

促進式調解模型

Facilitative Mediation Model

Hong Kong Mediation Council

香港調解會一天課程第一部份

One Day Training - Part 1

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Hong Kong Mediation Council

香 港 调 解 会

(隶 属 香 港 国 际 仲 裁 中 心)



We shall cover 我們將會學習

Conflicts 冲突

Conflict Resolution Styles 冲突解决方式

Definition of Mediation 调解的定义

Use of Mediation 调解的用途

Models of Mediation 调解模式

Facilitative Mediation Model- an Overview
促进式调解模型 - 概述

Mediator 调解员

Mediation Skills 调解技巧

What is Conflict?

什么是冲突?

A conflict occurs when two or more parties perceive that they have mutually incompatible values, priorities or goals

当两方或多方认为他们具有相互不相容的价值观、优先事项或目标时，就会 有机会发生冲突



Conflicts 冲突

Can you avoid?

你能避免吗?

Conflicts Normal Inevitable

冲突正常是
不可避免的

- We live in a world full of conflicts 我们生活在一个充满冲突的世界
- International conflicts/disputes 国际冲突/争端
- Work conflicts/disputes 工作冲突/纠纷
- Domestic conflicts/litigation/disputes 国内冲突 /訴訟/纠纷
- Our own conflicts 我们自己 内在的冲突

Some Common Causes of Conflicts

平常引起冲突的原因



Conflicts Good or Bad?

冲突好或坏?



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Conflicts - Bad? 冲突 - 坏事?

- Can be stressful and unpleasant
可能会有压力和不愉快
- Damage to substantive and relationship
对实质性和关系的损害
- Destructive 破坏性的
- Discord, disharmony, and hostility
不和谐和敌意



Is conflict beneficial? 衝突有好處嗎？



Good? 好处?

New Thinking and Ideas 新思维和新想法

Other Perspectives 其他观点

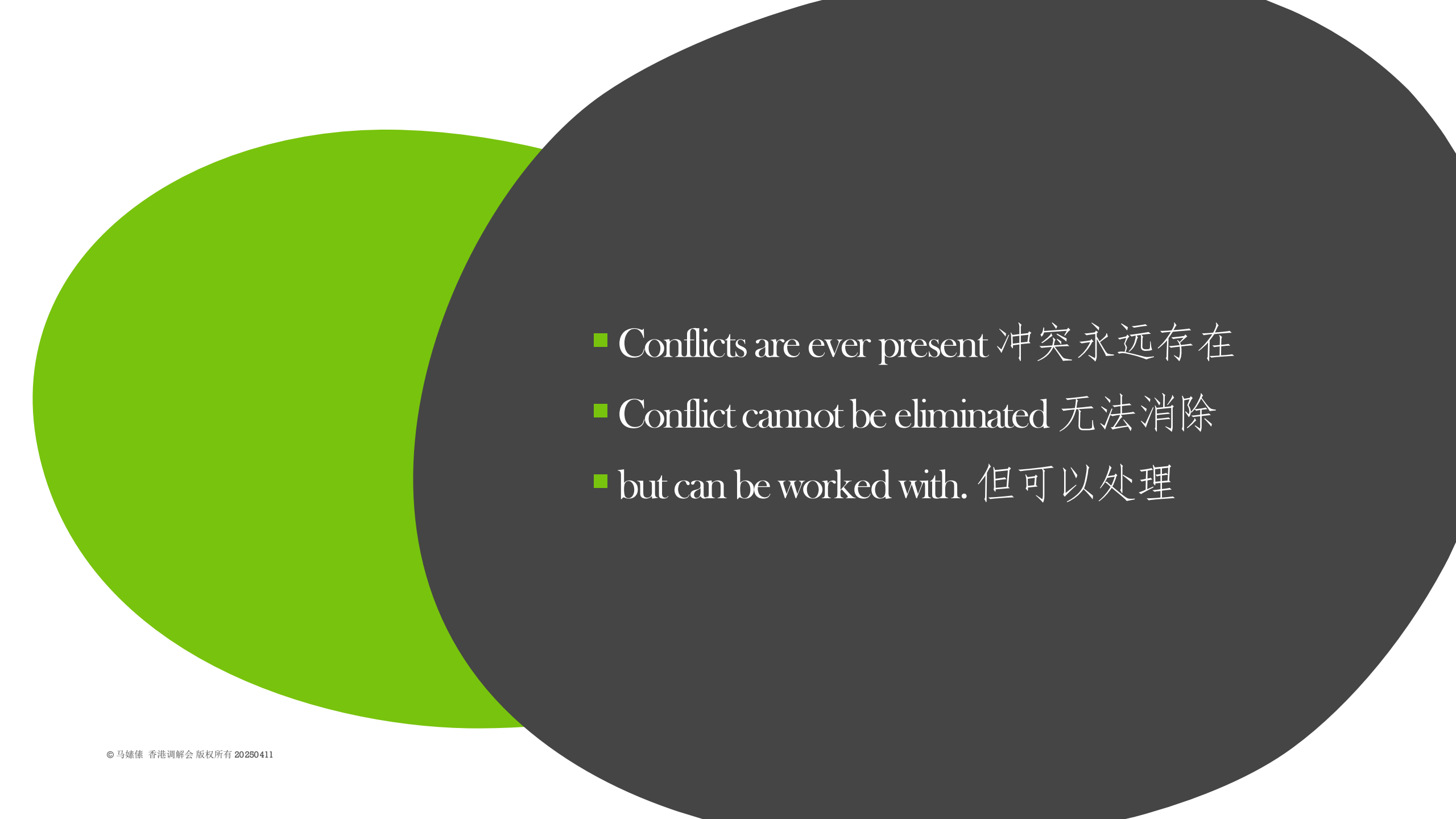
Better Understanding 更好地理解

Problem Solving (even long rooted problems) 解决问题
(即使是根深蒂固的问题)

Growth 成长

Positive Change 积极的改变

Breakthrough 突破

- 
- Conflicts are ever present 冲突永远存在
 - Conflict cannot be eliminated 无法消除
 - but can be worked with. 但可以处理

What is Conflict Resolution?

什麼是衝突解決？

- **Definition:** Conflict resolution is the process of resolving a dispute or disagreement in a peaceful and constructive way.

定義：

衝突解決是以和平且具建設性的方式解決爭端或分歧的過程。

- **Goal:** To find a solution that satisfies everyone involved.

目標：

找到令所有相關方滿意的解決方案。

- **Explanation:** Effective conflict resolution minimizes harm and maximizes mutual benefit, preserving relationships and creating understanding.

解釋：

有效的衝突解決能夠將傷害降至最低，並最大化互惠利益，同時維護關係並促進彼此的理解。通過開放的溝通、同理心、協商和妥協，參與者共同努力達成一個滿足各方需求和關切的解決方案。

Thomas-Kilmann Model

The Thomas-Kilmann Conflict Resolution Model (TKI) is a framework for understanding how individuals handle conflict.

托马斯-基尔曼冲突解决模型

是一种人际冲突管理风格，用来衡量个人对冲突情况的反应



- It was developed by **Kenneth Thomas** and **Ralph Kilmann** in 1974 and categorizes conflict-handling styles based on two dimensions: **assertiveness**(the extent to which a person attempts to satisfy their own concerns) and **cooperativeness**(the extent to which a person attempts to satisfy the concerns of others)
- 它由肯尼斯·托马斯 (Kenneth Thomas) 和拉尔夫·基尔曼 (Ralph Kilmann) 于1974年开发, 并基于两个维度将冲突处理方式分类: **自信性** (个人在多大程度上努力满足自己的需求) 和 **合作性** (个人在多大程度上努力满足他人的需求)

维持关系不重要

Maintaining the relationship isn't important



Competing 支配型



Avoiding 逃避型

My needs are important
我的需要很重要



Compromising 妥协型

My needs are not as important
我的需要不重要



Collaborating
合作型



Accommodating
迁就型

Maintaining the relationship is important

维持关系很重要

Exercise 練習

- 5 groups 5 组
- **5 conflict resolution styles** 5 种冲突解决方式:
 - Group 1: Competing 第 1 组: 竞争
 - Group 2: Collaborating 第 2 组: 协作
 - Group 3: Compromising 第 3 组: 妥协
 - Group 4: Avoiding 第 4 组: 逃避
 - Group 5: Accommodating 第 5 组: 迁就

场景 Scenario

- 两位工程师在一个重大基础设施项目中对设计方案存在分歧。一个倾向于使用成本效益高的方法，而另一个则坚持采用更创新但成本较高的方案。
- Two engineers disagree about which design approach to use in a major infrastructure project. One prefers a cost-efficient method, while the other insists on a more innovative but expensive solution.

场景

质量与时间的冲突

两位工程师正在合作一个关键的基础设施项目。

一位工程师专注于按时完成项目，即使这意味着要在质量上做出妥协。

另一位工程师则认为应该花更多的时间来确保结构达到最高的质量标准，即使这会推迟项目的截止日期。

- **竞争：** 一方坚持不惜一切代价按时完成项目， 另外一方坚持质量。
- **协作：** 双方讨论如何在调整时间表或重新分配资源的同时保持质量。
- **妥协：** 双方同意略微延长项目截止日期，同时保持可接受的质量水平。
- **回避：** 他们不处理截止日期与质量问题的冲突，继续工作而不解决矛盾。
- **迁就：** 一位工程师让步，选择优先考虑截止日期或质量。

Scenario

Project Deadline and Quality Conflict

Two engineers are working on a critical infrastructure project. One engineer is focused on meeting the project deadline, even if it means compromising on quality.

The other believes that extra time should be taken to ensure that the structure is built to the highest possible standards, even if it delays the deadline.

- **Competing:** One insists on meeting the deadline at all costs. One insists on quality of work.
- **Collaborating:** Both discuss how to maintain quality while adjusting the schedule or reallocating resources.
- **Compromising:** They agree to extend the deadline slightly while maintaining acceptable quality levels.
- **Avoiding:** They do not address the deadline vs. quality issue and continue working without resolving the conflict.
- **Accommodating:** One engineer concedes, agreeing to either prioritize the deadline or quality.

