal and Certain Civil Cases (1015/2005) responded to those needs.

Today, Finland has 17 mediation offices nationwide, staffed by approximately 100 employees and 1,400 volunteers providing services. Provincial governments are required to ensure access to mediation when both parties wish to utilise it. The Ministry of Social Welfare and Health supervises their activities. For participants, this form of mediation is free of charge.

The service offered in both criminal and civil cases is Victim-Offender Mediation, which, as a practice, falls under the umbrella of restorative justice. The key difference compared with conventional mediation is that the parties join the VOM in the roles of an offender and a victim. Mediation is facilitated by trained mediators with the primary purpose of repairing harm and restoring relationships. Although VOM does not replace formal prosecution in all cases, it often influences criminal procedures (e.g. dropping charges, reducing sanctions).

While VOM is by far the most common form of mediation in Finland, it is worth noting that it does not show the full picture. Additionally, about 2,400 court-mediated cases occur each

year, including family or employment-related issues. Mediation in its various forms (whether conventional or based on restorative justice) is also carried out separately in schools, neighbourhoods, workplaces and commercial settings.

Most cases mediated involve violence

According to data from the Finnish Institute for Health and Welfare (THL), in 2024, a total of 10,604 mediation initiatives were referred nationwide to criminal and civil mediation provided by mediation offices under the Mediation Act. These initiatives comprised a total of 14,546 cases (13,986 criminal cases and 560 civil cases).

Of all criminal and civil cases referred to mediation, more than half were violent offences (7,944). Notably, a total of 2,606 cases of intimate partner violence were referred, accounting for nearly 18 per cent of all matters.

Despite its popularity among service users, mediation of intimate partner violence has for decades been a controversial area among scholars, professionals and politicians. Disagreements centred on its appropriateness for mediation have sparked heated debates since the early 1990s.

According to Honkatukia (2015), the central tension has been between the mediation movement, to whom VOM is an arena for addressing conflict and finding solutions, and the women's rights NGOs, who believe that mediation invalidates domestic violence as a criminal offence, weakens victims' protection and may empower the perpetrators. After the lengthy dispute, the practice was discontinued from January 2025.

How successful is mediation in Finland?

'*The mediation service provided by Finnish mediation offices is, even by international standards, a success story and a model, and it has established its position as part of the broader framework through which we respond to crimes, disputes, and conflicts in general*.' (Peltonen et al. 2022)

The quote above is from a report analysing the state and future possibilities of mediation in Finland. Perhaps somewhat un-Finnish in its open self-satisfaction, the authors celebrate both the quality and quantity of mediation provided in Finland. According to the report, the current phase is still characterised by pending expectations: much has been achieved, but the full potential has yet to be realised.

One way to measure the success of mediation in Finland could be by its widespread use and accessibility. As a practice, VOM has gained broad acceptance and become an institutionalised part of the criminal justice system. Other suitable indicators could include examining how often mediation results in an agreement and how satisfied participants are.

Of the concluded criminal mediation processes, 78.6% (5,512) resulted in an agreement. For civil mediation processes, the figure was slightly lower: 66.8% (151) resulted in settlement. The total monetary value of all agreements reached through mediation was approximately 2.7 million euros. Additionally, mediation is, of course, a cost-effective way to resolve cases that would otherwise go to court.

Generally, the parties are satisfied with the process, as it promotes fairness by giving everyone a chance to be heard. For victims, this can be more meaningful than seeking punishment. Many participants also value

resolving the issue and moving forward. Participant satisfaction is measured through annual surveys. In a recent 2024 study, most respondents reported feeling listened to during mediation, having the opportunity to express themselves, and being able to influence the mediation outcome. Nearly 80 per cent would recommend mediation to others. Participants also reported high satisfaction with staff and volunteer mediators, with agreement rates ranging from 82 to 88 per cent across survey items assessing staff competence, kindness, respectfulness and impartiality.

However, an interview study carried out by Honkatukia (2015), specifically among victims of intimate partner violence, offers a more nuanced perspective on the VOM's success. While engaging in mediation was advantageous for many, it was detrimental for some, including cases of re-victimisation. The lesson here is that, in addition to surveys, regular interviews with participants would be beneficial.

Future of mediation in Finland

Over the past 15 years, Finnish coalition governments have generally supported increasing the use of mediation. In government programmes, this has been justified by concerns about efficiency: quick processes and low costs.

However, 2024 was indeed the final year in which the mediation offices handled cases of intimate partner violence. From 1 January 2025 onwards, the Mediation Act restricts mediation in these cases. Since they accounted for approximately 18% of all mediated cases, we are likely to see a decrease in overall mediation numbers.

Other plans of the current PM Petteri Orpo's coalition government include developing court mediation, enhancing the role of communities in mediation, increasing the use of alternative dispute resolution methods, improving access to legal aid, and promoting the utilisation of legal assistance in mediation.

It is expected that mediation will remain an active topic of political debate and development in Finland. However, there are conflicting pressures to consider. In a country where financial pressures are related to an ageing population, mediation might continue to grow in importance as a cost-effective approach. Conversely, the current political climate leans towards a more punitive stance, which is also evident in the approach towards young people – a key group initially targeted by mediation in Finland.

Despite some disputes surrounding the practice, there is a strong commitment to mediation within Finnish society, and ongoing efforts to develop criminal justice mediation. Therefore, VOM is very likely to remain an evolving and well-regarded, yet also contested, part of the Finnish criminal justice system, regardless of which parties form the government.

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Mandatory Mediation in South Africa
by Ettian Raubenheimer

Ettian Raubenheimer

The primary modes of dispute resolution in South Africa are litigation and arbitration, each of which is regulated by its own statutory instrument. Domestic arbitration is regulated by the Arbitration Act, Act 42 of 1965, and International Arbitration by the International Arbitration Act, Act 15 of 2017. Litigation in the High Courts is regulated by the Superior Courts Act, Act 10 of 2013 and the rules promulgated in terms thereof, and in the Lower Courts by the Magistrates' Courts Act, Act 32 of 1944.

Mediation is not regulated by general statute and is primarily reserved for labour-related matters in terms of the Labour Relations Act, Act 66 of 1995.

