

AMBITIOUS GOALS AND GLOBAL PLANS: THE GLOBAL POUND CONFERENCE SERIES

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Ambitious Goals and Global Plans: The Global Pound Conference Series

*The GPC is an opportunity for us to have a conversation about what dispute resolution should be today and for years to come. Our vision for the GPC is for the stakeholders to come together to define the way disputes ought to be resolved in the modern world.*¹

- Michael McIlwrath, Chairman of Central Organizing Group for GPC Series.

I. INTRODUCTION

On October 29, 2014 an interactive convention titled “Shaping the Future of International Dispute Resolution,”² organized by the International Mediation Institute,³ the IDR Group,⁴ and Herbert Smith Freehills⁵ at London’s Guildhall, surprised the global dispute resolution community.⁶ Data generated from this convention shed light on the chasm between users needs and what the dispute resolution marketplace offered.⁷ The silver lining was that all stakeholders⁸ agreed that a series of international “Pound Conferences” would be beneficial to further explore the differences.⁹

¹ Media Release, *Global Pound Conference Launch: Shaping The Future Of Dispute Resolution & Improving Access To Justice*, GLOBAL POUND CONFERENCE SERIES 2016-2017 (October 2015), <http://www.globalpoundconference.org/Documents/GPC%20Series%20Press%20Release%20October%202015.pdf> (last visited March 26, 2017). Michael McIlwrath is also the Chief Global Litigation Counsel at GE Oil & Gas.

² *A Unique Interactive Convention Shaping the Future of International Dispute Resolution*, <https://imimmediation.org/shaping-idr-convention-2014>, INTERNATIONAL MEDIATION INSTITUTE (last visited March 11, 2017).

³ INTERNATIONAL MEDIATION INSTITUTE, www.imimmediation.org (last visited March 11, 2017). International Mediation Institute (IMI) is a non-profit public interest initiative to drive transparency and high competency standards into mediation practice across all fields, worldwide. Headquartered in the Hague, in the Netherlands, there are more than 400 IMI Certified Mediators in 45 countries.

⁴ THE IDR GROUP, <http://www.idrgroup.org/> (last visited March 11, 2017). IDR Group is a not for profit organization comprising of international dispute resolution specialists. Headquartered in London, the group has wide geographical spread with members in key locations – Africa, Bangladesh, China, Europe, the Middle East, Russia, Singapore, the United Kingdom, and the United States.

⁵ HERBERT SMITH FREEHILLS, <https://www.herbertsmithfreehills.com/about-us> (last visited March 11, 2017). Hebert Smith Freehills is an international law firm with 26 offices located across the globe.

⁶ Deborah Masucci & Michael Leathes, *The Urgent Need for Data: Are the Users and the Dispute Resolution Market Misaligned?* KLUWER ARBITRATION BLOG (Nov. 5, 2014), http://kluwermediationblog.com/2014/11/05/the-urgent-need-for-data-are-the-needs-of-users-and-the-dispute-resolution-market-misaligned-2/?doing_wp_cron=1489665717.0117220878601074218750 (last visited March 11, 2017).

⁷ *Id.*

⁸ *Id.*; *London 2014 Pilot Project Event*, GLOBAL POUND CONFERENCE SERIES 2016 -2017 (March 11, 2017, 10:30:55 PM), <http://globalpoundconference.org/about-the-series/london-2014-pilot-test#.WMBgjoWcFw>. The London 2014 Pilot Project Event had 150 delegates from over 20 countries in North America, Europe, Asia, Australasia, the Middle East and Africa.

⁹ Masucci and Leathes, *supra* note 6.

The Global Pound Conference (“GPC”) Series is an unprecedented year-long international initiative designed to create a dialogue on commercial dispute resolution between users, advisors and providers.¹⁰ It was launched by the International Mediation Institute¹¹ (“IMI”) with the goal of helping align users needs with what dispute resolution providers offer.¹²

The GPC Series seeks to learn how disputants practice dispute resolution today, what their needs will be in future, and how dispute resolvers should evolve to meet the demands of the marketplace.¹³ Although originally planned to take place in fewer locations, approximately forty cities volunteered to hold events in thirty one countries to gather information that would address these questions.¹⁴ The GPC Series commenced in Singapore on March 17-18, 2016, and will culminate in London in July 2017.¹⁵ The events are organized locally and coordinated globally.¹⁶ There are five stakeholder groups represented in each GPC event: parties to commercial disputes, their advisors, their adjudicative and non-adjudicative providers, and influencers.¹⁷ In each event,

¹⁰ *About The GPC Series*, GLOBAL POUND CONFERENCE SERIES 2016 -2017 (March 11, 2017, 10:30:04 AM), <http://globalpoundconference.org/about-the-series/about-gpc>.