Reflection 反思

In Groups 小組討論

- How effective your assigned style was in resolving the conflict.
你被委派的处理冲突的方法有效吗？
- How the style impacted the relationship between the parties.
处理冲突的方法对关系有什么影响？

Class-Wide Debrief 全班汇报

- Was the resolution style effective? 解决方式有效吗?
- How did the other party in the scenario respond to your style? Did it escalate or resolve the conflict?

场景中的另一方对你的风格有什么反应？它是否升级或解决了冲突？

- One advantage and one disadvantage of using that style.

使用该样式的一个优点和一个缺点。

- In real life, when might this style be most or least effective?

在现实生活中，这种风格什么时候可能最有效或最无效？

Avoiding 逃避型



“Conflict? What
Conflict?”

“争议?什么争议?”

“Forget about
it...”

“忘记它吧...”

“Can we talk
about it some
other time?” “我
们迟些再谈好吗?”

I LOSE, YOU LOSE
我输，你输

Avoiding 逃避型

■ When this style is appropriate 这种方式适合:

- Issue is trivial 问题微不足道
- Cooling off period is needed 需要冷静期
- Timing is wrong 时机错误

■ When this style is not appropriate

这种方式不适合:

- Issue is important and conflict will not disappear, but instead continue to get worse

问题很重要，冲突不会消失，反而会继续恶化

Competing 支配型



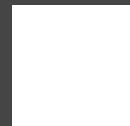
“We are doing it my way....”

“我们依我的方法做....”



“Let’s just get the job done...”

“我们就把事情完成吧...”



I WIN, YOU LOSE

我赢，你输

Competing 支配型

■ When this style is appropriate 这种方式适合:

- A decision needs to be made quickly – emergency e.g. fire, danger

需要迅速做出决定-紧急情况，例如火灾，危险

- Agreed upon that power comes with position of authority e.g. authoritative figure 同意权力伴随着权威地位，例如权威人物

- Unpopular decision needs to be made 需要做出不受欢迎的决定

■ When this style is not appropriate 这种方式不适合:

- Feelings are sensitive 要兼顾感受和关系
- Decision is not urgent 不紧急的决定

Accommodating 迁就型

“Sure! I am flexible....”

“当然，我很弹性
的....”

“Whatever you want is
fine with me...”

“你要什么我都行...”

I LOSE, YOU WIN

我输，你赢



Accommodating 迁就型

■ When this style is appropriate 这种方式适合:

- Maintaining the relationship more important

维持关系更重要

- Issue is very important to the other person and not to you

问题对方非常重要，对你并不是非常重要

■ When this style is not appropriate 这种方式不适合:

- Issue is important to you 问题对你很重要

- Lead to evading the issue when others are ready to address it

当其他人准备解决问题时，回避问题，导致问题未能解决



Compromising 妥协型

“I will meet you half way...”

“我愿意各退半步...”

“Let's make a deal...”

“我们作个交易吧...”

I WIN SOME, YOU WIN SOME

我赢部份，你赢部份

Compromising 妥协型

■ When this style is appropriate 这种方式适合:

- A decision needs to be made sooner rather than later 需要尽早做出决定
- Both parties are better off than attempting a win/lose 双方每人让步一点点都比尝试输赢更好

■ When this style is not appropriate 这种方式不适合:

- Situation is urgent 情况紧急
- Unbalanced power 力量不平衡
- Many important needs must be met 必须满足许多重要需求



Collaborating 合作型

"My preference is.... And please tell me yours.... If we each explain what we want, and keep talking, we can find a way for both of us.

我 优先的考虑是.... 请告诉我你的... 如果我们每个人都解释我们想要什么，并继续交谈，我们可以找到适合我们俩的方法

I WIN, YOU WIN

我赢，你赢

Collaborating 合作型

■ When this style is appropriate 这种方式适合:

- An important decision must be made
必须做出重要决定
- Situation is not urgent 情况不紧急
- Previous resolution attempts have failed
以前尝试的解决方案失败

■ When this style is not appropriate: 这种方式不适合:

- The matter is trivial to all involved
此事对所有参与者来说都是微不足道的
- Time, commitment and ability are not present
时间，承诺或能力不容许

这

Conflict Approaches 冲突处理的模式

ASSERTIVENESS

自信度

Competing 支配型

- Low relationship
 - High Issue
- Win/lose power struggle
- 低关系
- 高对应问题
- 赢/输角力
- 斗争

Collaborating 合作型

- High relationship
 - High Issue
- Expand range of possible options
- Goal is win/win
- 高关系
- 高对应问题
- 扩展可能的选项范围
- 目标是双赢

Compromising 妥协型

- Relationship undamaged
- Goal is to find "middle ground"
- 关系未受损
- 目标是找到“中间立场”

Avoiding 逃避型

- Low relationship
 - Low Issue
- Withdraw from the situation
- Maintain neutrality
- 低关系
- 低对应问题
- 逃避处境
- 保持中立

Accommodating 迁就型

- High relationship
 - Low Issue
- Give in to other party
- Maintain harmony
- 高关系
- 低对应问题
- 向对方让步
- 保持和谐

COOPERATIVENESS 合作度

策略

Strategies

Resolutions 议案

Win-Win

赢 - 赢

Lose-Lose

输 - 输

Win-Lose

赢 - 输

逃避型

Avoiding

Both parties
ignore the issue

支配型

Competing

双方都忽略了问题

Only one
party wins

合作型

Collaborating

Meet the needs
of all involved

只有一方胜出

迁就型

Accommodating

满足所有参与者的需求

One party meets
needs of other at
own expense

妥协型

Compromising

Both parties give
up something

一方牺牲需要
成全另一方的需求

双方都放弃了一些东西

Conflicts and Disputes 冲突与争议

- Conflicts – broader and deeper meaning

冲突 – 更广泛和更深的含义

- Disputes 争议:

- terminology preferred by some sectors

某些行业首选的术语

- standard terminology in litigation more focus on positions and issues which might otherwise be dealt with by more formal procedures like litigation

诉讼中的标准术语，更侧重于可能通过诉讼等，更正式程式处理的立场和问题

ADR

- Alternative Dispute Resolution 替代性争议解决
- Processes 过程
- Not judicial determination 非司法裁决
- Impartial third person assists to resolve disputes
公正的第三人协助解决争议
- Less costly and faster processes 成本更低，流程更快
- More creative and collaborative solutions
更具创造性和协作性的解决方案
- Example: Mediation, Conciliation, Arbitration
- 示例：调解、调停、仲裁

THE DISPUTE RESOLUTION SPECTRUM 争议解决范围

无协助谈判 UNASSISTED NEGOTIATIONS	替代性争议解决 ALTERNATIVE DISPUTE RESOLUTION			审判 ADJUDICATION
Traditional Settlement Negotiations 传统的和解谈判 Pre-dispute Early Involvement 争议前早期参与	PROCESS ASSISTANCE 过程协助	OUTCOME PREDICTION 结果预测	PRIVATE LITIGATION 私人诉讼	Admin Boards 管理委员会 Judicial Forums 司法论坛
	Conciliation 协调	Early Neutral Evaluation 早期中性评估	Binding Arbitration 具约束力的仲裁 Summary Proceeding with Binding Decision 具有约束力的决 定的简易程序式	
	Facilitation 促进	Non-Binding Arbitration 不具约束力的仲裁		
	Mediation 调解 Ombuds 监察员	Fact Finding 事实调查 Summary Jury Trial 简易陪审团审判		
小型审判和解法官 Mini-Trial Settlement Judge				
NON-BINDING PROCESSES 非约束性流程			BINDING PROCESSES 约束性流程	

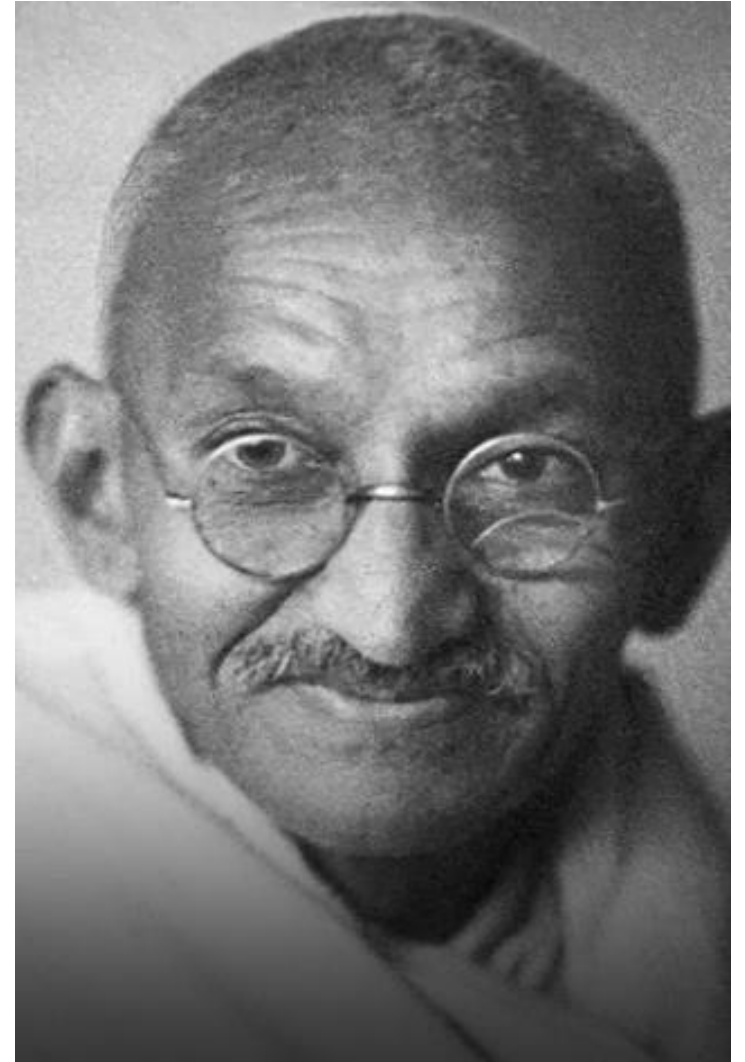


Peace is not the absence of conflict,
but the ability to cope with it.
Mahatma Gandhi

和平并不是没有冲突，而是应对冲突的能力。
圣雄甘地

Gandhi (1869-1948) was an Indian lawyer and anti-colonialist who relied on nonviolent resistance. As a leader in the campaign for India's independence from the British, other human rights movements around the world embraced his words and tactics.