The movement towards mediation

Legislative initiatives

1. Legislative innovation in South Africa is primarily driven by the South African Law Reform Commission (SALRC). In terms of section 4 of the South African Law Reform Commission Act, Act 19 of 1973 the purpose of the Commission is the conduct of research, study and investigation of all branches of the law in South Africa, and the making of recommendations for the development, improvement, modernisation or reform of the law.
2. The SALRC commenced with a project on mediation in July 1997 when it published the Issue Paper on Alternative Dispute Resolution (Project 94). The work on the draft General Mediation Bill dealing with commercial, civil and community disputes commenced in 2019, and the discussion paper containing the Bill was published in January 2025.
3. The SALRC also published a discussion paper on alternative dispute resolution in family matters in 2019.

Jurisprudential initiatives

Mediation has, since the promulgation of South Africa's Constitution in 1996, been inextricably linked to the guarantee of the right of access to justice as contained in section 34 thereof. The right of access to justice has been interpreted to encompass timely and affordable dispute resolution and the focus has shifted to substantive access which is not limited to mere access to courts but entails the dignified and effective resolution of disputes.

The seminal decision in this regard is the Constitutional Court decision in Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC), where the court stated that courts are duty bound to adjudicate conflict justly and equitably and that mediation provides for creative and flexible solutions to disputes, often not available to a judicial officer bound by rigid rules and principles. This possibility has the potential to go a long way in restoring and preserving the dignity of the disputants. The court ruled that courts could stay or adjourn

proceedings to permit mediation depending on the context.

The evolution of mediation jurisprudence

The jurisprudential approach to mediation post-1994 can be loosely divided into the following waves:

The Voluntary Wave (1994–2010)

During the early post-apartheid era the judicial approach to mediation was viewed primarily as a voluntary, restorative tool for the resolution of disputes. High courts in the utilisation of their inherent powers in terms of section 173 of the Constitution, began to suggest mediation in social disputes. During this phase no formal procedural penalties for refusing to mediate existed. The *Port Elizabeth Municipality* case, discussed above, exemplifies this period of judicial encouragement.

The Ethical Wave (2010–2020)

A significant shift occurred in about 2010 where the focus moved to the professional responsibilities of legal practitioners.

- In Brownlee v Brownlee 2010 (3) SA 220 (GSJ), the court held that attorneys have a professional obligation to encourage clients to seek mediation before costly litigation, especially in family law. The court expressed displeasure with "scorched earth" litigation and penalised the successful party with capped legal costs for failing to investigate mediation.
- In the MB v NB 2010 (3) SA 220 (GSJ) matter, the court reinforced mediation as a critical tool for reducing the trauma of divorce. The judgment emphasised the cost-effectiveness and privacy of mediation. This judgment suggested that failure to mediate should have direct financial consequences for litigants and legal representatives. It consequently laid the groundwork for future procedural rules.
- In the MN v AJ 2013 (3) SA 26 (WCC) matter, the court, in a parental rights dispute, criticised parties for using the court as a "battlefield". The court further noted that the legal system is not designed, and consequently more often than not, ill-equipped for emotional nuances in domestic disputes. It reiterated that mediation allows for a "win-win" outcome.

The Procedural Wave (2020–2025)

Uniform Rule of Court 41A was enacted in March 2020. This constituted a definitive turning point which embedded mediation into the procedural lifecycle of High Court litigation. The effect of this rule is that disputing parties are required in every new action or application to file a "Rule 41A Notice" stating whether they agree to or oppose mediation and providing reasons for any opposition. Although the delivery of the Notice became mandatory, the process of mediation itself remained voluntary during this phase. As could be expected, the rule quickly attracted judicial attention.

- In Koetsioe and Others v Minister of Defence and Military Veterans and Others (12096/2021) [2021] ZAGPPHC 203 (6 April 2021), the court confirmed the mandatory nature of the rule and the requirement that the rule requires earnest consideration.
- In the matter of MD v MD [2023] ZAGPPHC 142, the court ruled that Rule 41A is not a mere formality and requires a genuine consideration of mediation. Any refusal to mediate must be based on reasonable and substantiated grounds. A

vague refusal to mediate due to mere animosity between the parties does not constitute grounds for refusal. The basis for this approach by the court is the rule to promote efficient and constructive dispute resolution. The judgment is a clear indication of the judiciary's increasing impatience with parties who attempt to circumvent mediation.

- In Nsele v Road Accident Fund (2023/023750) [2024] ZAGPJHC 793 (12 August 2024), the court considered whether one party could compel the other party to consider mediation, further reinforcing the judiciary's role in policing procedural compliance with Rule 41A.
- In DD v IL and Another (16939/2024) [2024] ZAWCHC 215 (20 August 2024), the High Court held that refusal to cooperate in mediation could lead to adverse cost considerations in family law matters.

The Administrative Wave (2025–Present)

This wave heralded the advent of Mandatory Mediation, when on 22 April 2025 the Gauteng Division of the High Court introduced the Revised Mediation Protocol by means of the Revised Directive Introducing Mandatory Mediation in the Gauteng Division. This directive primarily came about due to the extreme backlog in the awarding of trial dates. During 2024 trial dates were allocated as far ahead as 2031. The court leadership regarded this state of affairs as unacceptable and engaged in wide consultation with the legal profession as well as relevant stakeholders, such as mediation organisations and consumers of court services. After comprehensive consultations during the latter part of 2024 and the first part of 2025, the Directive was issued. The Directive transformed mediation from a procedural suggestion into a mandatory prerequisite for trial in the Gauteng Division. The effect of this Directive is that no civil trial date will be allocated without a signed Mediator's Report. All trial dates from 1 January 2027, were summarily withdrawn, requiring re-enrolment only after mediation is attempted. Although the Directive was largely favourably received by the legal profession it has been subjected to critique from certain quarters. Initial challenges to the Directive were averted, but the possibility of a Constitutional Court challenge is still alive.