甘地（1869-1948）是一位印度律师和反殖民主义者，依靠非暴力抵抗。在领导印度争取独立脱离英国的运动中，他的言论和策略被世界各地的其他人权运动所采纳。



YOU NEED 你需要:

Communication Skills
沟通技巧

Conflict Resolution Skills
争议解决技巧





Welcome to the
World of Mediation
欢迎进入
调解的世界

Mediation 调解

- A Form of ADR – alternative to court system
替代传统法庭系统解决争议的一种形式
- Structured process 结构化流程
- Trained and impartial third party 训练有素且公正的第三方
- Assist the parties to make decisions 协助各方做出决定
- Not impose decision on the parties 不会将决定加诸当事人
- Voluntary 自愿
- Confidential 保密
- Goal: amicable settlement responsive to need and acceptable to all
目标：友好解决，回应需求，结果为所有人所接受

Benefits of Mediation 调解的好处

- More control over the proceedings and outcome
对程序和结果的更多控制
- More likely to preserve and enhance relationship
更有可能维护和改善关系
- Greater access to creative and adaptive solutions
更有可能获得创造性和适合的解决方案
- Quicker resolutions 更快捷的解决方案
- Less expensive 更便宜

Uses of Mediation 调解的应用

Mediation is widely used to settle 调解被广泛用于解决:

- Construction Disputes 建筑工程争议
- Civil cases 民事案件
- Business and Commercial Disputes 商业纠纷
- Family Disputes 家庭纠纷
- Financial Disputes 财务纠纷
- Labour Disputes 雇佣关系争议
- Land Disputes 土地纠纷
- Others 其他

International Disputes

国际争端

The United Nations has played a crucial role in helping to mediate inter- and intra-State conflicts at all stages: before they escalate into armed conflict, after the outbreak of violence, and during implementation of peace agreements

联合国在协助调解国家间和国内冲突的所有阶段方面发挥了关键作用：在冲突升级为武装冲突之前、暴力爆发之后以及执行和平协定期间



Mediation Support Unit

Recognising the need for a more professional approach to mediation, the United Nations has enhanced its operational readiness to implement and support mediation efforts. A key innovation in this regard was the establishment of the Mediation Support Unit (MSU) within the Policy and Mediation Division (PMD) of the UN Department of Political and

- **Mediation skills -> conflicts -> manageable -> peace**

调解技巧 ->冲突 ->可管理 ->和平

- **Personal and professional lives: lawyers, counselors, teachers, law enforcement officers, human resource professionals,even students and young children**

个人和职业生活：律师、顾问、教师、执法人员、人力资源专业人员.....甚至学生和幼儿

- **Empowering people to make their own informed choices to resolve conflicts**

鼓励每一个人都有能力， 为自己作出 明智的决定， 解决冲突

Philosophy
for life?
人生哲理？

调解是一种生活态度

Mediation

is a

Lifestyle

Models of Mediation 调解模式

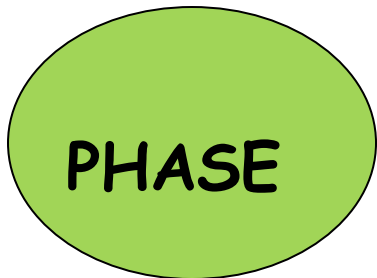
Facilitative 促进式

Evaluative 评估式

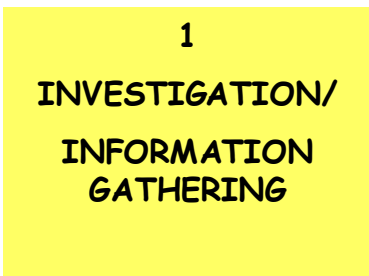
Transformative 转化式



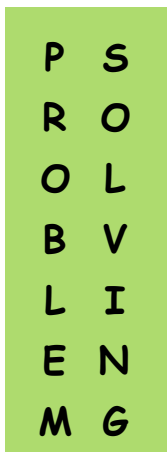
阶段



探讨
信息收集



解决问题



PROCESS 流程

Pre-mediation Meetings

调解前会议

Mediator's Opening Statement

调解员开场白

Parties' Initial Statements

双方开场白

Summarizing

总结

Issue identification & Agenda Setting

问题识别和
议程设置

Discussion
讨论

Exploration and Clarification
探讨和澄清

Private Session 个别会谈

Option Generation 制造方案

Initial Negotiation 初阶段谈判

Bargaining Phase 议价阶段

Outcome and Documentation 成果和文件

Debrief 汇报

SKILLS

技巧

ACTIVE
LISTENING

积极倾听

SUMMARIZING
REFRAMING
QUESTIONING
PARAPHRASING
EMPATHY

总结
重构/框架重整
适当提问
释意/复述
同理心

HYPOTHETICAL
QUESTIONING

假设性
提问

AGREEMENT
WRITING

协议撰写

Facilitative Mediation 促进式调解

Mediator structures a process to assist the parties in reaching a mutually agreeable resolution

调解员构建一个程序，协助各方达成双方都同意的解决方案

Facilitative Mediator 促进式调解员：

- Asks questions 提出问题
- Validates and normalizes parties' points of view 确认和 正常化各方的观点
- Searches for interests underneath the positions taken by parties
在各方采取的立场下寻找利益
- Assists the parties in finding and analysing options for resolution
协助各方寻找和分析解决方案的选项
- Does not make recommendations to the parties, give his or her own advice or opinion as to the outcome of the case, or predict what a court would do in the case
不向当事人提出建议，不对案件结果提出自己的意见，也不预测法院在案件中会做什么
- Mediator is in charge of the process, 调解员负责过程
- Parties are in charge of the outcome. 当事人负责结果

Facilitative Mediation 促进式调解

- Facilitative mediators want to ensure that parties come to agreements based on information and understanding

促进式调解员希望确保各方在资讯和理解的基础上达成协议

- Predominantly joint sessions with all parties present -> that the parties can hear each other's points of view

调解过程以**联席会议**为主->各方可以听取彼此的观点

- Hold caucuses regularly 定期进行个别会谈

Evaluative Mediation

评估式调解

Evaluative mediators assists the parties in reaching resolution by

评估式调解协助各方通过以下方式达成解决方案

- pointing out the strengths and weaknesses of their cases

指出他们案件的优势和劣势

- predicting what a judge or jury would be likely to do

预测法官或陪审团可能会做什么

Evaluative Mediation 评估式调解

- An evaluative mediator might make formal or informal recommendations to the parties as to the outcome of the issues

评估式调解员可能会就问题的结果向当事人提出正式或非正式的建议

- Evaluative mediators are concerned with the legal rights of the parties rather than needs and interests

评估式调解员关注的是当事人的合法权利，而不是需求和利益

- Less focus on non-legal aspects, e.g. relationship, feelings, interests
较少关注非法律方面，例如关系、感情、利益

Evaluative Mediation 评估式调解

- Evaluative mediators meet most often in separate meetings with the parties and their attorneys, practicing “shuttle diplomacy”

评估式调解员最常与当事人及其律师单独会面

- They help the parties and attorneys evaluate their legal position and the costs vs. the benefits of pursuing a legal resolution rather than settling in mediation

他们帮助当事人和律师评估他们的法律地位以及寻求法律解决方案而不是通过调解解决的成本与收益

- The evaluative mediator structures the process, and directly influences the outcome of mediation

评估式调解员构建流程，并直接影响调解结果

Transformative Mediation 转化式调解

[Goal 目標]

Empowerment

赋能

Recognition

理解和尊重

Transformative Mediation 转化式调解

- Empowerment 赋能
 - through empowerment, disputants gain “greater clarity about their goals, resources, options, and preferences” and that they use this information to make their own “clear and deliberate decision

通过赋能，争议者可以「更清楚地了解他们的目标、资源、选择和取向」，并且使用这些资讯来做出「他们自己的清晰和深思熟虑的决定」

- restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems

恢复个人对自己的价值和力量以及自己处理生活问题的能力

Transformative Mediation 转化式调解

- Recognition 理解和尊重

- help each person to recognize and empathize with the other party

帮助每个人理解和明白对方的感受和想法

- Even not agree 即使未必同意

- enabling the parties to see and understand the other person's point of view -- to understand how they define the problem and why they seek the solution that they do

使各方能够看到和理解对方的观点——了解他们如何定义问题以及他们为什么寻求他们所做的解决方案



Transformative Mediation 转化式调解

- Improved or transformed relationship -> settlement

转化或改善关系，从而解决争议

- Empowerment and recognition pave the way for a mutually agreeable settlement, but that is only a secondary effect.