A cursory look at the jurisprudence since the implementation of the Directive:

- In Brondani v Brondani 2025 ZAGPJHC (17 November 2025), it was held that acrimony or a subjective belief that mediation is "futile" is not a valid reason to refuse a referral to mediation and can be considered delinquent. The court argued that extending trial backlogs to 2031 constitutes a de facto denial of access to justice, justifying mandatory mediation as a "reasonable and justifiable limitation" on the right to litigate.
- The judgment in Mofiko v Mthophe and Others (2024/044182) (2025) ZAGPJHC 772 (7 August 2025), lamented that the use of mediation as envisaged in Rule 41A would have resulted in time, money and anxiety being saved. Rule 41A is not regarded by courts as a mere rule but as a necessary and pragmatic tool to curb wasteful litigation.
- In Malebane v Road Accident Fund [2025] ZAGPPHC 1253 (11 November 2025), the court confirmed that the basis for the Mediation Protocol is Rule 41A. The court importantly held that the extreme backlogs constitute a de facto denial of justice under section 34 of the Constitution.

In other specialist courts mediation has been considered and it has been concluded that it is mandatory within the context of the particular legislative framework.

In the Land Claims Court judgment of Marais NO and Another v Daniels and Others [2025] ZALCC 38 (30 September 2025), the court confirmed that mediation is mandatory under the Extension of Security of Tenure Amendment Act, Act 2 of 2018 and that informal negotiation is insufficient.

Legislative Roadmap and Future Trends

The closing date for comments on the SALRC Discussion Paper and draft Mediation Bill was May 2025 and the submissions are currently being processed, with the Bill being finalised for tabling in Parliament. The purpose of the Bill is to replace the fragmented rule-based approach with a generic statute for civil, commercial, and community mediation. It furthermore aims to integrate the Singapore Convention on Mediation, allowing international commercial mediated settlements to be enforced in South African courts. The Bill also envisions a "Mediation Council" to regulate and statutorily accredit mediators, ending the current era of voluntary accreditation.

Conclusion

Since 1994, South African jurisprudence has successfully re-conceptualised mediation from a voluntary 'alternative' to a constitutional necessity and a fundamental component of the justice system. By rooting mediation in constitutional rights, the courts have ensured it serves not merely as a tool for efficiency but as a primary path for achieving substantive and restorative justice. As the legal framework continues to evolve, particularly with the implementation of mandatory directives and proposed legislation, mediation is set to become an even more integral 'gatekeeper' for civil disputes in South Africa, reflecting a legal system that increasingly prioritises harmony and efficient resolution over adversarialism.

Ettian Raubenheimer has been a practising Advocate of the High Court of South Africa since 2006, and has extensive experience in alternative dispute resolution modes, especially in mediation and arbitration. He was awarded a Doctorate in Law with a thesis on the Alternative Dispute Resolution of International Financial Disputes. Ettian practises as a mediator and is a Board Member of Mediation in Motion Mediators in South Africa.

From Village Halls to Virtual Rooms: How the Mediation Act 2023 is Shaping India's Culture of Conflict

by Deeraja

Deeraja

Introduction: A Land of Uncontainable Realities

Across journals, letters and half-finished attempts to describe her, India repeatedly slips beyond the categories meant to contain it. In a country characterised by immense demographic scale and social plurality, rigid frameworks often struggle to capture lived realities. Difference is visible; nuance is not. Yet, it is within these less visible spaces that everyday negotiations of conflict and coexistence quietly unfold.

Within this social panorama, conflict is not a deviation. Disagreements within families, between neighbours, and among communities are part of everyday life, negotiated long before they are formalised. Conversations precede cases; intermediaries emerge before institutions intervene. These exchanges are informal and relational, shaped more by shared histories than by legal rights. Conflict here is managed through social negotiation rather than being immediately translated into legal language.

Mediation Before Formal Law

Informal mediation in India took various forms across different communities. Sometimes, it was a Panchayat, where village elders resolved disputes within the village; other times, tribal elders practiced Panchas to manage conflicts within the tribe; and occasionally, Mahajans combined arbitration and mediation to settle business disagreements.[1] These practices existed long before colonialism reached India. They relied on the authority of elders and the community's belief in the value of their experience and traditions. However, they were not free from the harsher social realities of their time.

Despite its long-standing historical presence, mediation in India remained largely informal, localised, and embedded within social or judicial frameworks. It was practiced but seldom theorised as an independent legal process. The shift toward recognising mediation as a standalone process, capable of operating beyond courts and across borders, occurred much later and became definitive with India's signing of the Singapore Convention on Mediation in 2019.[2]

The Singapore Convention Catalyst: A Philosophical Mismatch

When the Singapore Convention was adopted in 2019, it articulated a specific conception of mediation: a voluntary, party-driven process in

[1] Anil Xavier, 'Mediation: Its Origin and Growth in India' (2006) 27 Hamline J Pub L & Pol'y 275.

[2] Press Information Bureau, 'Cabinet approves signing of the UN Convention on International Settlement Agreements resulting from mediation by India' (Press Information Bureau, 31 July 2019). https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1580824 accessed 9 January 2026.

which the mediator holds no adjudicatory authority, and the settlement stands independently of courts or arbitral mechanisms.[3] The Convention's premise was straightforward: if parties voluntarily reach a mediated settlement, that agreement itself should be capable of recognition and enforcement, particularly in cross-border commercial disputes.

This understanding did not fully align with how mediation functioned in India. At the time, mediation was largely integrated within existing legal frameworks rather than operating as an independent process. Court-annexed mediation under Section 89 of the Civil Procedure Code produced settlements whose enforceability derived from court decrees, while conciliation under the Arbitration and Conciliation Act resulted in settlements treated as arbitral awards.[4] In both cases, the authority of the settlement stemmed from an external legal mechanism, not from mediation as a standalone process.

This distinction proved decisive. The Singapore Convention recognises only "pure" mediation settlements, those arising entirely from a voluntary mediation process without being integrated into judicial or arbitral frameworks. As a result, the predominant forms of mediation practiced in India fell outside its scope. This gap revealed a deeper philosophical divide: while some jurisdictions viewed enforceability as unnecessary for a voluntary process, India adopted a more pragmatic stance, recognising that enforceability is often essential to ensure the durability of settlements. This mismatch highlighted the need for standalone mediation legislation. Therefore, the Mediation Act should be understood not as a sudden reform but as a response to an international framework that demands mediation be recognised as a process in its own right.