赋能和理解尊重为双方都同意的解决方案铺平了道路，但解决方案是次要效果。

Transformative Mediation 转化式调解



Let the parties make their own decisions – content & process
讓各方做出自己的決定 - 內容和流程



Mediator 调解员：

Questions to help the parties in self-discovery

用问题协助各方自我发现/ 更深切地了解自己的需要

Transform conflicting individuals from adversaries to collaborators
将冲突的 对立的双方转变为合作者

By-product: transformed relationship 副产品：关系转变 及改善
Reactive and Supportive role 反应和支援作用

Not Suitable 不适用于

- People want a punitive judgement, retribution, pay-back or revenge
人们想要惩罚性的判决、报复、回报或报复
- Authoritative Judgement is needed: enforcement action needed, victim protection, establish a rule of law
需要权威判决：需要采取执法行动、保护受害者、建立法治
- Serious danger of mediation being used in bad faith, e.g. fishing for information
恶意使用调解，例如获取资讯
- Incompetency of disputants (e.g. mental health, substance abuse, etc.)
争议方无能力（例如心理健康、药物滥用等）
- Safety & violence 安全和暴力
- May be not ready now, future? 现在可能还没有准备好，未来？

▼ FACILITATIVE MEDIATION MODEL 促进式调解模型



阶段

PHASE

探讨
信息收集

解决问题

P
R
O
B
L
E
M
S

1
INVESTIGATION/
INFORMATION
GATHERING

2
EXPLORATION
勘探

3
NEGOTIATING
TOWARDS
AGREEMENT
谈判达成协议

4
Settlement
Agreement

和解协议

PROCESS 流程

Pre-mediation Meetings

调解前会议

Mediator's Opening Statement

调解员开场白

Parties' Initial Statements

双方开场白

Summarizing

总结

Issue identification & Agenda Setting

问题识别和
议程设置

Discussion
讨论

Exploration and Clarification
探讨和澄清

Private Session 个别会谈

Option Generation 制造方案

Initial Negotiation 初阶段谈判

Bargaining Phase 议价阶段

Outcome and Documentation

成果和文件

Debrief 汇报

SKILLS

技巧

ACTIVE
LISTENING

积极倾听

SUMMARIZING
REFRAMING
QUESTIONING
PARAPHRASING
EMPATHY

总结
重构/框架重整
适当提问
释意/复述
同理心

HYPOTHETICAL
QUESTIONING

假设性
提问

AGREEMENT
WRITING

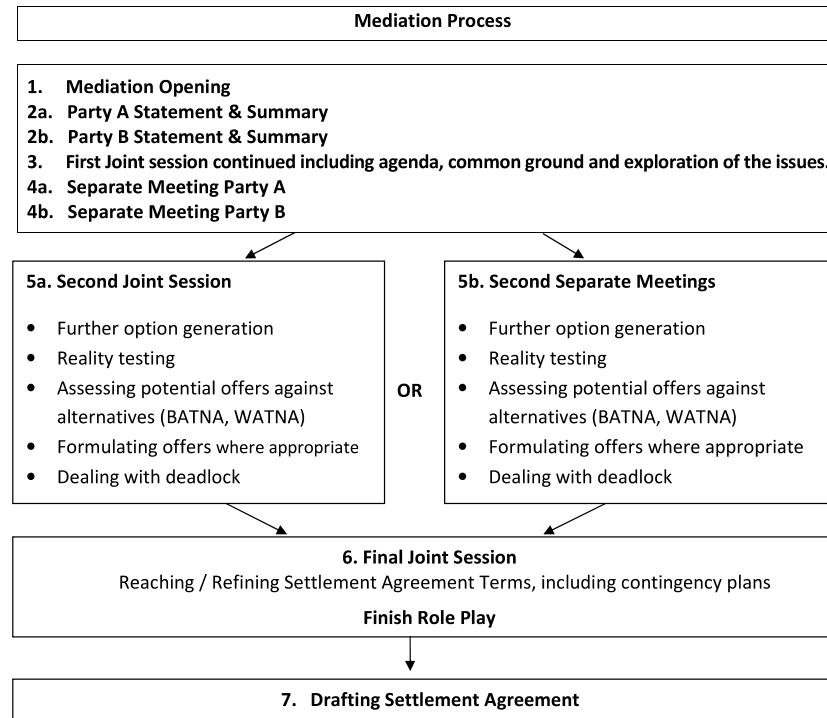
协议撰写

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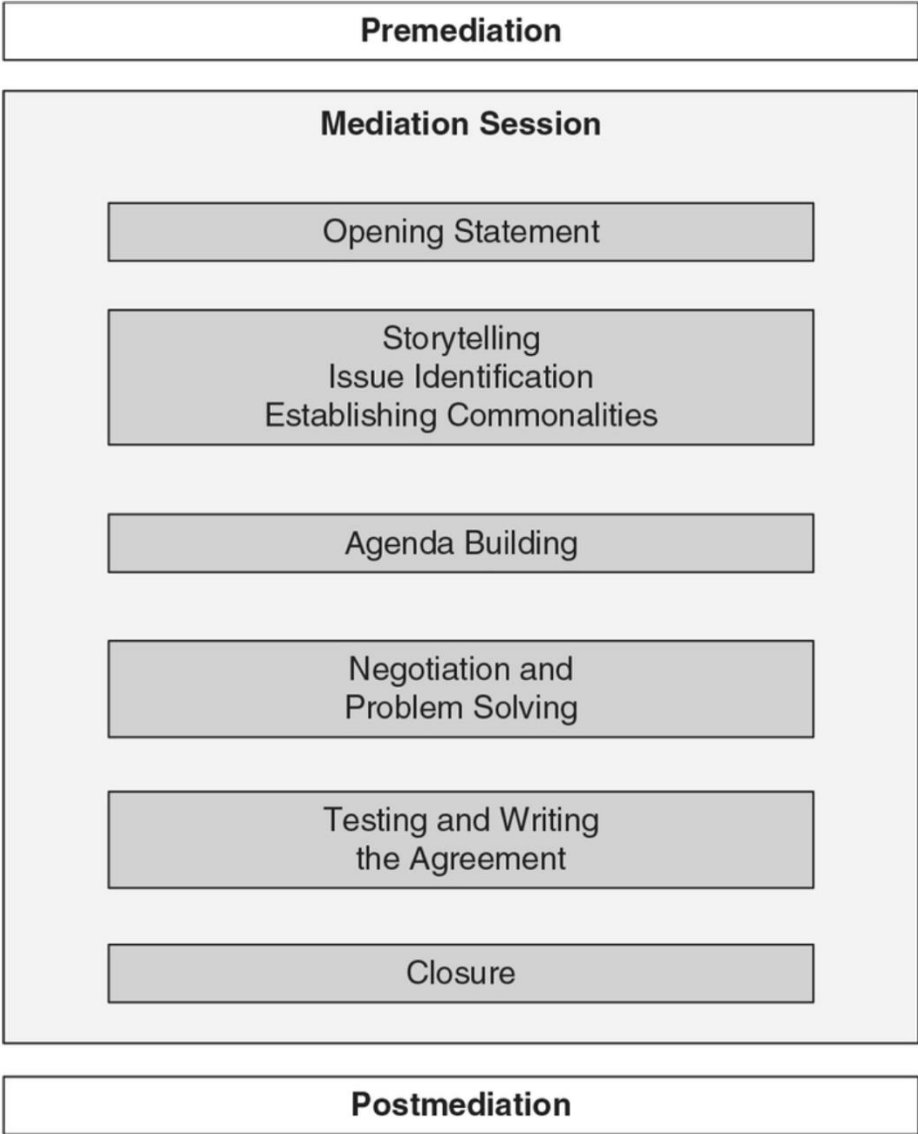
Mediation Process Model for HKMAAL Stage 2 Mediator Assessment

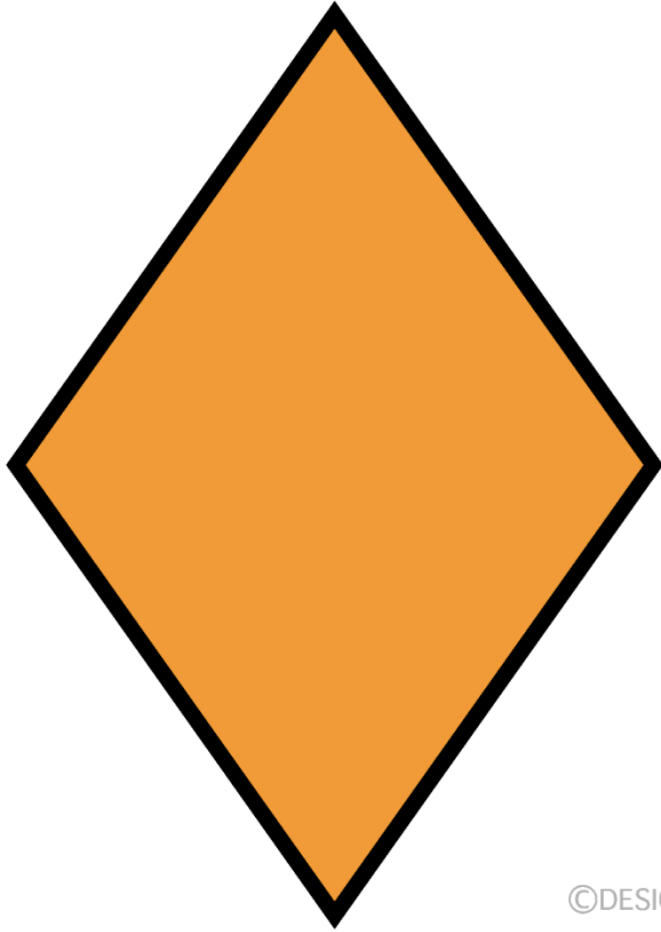
For the purpose of assessment, candidates MUST follow the mediation process model set out below, demonstrate his/her understanding and application of interest based negotiation principles in handling the dispute in the simulated cases as well as the specific skills set out in Form 1:

Candidates should refer to HKMAAL Competency Handout for more comprehensive outline of Process Stages Goals and Mediator Skills



*Please note: Regardless of which path the Mediator takes in the process at Step 5, Second Joint Session or Second Separate Meetings, the total separate meeting time for the role play should not be more than 40 minutes. Besides, the mediator must demonstrate the additional skills as outlined to move the process forward towards settlement, even if a full settlement is not reached.