The Mediation Act 2023: A Blueprint for a New Era

Although the Mediation Act 2023 has been enacted, it has not yet become fully operational. Several key provisions remain inoperative, and the Rules necessary to implement the Act are still awaited. Until these rules are framed, the Mediation Council of India cannot be constituted, and many of the Act's most progressive mechanisms remain theoretical. Nevertheless, even in this incomplete state, the Act signals a clear shift in how mediation is envisioned within India's justice framework.

A Legislated Pause Before Litigation

One of the Act's most significant innovations is the introduction of pre-litigation mediation for civil and commercial disputes.[5] The intention is not to compel settlement but to require parties to attempt dialogue before resorting to litigation. Parties are expected to participate in at least two mediation sessions before

[3] United Nations, *United Nations Convention on International Settlement Agreements Resulting from Mediation* (adopted 20 December 2018, opened for signature 7 August 2019) https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22 accessed 9 January 2026, art 3.

[4] The Arbitration and Conciliation Act 1996, ss 73–74.

[5] The Mediation Act 2023, s 5, "Pre-Litigation Mediation" India Code, available at https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC_CEN_3_46_00011_A2023-32_1697800640677&sectionId=80946&sectionno=5&orderno=5&orgactid=AC_CEN_3_46_00011_A2023-32_1697800640677

approaching the courts, with the option to opt out thereafter. This design strikes a careful balance: mediation is made unavoidable at the entry point but never coercive in outcome. In a system burdened by chronic case backlogs, this provision functions as a legislated pause, encouraging dialogue without excluding legal remedies.

Giving Legal Shape to Community Wisdom

The Mediation Act 2023 also turns its attention to community mediation, but in a way that feels both cautious and intentional. It recognises that disputes at the local level are often better addressed through conversation than coercion. Under the Act, community mediation is carried out by a panel of three mediators, creating space for dialogue that is grounded, familiar and responsive to local realities.

What stands out here is the purpose the law assigns to this process. Community mediation is not meant to produce legally enforceable outcomes. Instead, it is oriented towards restoring peace, harmony and a sense of balance within a neighbourhood or locality. Where parties do arrive at a settlement, it can be written down and authenticated by the mediators, offering clarity without the weight of a court decree. Where they do not, the process still leaves behind something valuable: the act of having engaged rather than escalated.[6]

This design choice is telling. By keeping community mediation outside the realm of enforceability, the Act avoids turning it into a parallel adjudicatory system. It acknowledges India's reliance on relational forms of dispute resolution, while recognising that not every form of justice derives its meaning from enforcement.

Expanding Mediation Beyond Physical Rooms

Equally forward-looking is the recognition of online mediation[7] and Online Dispute Resolution (ODR) platforms. By acknowledging digital mediation as a valid mode of dispute resolution, the Act aligns itself with evolving realities of access, geography, and efficiency. Platforms such as SAMA and Presolv 360, which already facilitate structured online mediation, now find themselves reflected within the statutory framework, even though the regulatory regime to govern them is still evolving.

Building Trust Through Institutions

At the institutional level, the Mediation Council of India[8] is envisioned as the cornerstone of professional mediation in the country. Once established, it will be responsible for accrediting mediators, recognising training institutes, setting ethical standards, and ensuring quality control across a diverse and rapidly expanding mediation ecosystem. In a country as large and varied as India, such a body is not merely administrative; it is essential for consistency, credibility and public trust. The Act also introduces mechanisms such as the formal registration and identification of mediation settlement agreements,[9] reinforcing their enforceability while safeguarding against fraud and misuse.

The enforceability framework embodies a calibrated approach. Settlement agreements reached through mediation are granted the status of court decrees, while the grounds for

[6] The Mediation Act 2023, ss 43–44.
[7] The Mediation Act 2023, s 30
[8] The Mediation Act 2023, ch VIII.
[9] The Mediation Act 2023, s 20

challenging them are intentionally limited.[10] This ensures finality without compromising fairness, signalling that mediation is not a lenient alternative but a serious legal process with binding consequences.

The Implementation Gap: Promise vs Pause

Despite the urgency that mediation promises to address, the implementation of the Act has progressed slowly. Court-annexed mediation, private mediation and online mediation continue to operate under existing legal frameworks; not because of the Act, but due to its absence. The delay in promulgating the Rules indicates that, although mediation is widely recognised as necessary, it has not yet achieved the legislative priority required for systemic reform. This gap between intent and execution remains one of the Act's most significant challenges.

Where Rules Meet Relationships

Conversations with practicing mediators reveal that mediation resists a singular philosophy. One mediator described transformation as the quiet but essential endpoint of the process, where parties rediscover their capacity for self-determination and leave not merely with a settlement but with the confidence to resolve conflicts without external authority. Another emphasised something different yet equally powerful: the process itself. For them, mediation is revolutionary not because it guarantees resolution, but because it creates a space where people choose to sit together and speak. Even when outcomes remain unresolved, the act of dialogue continues its work beyond the room. This plurality of approaches is not a weakness; it is mediation's strength. It reflects precisely what the Mediation Act and Rules seek to protect. As Anil Xavier[11] has observed, mediation encompasses both a science and an art.[12] The Act provides the scientific scaffolding through structure, enforceability and standards, while deliberately leaving room for the art to unfold. By protecting this flexibility through rules, we empower mediators to respond to context, culture and human complexity, rather than forcing disputes into a single procedural mould.

Mediation in Motion: The Ripple Effect

Imagine if every civil dispute first passed through mediation. Beyond reducing the backlog of four million pending cases, mediation has the potential to transform India's approach to conflict itself. A skilled mediator doesn't just resolve a case; they guide parties toward understanding, compromise and restoration. Over time, this ripple effect could change the cultural narrative around disputes, fostering a society that values dialogue over contention.

Mediation in India, under the Mediation Act of 2023, introduces a framework that balances rigour with flexibility. The unique code assigned to each mediated settlement not only ensures legal validity but also anticipates future challenges, protecting parties from potential disputes or fraud. This scientific foundation, comprising codified rules, enforceable settlements, and the Mediation Council of India, provides the stability necessary for mediation to scale effectively across the country. Yet, the Act intentionally leaves room for the art of mediation: the

[10] The Mediation Act 2023, s 28

[11] International Mediation Institute (IMI), 'Anil Xavier' (IMI Mediation, 2024) https://imimediation.org/member/anil-xavier/ accessed 9 January 2026.