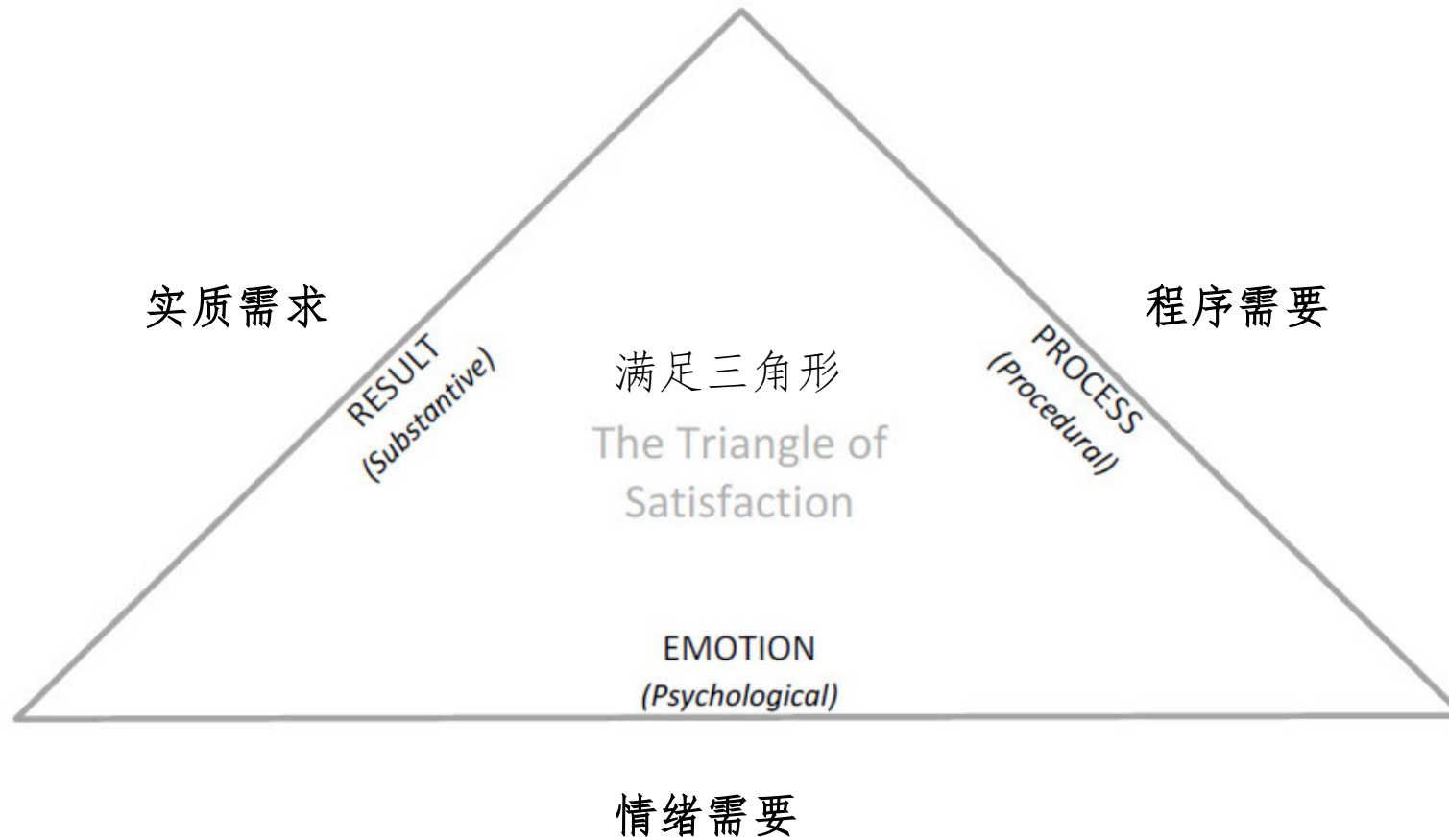




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Role of the Mediator 调解员的角色



Mediator 调解员

Facilitator of
Negotiation
谈判促进者

Not Judge or
Adjudicator
非法官或裁决者

Not a Decision Maker
非决策者

No Stake in the
Outcome
非结果得益者

Trained in Mediation
接受过调解培训

Formally Accepted by
Disputants
争端各方正式接受

Impartial &
Independent Third
Party
公正和独立的第三方

Process Manager

- “Mediator - in charge of the Process, Parties - in charge of the Content.”
- 流程管理者：“调解员-负责程序，各方-负责内容。”

Manager of the Process

流程管理员



Control the process 控制流程



Goals for each stage of the process
流程中每一阶段的目标



Momentum 步伐节奏

Facilitator of
Negotiation
谈判的促进者

Communication Channel

沟通渠道

Communication Guide 沟通
指引

- Find ways out 找寻出路
- Towards settlement 走向解决

Information Gatherer + Interpreter

资料搜集员 + 翻译员

Gather 收集	Gather information 收集资料
Clarify 澄清	Clarify misunderstanding 澄清误解
Manage 管理	Manage disputants' perception 管理争议者的看法
Use 运用	Use the information constructively 建设性地使用信息
Identify 识别	Identify common grounds, agenda, interests, needs, emotions 确定共同点、议程、利益、需求、情感

确定共同点、议程、利益、需求、情感

Problem Solver 问题解决者

- Clear Head & Creative Mind (needs -> options)
清晰的头脑及创意的思维(需要 -> 方案)
- Reality Tester 现实测试者
- Settlement Supervisor 和解监督
- Agreement Drafter 协议撰写员

Mediator

调解员

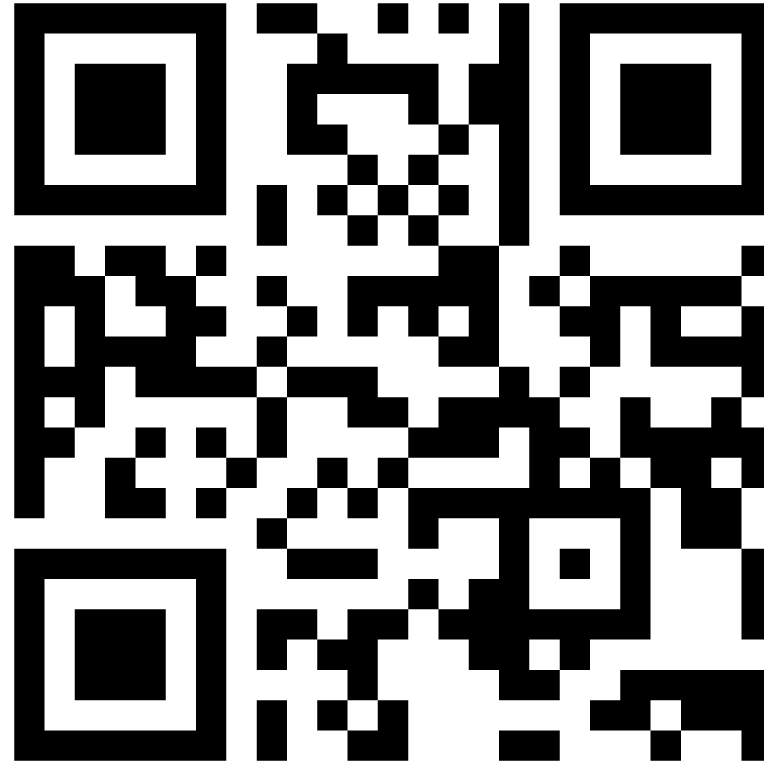
Expert of the field?
该领域的专家?

Lawyer? 律师?

Process Expert!
流程的专家!



Attributes of a
Good Mediator
好调解员的特质



Go to **www.menti.com**
and use the code **6178 4931**

<https://www.mentimeter.com/s/d61748e0ee90f122192e4dd7a18a0484/d4f27e72d812>

Good Mediator 好调解员

Strong People Skills

良好的人际交往能力

Able to Empathise

有同理心

Able to be Directive and to Confront

能够作出指示及有效地提出不同的见解

Comfortable with High Emotions, Arguments, Interruptions, Tears

自如地处理强烈情绪、争论、打断、眼泪

Respected and Trusted

受人尊敬同信赖

Creative in Problem Solving

创意地解决问题

Non-judgemental

不批判

Patient & Thorough

有耐性和贯彻

Persistent

坚持不懈

Low Need for Recognition, Credit, having things turn out your way

对认可、信用、事情按照自己的方式发展需求低

Impartial

不偏不倚

Able to Maintain Positive Tone

能够保持积极的语气

Mediator Skills 调解员技巧

- Appropriate **questions** 适当的问题
- Active **listening** 积极倾听
- Acknowledging and validating the expression of emotions
确认并肯定情绪的表达
- Summarizing 总结
- Paraphrasing 意译或复述
- Reframing 框架重整
- Awareness of his own and the party's body language
意识到自己和各方的 身体语言

Questions – Closed ended Open ended

開放式問題 **OPEN QUESTIONS**

- Encourage more information 鼓勵提供更多信息
- Allow for a wide range of responses 允許更廣泛的回應
- "What do you think about climate change?" 你對氣候變化有什麼看法？

封閉式問題 **CLOSED QUESTIONS**

- Limit the respondent to a specific set of responses, often "yes" or "no," or selecting from predefined options
- "Do you believe in climate change? (Yes/No)" 你相信氣候變化嗎？（是/否）

Exercise 练习

Open or Closed Questions ?