[12] International Mediations Organisation, 'Mediation, the Indian way!! An analysis of the Mediation Act 2023' (YouTube, 7 August 2025) https://www.youtube.com/watch?v=QUExXhtygRQ accessed 9 January 2026.

creativity, empathy, and relational nuance that each mediator brings to the process. It is in this interplay between structure and artistry that mediation reveals its true potential.

If widely embraced, mediation could generate more than just efficiency within the judicial system; it could ignite a profound cultural transformation. A skilled mediator, through dialogue and empathy, can turn conflicts into opportunities for insight, compromise and restoration. In this way, mediation reflects the complexity of India itself, a society that cannot be neatly categorised, where history, relationships, and social realities intersect in ways that defy simple solutions. Each resolved dispute sends ripples through communities, influencing how people perceive conflict, collaboration and justice, quietly yet powerfully shaping societal norms.

Perhaps this is what visitors, scholars, and those who have tried to explain India have long sensed: a nation that refuses to be confined, and a form of justice that cannot be limited to legal categories alone. Mediation is more than a mechanism to reduce court backlogs or formalise settlements; it is an opportunity to heal, to teach, and to transform. When approached wisely, gracefully, and inclusively, it can redefine India's understanding of conflict - not merely as something to be adjudicated, but as a human process capable of fostering understanding, resilience and community.

Deeraja is a law graduate currently pursuing a Master's degree in Mediation and Conflict Resolution at the University of Strathclyde. She has prior experience as a case manager in 'Sama' an Online Dispute Resolution platform in India and is currently gaining exposure to mediation practice through the Strathclyde Mediation Clinic.

Research Reflections
Andrew Reid reflects on his LLM dissertation

Andrew Reid

In this series of articles, Adrienne Watson has asked some of our former students to reflect on their Master's dissertations. Our students have shared the lessons they learned, the impacts of their research and their advice for future students.

In this issue, Andrew Reid reflects on his LLM dissertation, *Mediation - The Legal Position in Scotland*, which he submitted in 2025.

How would you summarise your dissertation's key aims and outcomes?

The purpose of the dissertation was to examine the legal position of mediation in Scotland, and how the features of mediation interact with the Law of Obligations in Scotland.

What particularly interested you about the area you were researching?

I previously studied Law as an LLB student at the University of Strathclyde. I very much enjoyed the Law of Obligations and, particularly, the law on Contracts.

During my LLM studies, I often felt that many of the characteristics of a mediation were akin to a legally binding obligation according to Scots Law of Obligations. I found myself at odds with the fact that mediation was widely said to be an 'informal process' given that my thoughts were that those entering into a mediation were perhaps entering into a legally binding agreement.

I wanted to test the legal position of a mediation, its different features (from the agreement to enter into mediation, all the way through to a settlement agreement) and to explore the legal position of a mediation. With mediation being relatively new to the law in Scotland, this has never been tested in court.

Which research methods did you use – why did you choose these methods?

I used mostly open-source information, text books, internet resources, case law and legal publications. I used this method because I felt that my dissertation question required a legalistic answer backed up by law and legal decisions.

Did you develop any new skills during the dissertation. If so, what were they?

As an older student, both as an undergraduate and Master's student , I had very little experience of critical academic writing, so this was a steep learning curve.

What aspects of your dissertation were particularly challenging? How did you overcome the challenges?

I found it challenging to write at the level required for a Master's, which was more demanding than writing undergraduate essays. Fortunately, I had an extremely competent supervisor who was able to recognise my challenges very early on in the process and could signpost me to the relevant learning materials.

What aspects of your dissertation are you most proud of?

My journey to a Master's Degree at the University of Strathclyde was very unusual and unexpected. Having grown up in the care system, I left school at 14 years of age with no academic qualifications at all. At school I was written off as a failure from a very young age.

I was fortunate enough to have joined the British Army when I was 16 years old. It was only as a result of my years as a soldier that I was successful in an application to join Strathclyde Police. And it was owing to my 20 years of police service that I was given the opportunity to study Law at Strathclyde. Achieving as I have at one of the top law schools in the country is not meant to happen to those with the background I have.

With that said, there have been many memorable points in my life, many things that will stay with me. Of all those things, I will never forget the day I received a message saying that I had not only achieved my Master's degree, but had done so with Merit. I will always remember the exact stretch of road where I had to pull over and compose myself. For all those reasons, achieving my LLM is the thing I am most proud of. Because, as I have mentioned above, that was not supposed to happen to someone like me.

If you were to do your dissertation now, with the benefit of hindsight, would you change anything about your dissertation? If so, what?

Yes. I would plan better and I would apply the knowledge I have now on the difference between undergraduate essay writing and critical Master's level writing.

Was your dissertation helpful in shaping your mediation practice? If so, how?

I believe so. My dissertation led me to the conclusion that the notion of mediation being 'informal' is perhaps misleading. I am very aware of this during my work, and so I tend to ensure that I do not overstate the notion of an informal process.

What advice would you give to students who will be working on their dissertations next summer?

Enjoy doing your research, but not too much, the deadline arrives very quickly. I would also strongly advise a student to proof-read as they go along, rather than waiting until the very end.

Andrew Reid completed the LLM in Mediation and Conflict Resolution at the University of Strathclyde in 2025. He is a registered mediator with Scottish Mediation, regularly mediates for the Mediation Clinic in a range of cases, and also oversees workplace mediation in Local Government.

From the Chair…..

Sneha Selina Bonomally

As we begin a new year, I hope this message finds you well and that you enjoyed a restful and enjoyable festive season. January often brings a sense of renewal, and for the Mediation Clinic it is very much a time to look ahead with fresh energy, while also reflecting on what has already been achieved.

The start of 2026 marks a new chapter for the Clinic and for the Board. I am pleased to introduce the Board members for the year ahead: Charlie Irvine, Pauline McKay, Abel Uloko, Alice Gorry, James Claxton, Cordelia Gayfer, Jenny Cochrane, Lisl MacDonald, Robert Campbell, Sharon O'Loan, Bronwyn Sutton and myself. We are also delighted to welcome Eva Robertson and Pinky Ghadiali as co-opted members for the year. Together, this diverse and experienced group brings a wide range of perspectives that will help guide the Clinic's work in the months ahead.