開放式或封閉式問題？

- Did you have a conflict with him? 你跟他是不是發生了衝突？
- How do you feel about this matter? 你對這件事有什麼感受？
- How would you like to resolve this problem? 你想如何解決這個問題呢？
- Are you very upset with his actions? 你對他的做法 是否十分反感？
- Do you feel he needs to apologize? 你是否必須要他作出道歉？
- What would you like to discuss today? 你今天想 討論什麼事情？

Active Listening 積極傾聽



- Body language 身体语言
- Eye contact 眼神交流
- Facial expressions 面部表情
- Gestures 姿势
- Tone of voice/inflection 语气/语调变化

Attending Skills 聆听技巧

Following Skills 跟进技巧

- Passive listening (nodding, facial expressions)
被动倾听（点头、面部表情）
- Encouragers (uh huh, yes) 鼓励（嗯，是的）
- Questions (clarifying, open, closed, hypothetical, etc.) 问题（澄清、开放、封闭、假设等）

TECHNIQUES OF ACTIVE LISTENING

积极倾听的技巧

1. **Body language** 身体语言
2. **Prompt the Speaker** 提示
3. **Clarifying questions** 澄清问题
4. **Paraphrasing / Reframing** 释义/框架重整
5. **Identify feelings** 识别感受
6. **Identify underlying values/interests** 确定根底价值/ 潜在利益



Body Language 身体语言

Purpose: Encourage speaker to be comfortable and disclose more
目的：鼓励讲者感到舒适并透露更多

Technique 技巧：

-Eye contact 眼神接触

-Attentive posture 留心的姿势

-Take notes 做笔记

-Note facial expressions 留意面部表情

SOLER

- **S**quarely facing speaker
正面望着对方
- **O**pen your posture
开放的姿态
- **L**ean towards the speaker
微微向讲者 方向前倾
- **E**ye contact is maintained
保持眼神接触
- **R**elax while listening
放松聆听



Summarising 总结

- Summarizing is the process of **condensing** a longer text, conversation, or piece of information into its most important points or main ideas

总结是将较长的文本、对话或信息**压缩**成最重要的要点或核心思想的过程

- Focus on the **key points** and **essential details**

集中**关键点**和**重要细节**

- Neutral, focusing on what was said or written

保持中立，专注于所说或所写的内容

- Avoid adding personal opinions or interpretations

避免加入个人意见或解释

Paraphrasing 释义

- **Paraphrasing** is the process of restating someone else's ideas or statements in your own words while maintaining the original meaning

释义是用你自己的话**重新表述**他人的想法或陈述,同时保持原意

- Unlike quoting, where you use the exact words from the source, paraphrasing focuses on rewording the information to make it clearer or more relevant to the context without altering the intended message

与引用不同,引用是使用来源的原话,而释义则注重**重新措辞**信息,使其在不改变原意的情况下更加清晰或更符合上下文

Reframing 框架重整

- Reframing is the process of changing the way we perceive or interpret a situation, event, or thought, often to shift from a negative to a more positive or constructive outlook. It is a cognitive-behavioral technique that can help reshape thinking patterns to influence emotions and behavior in a healthier way.
- 框架重整是改变我们感知或解释情况、事件或想法的方式的过程，通常是从消极的观点转变为更积极或建设性的观点。这是一种认知行为技术，可以帮助重塑思维模式，以更健康的方式影响情绪和行为。



負面 Negative ->正面 Positive

這杯水一半空， 還是一半滿？

Half Empty or Half Full?

Reframing 框架重整

- ◆ Changes statement from negative to positive 将陈述从 负面变为 正面
("Your price is too expensive 你们太贵")
- ◆ Blaming -> needs, desired outcome 责备 -> 需求, 期望的结果
("Your response to feedback is too slow 你们对反馈的回应太慢")
- ◆ Neutralizes inflammatory statements 中和煽动性/引发愤怒情绪的陈述
("You are a liar, your words are rubbish 你说谎, 你说的都是垃圾")
- ◆ Can shift focus from past to future 可以将焦点从过去转移到未来
("He breached the contract terms previously 他之前未有遵守合同條款....")
- ◆ Can shift focus from person to problem 可以将焦点从人转移到问题上
- ◆ Can shift focus from position to interest 可以将焦点从立场转移到利益
- ◆ Can mutualize and build co-operation 可以相互合作
- ◆ Can promote understanding, trust and re-build relationships 可以促进理解、信任和重建关系

Old Frame 旧框架	New Frame 新框架
Problem 麻烦/ 问题	Matter 事项
Dispute 争议	Situation 情况
Conflict 冲突	Circumstances 情况
Difficulty 困难	Challenge 挑战
I do not believe you 我不相信你	I am having trouble understanding you 我有困难去明白你
Damage 损失	Need for repair or restoration 需要修理或修复
Compensation 赔偿	Financial arrangement 金钱安排 Actual loss 实际损失
Reach agreement 达成协议	Ways to dealing with 处理的方法
It is a matter of principle 这是原则的问题	This is important to you 这对你很重要

Adapted from L Boule, M Colatrella Jr and A Picchioni, Mediation: Skills and techniques, LexisNexis, San Fransisco, 2008 at p120

Exercise 练习

Reframing 框架重整

Compensation 赔偿 →

Damage 损失 →

Position 立场 →

Complaints 投诉/不满 →

Past 过去 →

Actual Loss 实际损失

Financial and other arrangements
金钱或其他安排

Interest 利益

Needs 需要

Future 未来

A person with long hair, seen from behind, is standing in a field of yellow cosmos flowers. They are holding their hands up to form a heart shape against a bright blue sky with light clouds. The text is overlaid on the upper half of the image.

指责的背后是需要
***WHERE THERE IS A BLAME,
THERE IS A NEED.***

From Josephine Ma 馬嫻嫻

Reframing Exercise

框架重整 练习 1

He is the most uncooperative employee I have ever had.

他是我见过最不合作的雇员。

There are concerns about the business running smoothly
and with a spirit of cooperation between all parties.

对于业务顺利的进行及各方之间的合作有点关注。

Reframing Exercise

框架重整
练习 2

It is a matter of principle that our company cannot tolerate them to sell those goods to any other party.

本公司的原则是不能容忍他售卖该货品给其他人士.

Exclusive sale of those goods to your company is important to you.

向贵公司独家销售这些商品对您来说很重要。

Reframing Exercise

框架重整
练习 3

Please tell me your position in relation to the damages payable for the breach of contract.

请你告诉我在违反合同 这件事上你的立场。

- Please tell me what happened to the contract.
How did it affect you?

请你告诉我合同发生什么事？ 这事怎样影响你？

Reframing Exercise

框架重整
练习 4

Their lack of transparency is making it impossible to trust them.

他们缺乏透明度，让人无法信任。

- Addressing transparency issues can lay the groundwork for building a stronger, trust-based relationship.
- 解决透明度问题可以为建立更强的信任关系奠定基础。

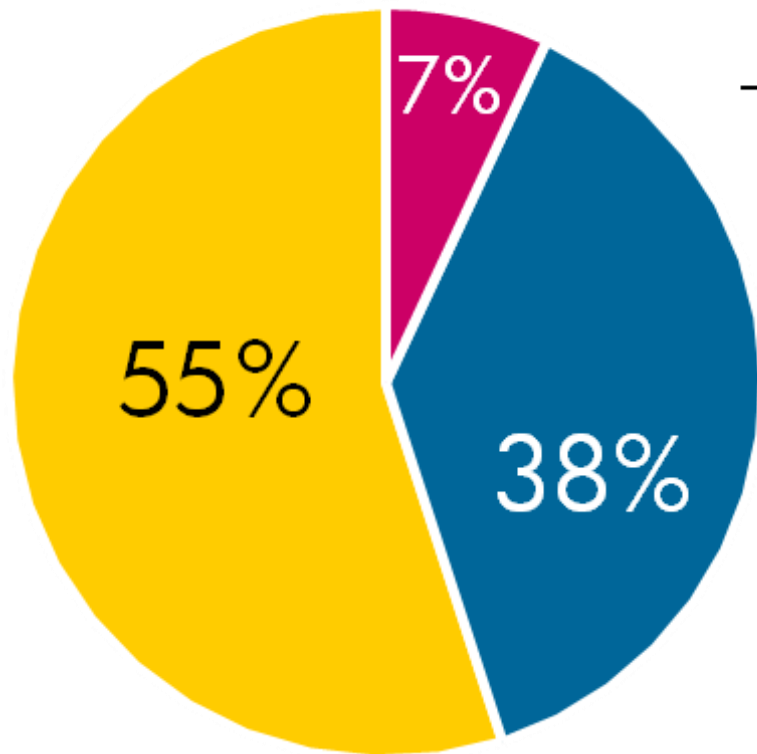
Reframing Exercise

框架重整
练习 5

My injury is caused by the employer's failure to provide a safe work environment. I want to claim compensation from them.

我的受伤是由于雇主没有给我安全的工作环境，我要向他们追讨赔偿。

- You mentioned about your injury and have concern about the work environment. You would like to talk about financial arrangement.
- 你提到你的受伤，并且对于工作环境提出关注。你希望商量金钱安排。



Dr. Albert Mehrabian's 7-38-55% Rule

Elements of Personal Communication 溝通的元素

- 7% spoken words 文字
- 38% voice, tone 語調
- 55% body language 身體語言

It is not **WHAT** you say.
不是你**说**什么

It is **HOW** you say it.
是你**怎样**说出来

Body Language 身体语言

- **Facial Expressions:** A smile can indicate friendliness, while a furrowed brow might signal confusion or concern

面部表情：微笑可以表示友好，而皱起的眉头可能表示困惑或担忧

- **Posture:** Standing or sitting upright can show confidence and engagement, whereas slouching might suggest boredom or fatigue

姿势：站直或坐直可以表现出自信和投入，而懒散可能表明无聊或疲劳

- **Eye Contact:** Direct eye contact can convey attentiveness and sincerity, while avoiding eye contact might suggest discomfort or dishonesty

眼神交流：直接的眼神交流可以传达注意力和真诚，而避免眼神接触可能暗示不适或不诚实

Body Language 身体语言

- **Gestures:** Hand movements can emphasize a point, while tapping on a surface might indicate impatience or nervousness

手势：手部动作可以强调某个点，而点击表面可能表示不耐烦或紧张

- **Proxemics (Use of Space):** How close or far you stand from someone can signal comfort, intimacy, or dominance. Standing too close might make someone feel uncomfortable, while too much distance might imply disinterest or detachment

空间使用：您与某人的距离可以表示舒适、亲密或支配。站得太近可能会让人感到不舒服，而站得太远可能意味着不感兴趣或疏离



Can you Ignore Feelings in Mediation?

你可忽略调解中的感受吗?

Sometimes Yes, 有些情况可以

Sometimes No 有些情况不可以

Repeat? 重复?

Emotions in Mediation 调 解中的感受

Emotions are integral part of disputes

情绪是争议不可或缺的一部分

Different people can have different emotions in the same situation – background, personalities, attitudes, intentions, intuitions, awareness, context and capacity for empathetic
不同的人在不同的情况下可以有不同的情绪——背景、个性、态度、意图、直觉、意识、背景和同理心能力

Emotions provide information for mediator: what is important?

情绪为调解员提供信息：

什么是重要的？

Common emotions in commercial mediation

商业调解中的 常见情绪



DISGUST



NEUTRAL



ANGER



ANGER



ANGER



ANGER



FEAR



HAPPY



FEAR



DISGUST



FEAR



SAD



FEAR



FEAR



SAD

Possible Loss 可能的损失

Financial 财务

Reputational 声誉

Certain hopes and dreams 希望和梦想

Aspects of relationships 關係

Meaningful parts of their identity 身份的意义

Needs of Parties in Conflict

冲突各方的需要

To be heard 被聆听

Accurate empathy 准确的同理心

Validation 明白和确认

Respectful, appropriately paced process of dealing
with the conflict

尊重、处理冲突过程适当的节奏和速度

Empathy 同理心

Mediators who can manage emotions
are more likely to achieve resolution

能够管理情绪的调解员更有可能达成和解

Be prepared to *empathize* and **not**
sympathize

准备表达同理心 而不是 同情/可怜

Empathy and Sympathy

同理 与 同情

Empathy involves putting yourself in the other person's shoes and understanding WHY they may have these particular feelings. “I understand that you are in pain.”

同理心包括设身处地 去理解他人，并理解他们为什么会有这些特殊的感受。

“我明白你很痛苦。”

Sympathy is when you share the feelings of another e.g. feelings of pity and sorrow for someone else's misfortune. “I am sorry you are in pain.”

同情是指你 对于另一个人的感受，你有相同的感受，例如对别人不幸你感到怜悯和悲伤。

“我对于你的痛苦 感到怜悯。”

同理心是

Empathy is...

seeing with the eyes of another,

以别人的眼睛去看

listening with the ears of another,

以别人的耳朵聆听

and feeling with the heart of another.

以别人的心去感受

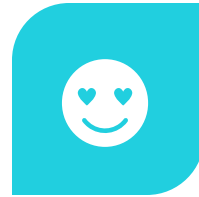
Empathy in mediation: why?

调解中的同理心：为什么？



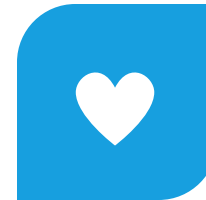
**BUILD
RAPPORT &
CONNECTION**

建立
信任和连结



**FOSTER THE
FEELING OF
BEING
UNDERSTOOD
& VALUED**

促进
被理解和
重视的感觉



**FOSTER
TRUST**
促进信任



**SOOTH
EMOTION**
舒缓情感

Can empathy
be trained?
同理心可以
被训练吗?

■ **YES!** 可以!

Research shows that empathic capacity can be improved by training.

研究表明，同理心可以通过训练来提高。



THE
E.M.P.A.T.H.Y.

ACRONYM

缩写

EMPATHIC HEART

同理的心



EMPATHIC MINDSET

同理心的思维

How to foster Empathy?
如何培养同理心?

Empathic Heart 同理的心

Embrace 包容和接受

Appreciate 认识和欣赏

Respect 尊重

Differences 差异



Empathic Heart +
Empathic Mindset
同理的心 +
同理的思维

Think Positive
正面思想

**Open Heart
Open Mind**
开放的心
开放的心态

**Shut out the
Negatives**
停止负面

**No judgment
No bias**
没有判断
无偏见



Respect the diversity of human nature

尊重人性的多样性

Self-Awareness

Understand

自我意识

明白

接受和尊重

Accept and Respect

Empathy starts from
同理心由

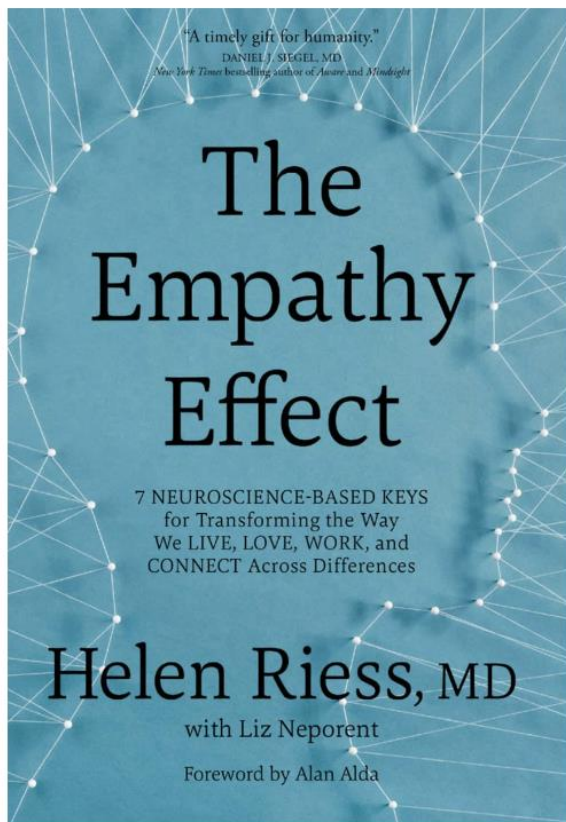
Empathic Heart
同理的心

Empathic Mindset
同理的思维开始



Empathic Listening and Response

同理地聆听和回应



The E.M.P.A.T.H.Y. acronym 缩写

E

Eye Contact 眼神接触

M

Muscles of facial expression 面部表情肌肉

P

Posture 姿势

A

Affect 情感

T

Tone of voice 声音的语调

H

Hearing the whole person 听到全人

Y

Your response 你的回应



How to acknowledge feelings? 如何 确认感受?

"So you feel frustrated ..."

"所以你感到沮丧..."

"Sounds like you are
confused..."

"听起来你好像很困惑..."

"You seem upset..."

"你好像很不高兴..."

"That must be difficult..."

"那一定很 困难..."

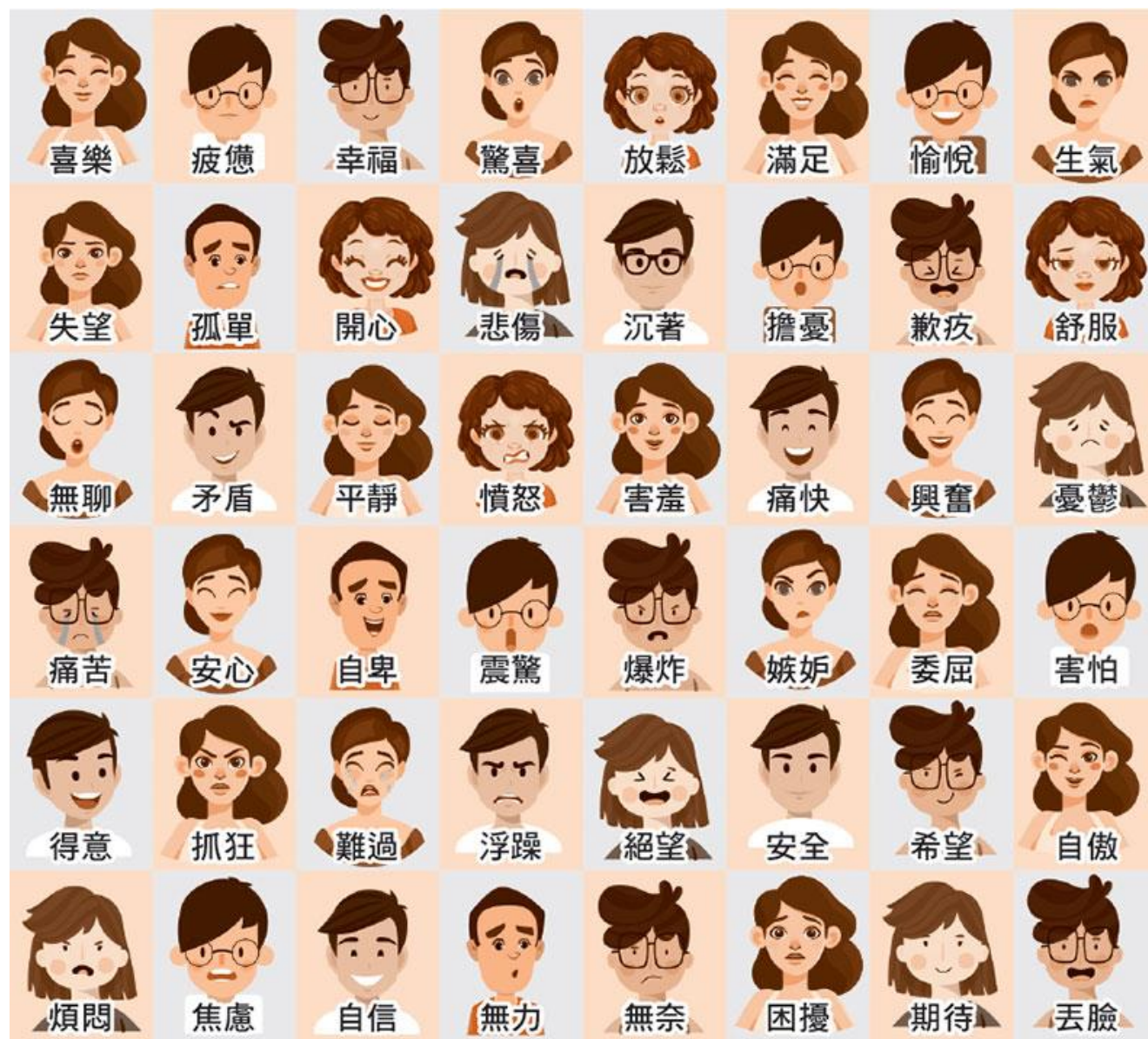
"It sounds as if you..."