The scale of the Clinic's activity over the past year continues to reflect the commitment and skill of everyone involved. From April through to December, the Clinic received 347 referrals. Of these, 188 cases progressed to mediation, with 132 reaching settlement, representing a settlement rate of 70%. A further 17 cases settled without mediation, while others were assessed as unsuitable or remain ongoing. At the close of December, 63 cases were pending - awaiting mediation, intake calls, or contact from one or more parties, with 26 currently allocated to court mediators. These figures demonstrate not only the growing demand for our service, but the meaningful impact mediation continues to have for those seeking constructive ways forward.

As we move into the year ahead, we do so with a clear sense of purpose: continuing to provide a high-quality and accessible mediation service, supporting learning and collaboration across the University, and contributing positively to the wider mediation community. A new year brings new opportunities, and we are excited to build on the strong foundations already in place.

Thank you to the staff, mediators, students and Board members, who all contribute time, expertise and care to the Clinic's work. I look forward to all that we will achieve together in 2026.

With warm wishes for the year ahead.

Sneha Selina Bonomally
Chair, Mediation Clinic

Sneha Selina Bonomally is a PhD candidate in Environmental and Planning Law at the University of Strathclyde, focusing specifically on the use of mediation as an alternative dispute resolution mechanism. She is a registered practitioner with Scottish Mediation, actively contributing to Strathclyde Mediation Clinic as a lead mediator, primarily handling Simple Procedure cases. In addition to her mediation work, Sneha is also a qualified architect by profession.

Clinic News

Pauline McKay

The festive break already feels like a distant memory and the Clinic is very much back in full swing and looking ahead to an exciting year.

In October, we were delighted to welcome delegates from across the globe to our online International Mediation Clinic Network Global Mediation Conference. Representatives joined us from Australia, England, Georgia, India and South Africa, creating a diverse exchange of perspectives. We hope to build on this with a Global Mediation Clinics Conference Part 2 in the first half of this year, with more details to follow. A third year LLB student, Mariam Naeem, has provided a thoughtful reflection on the conference which can be found in this issue, with summaries from the speakers included at the end of her report. To view the conference online visit our YouTube channel.

We were saddened to hear of the passing of Pamela Lyall, Commercial Mediator. She was such a generous and enthusiastic supporter of our students, offering many opportunities to mediate alongside her. Learning from her experience was always a highlight and she will be a huge loss to the Clinic and the mediation community.

Looking ahead, we already have our Peer Support dates in place, and we are developing our CPD joint events with Lothian & Borders Mediation Service. A particularly positive development is that, in addition to continuing our in-person mediation service at Falkirk Sheriff Court, we now have a daily presence at Glasgow Sheriff Court until further notice. While cases are not guaranteed, the Sheriffs are strongly supportive of the initiative and are keen for it to succeed. We have been allocated a dedicated room for in-person mediations and have established a rota consisting of lead and assistant mediators, as well as observers.

This opportunity at Glasgow Sheriff Court will allow our mediators to gain valuable experience of mediating in person, in addition to online practice. For some, this will be their first time doing so, which is another milestone in their mediation journey.

While the core principles of mediation remain the same, the transition from online to in-person can alter how the process is experienced by both mediators and parties. From my own experience of attending court in person, rapport-building begins immediately. Greeting parties as they leave the court room alongside mediators to commence the mediation, we often notice nerves and sometimes a touch of boldness. Informal conversation at this early stage plays a vital role in helping parties feel at ease, particularly where the Sheriff's suggestion that they speak with mediators comes as a surprise. In contrast, in online mediation, these initial moments can be overtaken by the practical need to check connections and ensure everyone's technology will last the call.

Communication also differs. In a physical space, mediators and parties can draw on a wide range of non-verbal cues, for example, body language, proximity, posture, the amount of space someone occupies, leaning in to show

engagement, or crossed arms indicating defensiveness. Online, much of this is reduced to facial expression and tone of voice.

Emotional responses can also present differently. In-person mediation can feel intense, with emotions either contained or amplified, and silences sometimes feeling longer and more pronounced. Conversely, some parties find it easier to express emotion online from the safety of a familiar environment, while others may withdraw more readily.

Despite these contrasts, many elements remain constant regardless of format. Mediators explaining clear ground rules, creating space for each party to speak, deep listening, regular check-ins, and the effective use of breakout rooms are all central to holding the space and supporting productive dialogue whether mediation takes place in person or online. We look forward to being allocated cases and to the experience and learning that will follow.

Following our internal pilot with the Faculty of Humanities and Social Sciences of Managing Difficult Conversations workshop sessions, we are very much looking forward to offering our workshops to Strathclyde Business School, and the Faculties of Engineering and Science in February. We are grateful that Board member, James Claxton, Ombudsman Specialist for the United Nations Funds and Programmes, will join us.

Pauline McKay
Co-ordinator, Mediation Clinic

Pauline McKay completed the PG Certificate in Mediation and Conflict Resolution course at the University of Strathclyde in 2020. She is currently an Accredited Mediator with Scottish Mediation, the Clinic Co-ordinator of Strathclyde Mediation Clinic and volunteers as a lead mediator with the Clinic, Lothian and Borders Mediation Service and other Community organisations.

Patrick's Ponderings – Confidentiality: An Ongoing Conundrum

by Patrick Scott

Patrick Scott

Confidentiality is a difficult concept to digest in a mediation. What does it mean?

The basics are obvious. If Party B makes an offer to Party A, that cannot be disclosed to the court. If one party makes an admission or concession, that cannot be disclosed to the court.

But what if a party discloses information, such as the existence of a witness of which the other party was previously unaware or a document which was not known to the other party. Consider the following scenario:

Frank and Anne are parties in a mediation, discussing a claim that Frank had instituted against Anne for damage to his car in an accident. Frank alleged that Anne was negligent in causing the damage. He was slightly disadvantaged as there were no witnesses to the accident, as far as he was aware. Not so, said Anne. There was a witness. It was someone sitting across the road at a bus stop. But Anne doesn't know this person's name or anything about them. Frank believes that having a witness would bolster his chances of winning the case. Can he place a notice in a local newspaper, asking for any witnesses to the accident to come forward? And maybe a post on social media? The information that he obtained during the mediation was confidential. Does that mean that he must obliterate all knowledge of that from his memory? What happens if it is confidential and he does indeed honour that confidentiality. He goes to a lawyer after the unsuccessful mediation and asks the lawyer to represent him in court. The lawyer asks if there were any witnesses and he says that he didn't see any. The lawyer says that perhaps they should play safe and place a notice in a local newspaper and on social media, to determine if in fact there were any witnesses. That must be permissible. What then is the difference between these two scenarios?

What if a party discloses the existence of a document in the hands of a third party, which may be of assistance to the other party? Does confidentiality mean that the other party cannot attempt to obtain that document? Or does it mean that, if the other party attempts to obtain the document from the third party and the third party denies having it, the other party cannot say that they were informed during a mediation that the third party has the document? Surely the latter!

Perhaps one needs to consider whether the term 'confidentiality' in an Agreement to Mediate refers to use or disclosure. And to also consider the wording of the confidentiality clause, which varies from agreement to agreement.

Take the following clause in Strathclyde Mediation Clinic's Agreement to Mediate:

> *"Mediation is a confidential process to the extent that, unless otherwise admissible, nothing said in, nor any documents produced specifically for the mediation (such as settlement proposals and draft settlement agreements) may be used as*

evidence in any subsequent court or other proceedings."

Here the restriction is on "use in evidence", not "use to acquire evidence".

I think that one has to apply an element of common sense to this conundrum. You can't disclose to the court settlement proposals made at the mediation. You can't cross-examine a party on a contradiction in their evidence compared to what was said at the mediation. And you can't use documents that are produced specifically for the mediation, such as draft settlement agreements. But a party cannot clear their mind of information. And they are surely entitled to use that information within the constraints of confidentiality.

Consider one last example.

Charles buys a house in a new housing development. Soon after moving in, he realises that there is a problem with his drainage. His garden is continually waterlogged. He sues the developer, and the matter is referred to mediation. Steve represents the developer at the mediation. Charles is accompanied by his friend, Simon, who has also recently purchased a house in the development. Everyone has signed an Agreement to Mediate and is bound by confidentiality. Steve has conceded to the mediator in a private session that there is an issue with the drainage and wants to settle. However, his concern is that once the news gets out that he has settled this claim, all of the other owners in the development will want similar compensation since they all have the same drainage problem. The mediator suggests that the parties include a clause in the settlement agreement stipulating that the settlement is confidential and will not be disclosed to any of the other owners. Simon is also asked to sign the settlement agreement.

What is Simon's position? He has similar drainage problems in his garden. Can he sue the developer? I believe that he can. As I stated previously, he cannot clear his mind of the information that he has. It is clear that he cannot inform any other owners of the settlement and, if his claim proceeded to court, he could not disclose either the fact or terms of the settlement to the court. But he can surely sue the developer, even if he gained the knowledge that the developer was prepared to settle with Charles at the mediation. If that were not the case, the result would be that, should the other owners see that Charles' drainage problem is being addressed and decide to themselves sue the developer, every owner, other than Simon, would be entitled to sue the developer. And that can never be right! Or can it?

Patrick Scott completed the LLM in Mediation and Conflict Resolution course at Strathclyde University in 2018 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation, serves on the Scottish Legal Complaints Commission (SLCC) Panel of Mediators and volunteers as a lead mediator with Strathclyde Mediation Clinic. He is also on the Board of Trustees of Scottish Mediation.

Mediation Mulligans
by Alan Jeffrey

Alan Jeffrey

In this regular column, mediator Alan Jeffrey candidly shares examples of the mistakes, missteps, and gaffes he has encountered on his mediation journey – and, most importantly, the lessons that he has learned from them!

Last year was an extremely busy year for me for several reasons, a house move in the summer being the main culprit. By December, I was limping, exhausted, into some well-earned rest.

The end-of-year break is traditionally a time to catch up with friends and family, head out on long solo runs, reflect on the year just past, and look ahead to the journey to come.

It is also a time to watch television in my boxer shorts.

Dear reader, I can assure you that the latter occurred with sufficient abandon to allow me to confidently rate and recommend all of 2025's hottest Hollywood offerings.

Stranger Things was good.

Pluribus was excellent.

Strictly Come Dancing was my daughter's insufferable choice.

I apologise for the mental image of my boxer shorts.

Of course, my wonky brain rarely allows me to relax for long. Before long, guilt crept in… I should be doing something more productive, something that contributed to my intellectual or career development.

It was in this guilt-ridden state that I wondered whether I could combine my work in mediation with my current TV-induced lethargy. Surely there must be a show about mediation that could stimulate my brain while I remained firmly entrenched on the sofa.

A quick Amazon Prime search later, the answer arrived with a resounding YES. Let me introduce - *Fairly Legal*:

> *When Kate Reed, a San Francisco litigator, becomes frustrated by the constant injustice she witnesses in the courtroom every day, she abandons her legal career to become a mediator.*

I watched this show for you. Do not make the same mistake I did. Here are some highlights from the first 30 minutes of the very first episode:

- "Oh, you're such a lawyer!" Kate remarks to a half-naked man as she shoos him off her boat. Kate lives on a boat, for reasons that remain unclear on first watch.
- "I'm a mediator… I don't have emergencies!" Kate declares, while ignoring an important phone call from her boss for the fifth time.
- An **armed robber** enters a coffee shop as Kate waits for her drink. Kate promptly facilitates a negotiation between the robber and the barista. A

settlement is reached. The police are not called. The robber leaves, free to rob at gunpoint elsewhere.

- Kate's evil stepmother, who seems perfectly pleasant and younger than Kate, ushers her into a mediation as she enters the building. *"Get them on the same page."* A settlement is reached in roughly three minutes. We are repeatedly told that Kate is very good at her job.
- Kate is sent to the District Attorney's office to leverage her "connections". The half-naked man from the boat? He's the DA.
- Kate is due in court… and she's late. Bursting in, she apologises profusely, saying she is sorry. "No, you're not," the judge snaps. "You have disdain for the law. You quit the profession." This judge knows Kate, and he does not like her one bit.
- Despite his hatred for her, the judge orders the parties to mediation with Kate. "A mediator is a kind of referee in a game with no rules, except those agreed by the parties involved."
- We also learn that Kate once stopped a war between Colombia and Nicaragua using her mediation skills alone. This astonishing detail is brushed aside in two lines of dialogue. Kate is VERY good at her job.
- Despite this, the judge still threatens to hold her in contempt of court unless she settles the case by tomorrow. "Yes, I can do that," she states confidently.
- It soon emerges that Kate may not be quite as good as she thinks she is when the three-minute mediation promptly unravels.
- "I thought mediators were supposed to solve problems?"
  "Sometimes. Sometimes they just like to point them out."