"听起来好像你..."

"You're angry about..."

"你生气了， 因为..."

确认并肯定 情绪的表达



感受 词语

担心、困扰、紧张、焦虑、害怕、不安、热心、烦躁、麻烦、渴望、兴奋、兴高采烈、欢呼、欢乐、鼓舞、满足、喜出望外、快乐、振奋、刺激、愉快、高兴、欣喜若狂、感兴趣、期待、充满希望、轻松、兴奋、乐观 着迷、沮丧、失望、心灰意冷的、贫困、空虚、气馁悲伤、悲惨、可怕、不舒服、糟糕、受到伤害、恼怒、孤独、绝望、悲观、烦躁、苦恼、心烦意乱、烦扰、困扰、愤怒、被冒犯，怨恨、苦涩、不安、矛盾、困惑、羞愧、迷失、犹豫、不适、孤立、孤独、超然、流离失所、昏昏欲睡、无精打采、没有动力、被支配、窒息、受害、受阻、惊奇、惊讶、震惊、好奇、不知所措、可笑、尴尬、充满希望、满意、平静、和平、沉着、舒适。。。。。

Acknowledging and validating the expression of emotions



grieving



excited



nervous



confident



frightened



regretful



surprised



hurt



proud



calm



enraged



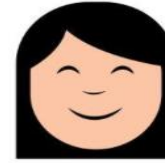
happy



angry



guilty



peaceful



aggressive



impatient



hopeful



disappointed



determined



joyful



ashamed



humiliated



withdrawn



apologetic



grateful



hopeless



lonely



annoyed



jealous

Feeling Words

- worried, troubled, nervous, anxious, apprehensive, fearful, uneasy, concerned, restless, disturbed, upset
- eager, excited, elated, cheered, joyous, inspired, fulfilled, overjoyed, happy,
- depressed, down, disappointed, rejected, desperate, pessimistic, hassled, crushed, jinxed
- agitated, irritated, 'pissed off,' perturbed, embittered, upset, annoyed, bothered, irritated
- confused, ambivalent, indecisive, unsure, uncertain, perplexed, abashed, unprepared
- indifferent, apathetic, unfeeling, unconcerned, alienated, isolated, alone

EMOTIONS IN MEDIATION

调解中的情绪

- ▶ Effective mediators need to be aware of psychological aspects of the dispute
有效的调解员需要意识到争议的心理
- ▶ Sometimes these are obvious and other times they are not
有时这些是显而易见的，有时则不是
- ▶ **Ventilation -> Acknowledgement is usually enough**
发泄-> 确认通常就足够了
- ▶ Witness 见证



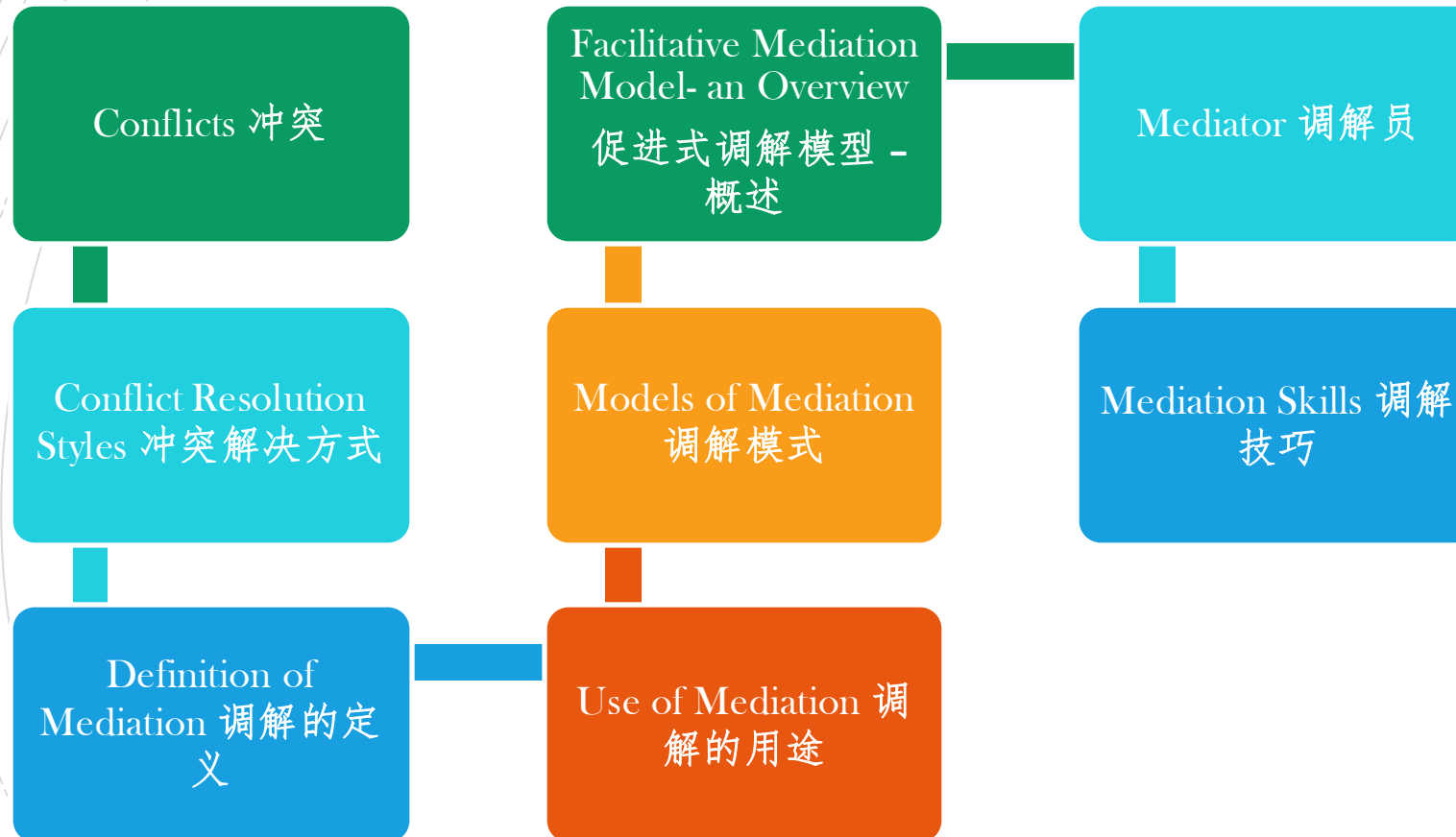
Art 艺术

Communication 沟通

Other Skills 其他技巧

- Note taking – shows interest 记笔记 – 表现出兴趣
- Visuals – whiteboard or flipchart 视觉效果 – 白板或活动挂图
- Good drafting skills 良好的草拟协议技巧

We have learn
我們學習了





PPT



Trainer Josephine Ma 導師 马嫻儀

- ▶ 马嫻儀律師是香港调解会的副主席。自2023年以来，她在不同時期担任香港区域法院案件和解会议的 聆案官。2025年1月獲認證成為香港粵港澳大灣區調解員。
- ▶ 马律師从事律师工作已有25年以上。自2004年起，她获得綜合調解員及家事調解員双重认证，随后成为家事調解監督。在过去的20年里，她主持了数百宗調解案件，成功解决了包括商业、建築、金融、合同、侵权、遺產、家事及跨境等多种纠纷。自2010年以来，她一直担任綜合事務調解員认证的评核员。
- ▶ 马律師是香港調解員认证课程的調解培訓導師，教導符合香港調解资历評審協會有限公司标准的調解課程。在她的職業生涯中，她在提升香港、澳門及內地超过1,000名專業人士的調解技能方面发挥了重要作用。
- ▶ 马律師拥有中国香港比較，佛學，教育及輔導三個領域的碩士學位，以多元的視野促進和解；她的專業領域涵蓋多種調解方法，包括促進式、轉化式、評估式、治療式、敘事式及高衝突調解技巧。马女士對這些多样化的調解方式有着深厚的造詣，能够熟练地引導各方解決衝突。
- ▶ Ms. Josephine Ma is the Vice-Chairperson of the Hong Kong Mediation Council. She has served as a Master of Case Settlement Conferences in the District Court of Hong Kong during various periods since 2023. Accredited as GBD GD, Hong Kong and Macao Mediator in January 2025.
- ▶ Josephine has been a practicing lawyer for over 25 years. She began practicing as an accredited general and family mediator in 2004 and later became a family mediation supervisor. Over the past 20 years, she has conducted hundreds of mediation cases and successfully settled a wide range of disputes, including those involving commercial, construction, financial, contractual, tort, probate, family, and cross-border matters. Since 2010, she has served as an assessor for the accreditation of general mediators.
- ▶ Josephine is an acclaimed trainer in accredited general mediation training programs that adhere to the standards of the Hong Kong Mediation Accreditation Association Limited. Throughout her career, she has played a key role in enhancing the mediation skills of over 1,000 professionals across Hong Kong, Macau, and mainland China.
- ▶ Josephine holds three master's degrees in Chinese and Hong Kong Comparative Law, Buddhism, and Counseling and Education. This diverse educational background equips her with a multifaceted perspective that enhances her ability to facilitate the settlement of disputes. Her expertise spans a wide range of mediation methodologies, including facilitative, transformative, evaluative, therapeutic, narrative, and high-conflict mediation techniques. Josephine's proficiency in these diverse approaches has enabled her to expertly guide parties through the resolution of their conflicts.