I could go on, but I wouldn't want to spoil whether Kate manages to settle all her mediation cases (remember: Kate is good at her job).

By the end of the episode, I had reached an important conclusion: it is sometimes perfectly acceptable to watch mindless television at the end of a busy year, and we should not feel guilty about taking a break.

I had also learned that if I fail to settle my cases within 24 hours, I may be held in contempt of court, which is… mildly concerning.

I hope you managed to read that book, see that family member, watch that cheesy film, and feel refreshed enough to start it all again in January. I also sincerely hope you haven't spent too much time watching *Fairly Legal* in your boxer shorts.

Alan Jeffrey is the senior mediator at Cyrenians Mediation and Whole Family Support service with over a decade of experience in the area of conflict resolution. As a graduate of the MSc in Mediation and Conflict Resolution, Alan maintains a relationship with the University of Strathclyde in his role as one of the lead mediators with Strathclyde Mediation Clinic.

Report on the International Mediation Clinic Network (IMCN) Global Mediation Conference 2025

by Mariam Naeem

The IMCN Global Mediation Conference took place online on Monday, 20th of October 2025 and aimed to bring together those who work in the field and have passion for mediation and its development. There were short presentations from speakers from across the world, which allowed knowledge and learning to be shared and new perspectives to be gained.

Mediation has become more of a global concept and has many manifestations, and it is much broader than it is perceived. Mediation Clinics allow different people to learn their skills by gaining first-hand experience and being able to offer services to the public. Summaries of the presentations are below and a recording of the conference can be found on the Mediation Clinic YouTube channel.

Journey of students in a mediation clinic - Nina Gersamia, Lawyer, Mediator, Head of EEDR - Mediation Center, and George Amirkhaniani, Student, Project Manager at EEDR Mediation Center, Grigol Robakidze University Georgia (GRUNI)

Creating opportunities for learning and personal growth lies at the heart of the mediation system. Mediation represents the future of conflict resolution. Its popularity is steadily growing, and so too must its accessibility. Involving students in mediation clinics is essential, as young people are the leaders and changemakers of tomorrow. These clinics provide a powerful platform for students to witness mediation in action, an experience that can be truly *transformational*. By bridging the gap between theory and practice, mediation clinics take the crucial first step in shaping the next generation of skilled and empathetic mediators.

Using mediation to build strong working relationships between PhD students and their supervisors - Dr Deborah Cunninghame Graham, Non-Clinical Senior Lecturer in Molecular Medicine, Faculty Lead for Doctoral Student Welfare, King's College London

Strong relationships are essential to effective mediation and improving overall efficiency. Achieving this requires a careful balance, as students are not regular employees and should not be treated as such. At the same time, it is crucial for students to take ownership of their projects, as this is the key to meaningful growth and learning. Equally important is the supervisor's role as a mentor, providing guidance and support to make the experience less overwhelming and more empowering.

How student mediators are reshaping justice - Fiza Mehraj, Student, Vidyashilp University, Bengalura, India

India has embraced mediation through the enactment of the Mediation Act 2023, granting it statutory authority. The inclusion of mediation as a mandatory module in universities, coupled with strong judicial support, highlights its growing significance. This widespread acceptance reflects India's commitment to integrating mediation into both its legal framework and society at large.

Navigating cultural expectations in mediation clinics - Ivor Heyman, Advocate of the High Court and Mediator, South Africa

Culture in mediation may be a factor that is heavily overlooked but is vital. This is because it doesn't just influence disputes, it defines

how people experience conflict and what resolution feels legitimate. Cultural expectations shape emotional expression, authority and fairness and mediators who are unaware of these dynamics risk reinforcing an unbalanced approach. Culture is extremely important and relied on in instances where people speak different languages as seen in South Africa's approach to mediation.

Learning is key to fully understanding the mediation process and being able to use it effectively for its purpose. Ivor stated some key lessons for global law clinics. The first being ensuring people understand cultural expectations, which is done by running mediation through different scenarios during the learning experience. The second is through this global mediation conference, which is to share perspectives and contrast different approaches.

Clinical Research in UWA Mediation Clinic - Professor Jill A Howieson, Law School Director, Director of Mediation Clinic, University of Western Australia (UWA)

The University of Western Australia's mediation clinic was established in 2018 with the aim of providing free and low-cost mediation services, whilst also creating a platform for students, practitioners and researchers to learn, practice and serve. Though it is still a specialist mediation service, it ended up becoming a more research-based clinic due to no cases coming through.

The present state of the UWA clinic takes on a new initiative by launching community practice hubs and creating dedicated training centres. Although this is not what they initially aimed to do, they lead with the motto that you must go wherever the evolution takes you and try to build on that.

A key difference in the UWA clinic is they take more of a psychology-based approach than a law-based approach. This was done because lawyers are more concerned with the outcome of a dispute, whereas psychologists are less focused on the outcome and are more open to understanding the issue at hand. This reflects through the UWA philosophy, which is more focused on understanding the conflict. They achieve this by having a psychologist expert in their intimate team.

Overall, the Conference highlighted the growing significance of mediation as a dynamic, evolving and truly global practice. Through diverse perspectives from around the world, it became clear that mediation is not only a tool for resolving conflict but also a means of building stronger relationships, fostering cultural understanding, and driving educational innovation. From the proactive national approach in India to the culturally attuned practices in South Africa, and the psychology-driven methods at UWA, each contribution demonstrated the many ways mediation can adapt to different contexts. Central to this development is the role of students and mediation clinics, which bridge theory and practice and ensure that the next generation is equipped to expand its reach. As mediation continues to grow in popularity, collaboration, cultural awareness, and continuous learning will remain essential to shaping its future.

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