¹¹ INTERNATIONAL MEDIATION INSTITUTE, *supra* note 3; *Central Organizing Group - Executive Committee*, GLOBAL POUND CONFERENCE SERIES 2016 -2017 (March 26, 2017, 10: 45 AM), <http://globalpoundconference.org/the-people/organisers#.WNfzpfkrI2w>. (The GPC Series is organized by a Central Organizing Group (COG), led by an Executive Committee of six people. The Executive Committee is appointed by the Board of IMI and is responsible for leading, supporting and overseeing the implementation of the GPC Series).

¹² Deborah Masucci, *The Global Pound Conference: The Journey to Determine the Needs of Users Has Started*, NEW YORK DISPUTE RESOLUTION LAWYER 9 (2016) 2, 27.

¹³ *Id.*

¹⁴ *About The Global Pound Conference Series 2016-17*, GLOBAL POUND CONFERENCE SERIES 2016-17 (March 26, 2017, 10:35:05 AM), <http://www.globalpoundconference.org/>. Of those approximately forty initially scheduled events, fifteen were completed as of April 9, 2017. The exact number of events to be held will not be known until July 2017. It is likely to end up being closer to 30 cities in 25 countries. E-mails from Deborah Masucci, Chair of International Mediation Institute, to author (March 23, 2017) and from Jeremy Lack, Global Coordinator of the GPC Series, and ADR Neutral and Attorney-at-Law, to author (April 6, 2017) (on file with author).

¹⁵ Masucci, *supra* note 12, at 27.

¹⁶ *Id.*

¹⁷ *Welcome by Central Organizing Group(COG)*, GLOBAL POUND CONFERENCE SERIES 2016 -2017 (March 26, 2017, 12:30:08 PM), <http://globalpoundconference.org/about-the-series/welcome-to-the-gpc-series#.WHv3sdzVnRw> (stating that the “GPC Series will convene all stakeholders in dispute resolution - commercial parties, chambers of commerce, business executives, entrepreneurs, lawyers, academics, judges, arbitrators, mediators, policy makers, government officials, and others - at conferences around the world”).

the same set of twenty core questions¹⁸ are being posed using interactive technology. After each event, the data collected is summarized in a report, which is available on the GPC Series website.¹⁹At the end of the GPC Series a final report with recommendations will be produced.²⁰

The cumulated data of the first seven events,²¹ that have taken place from March 2016 to December 2016, shows that the preferences and priorities of parties involved in commercial and civil disputes differ from what providers perceive and offer. In other words, there are gaps between the “demand” and “supply” sides in the dispute resolution market. While it is likely that these themes and trends may change as the GPC Series progresses, it is also possible that the first seven events are an accurate predictor of what will come next.

This paper gives a preliminary view of the aggregate data collected from the first seven events of the GPC Series that took place in 2016 and a discussion on how this data points to possible improvements in commercial dispute resolution. The paper proceeds as follows: Part II maps the background of the first two Pound events conducted in 1906 and 1976. These events provided the historic springboards for the current effort. Part III describes the GPC Series itself. Part IV summarizes the key findings from the first seven events of the GPC Series in 2016. Part V discusses future directions to improve commercial dispute resolution based on the data. Finally, Part VI concludes with a look at whether organizing the GPC event is worth the effort,

¹⁸ *GPC Series 2016-17 Core Questions For Commercial Disputes To Be Used At All GPC Events*, GLOBAL POUND CONFERENCE SERIES 2016-17, [http://www.globalpoundconference.org/Documents/GPC%20Series%202016-17%20--%20Core%20Questions%20--%20Publication%20Copy%20\(March%206%202016\).pdf](http://www.globalpoundconference.org/Documents/GPC%20Series%202016-17%20--%20Core%20Questions%20--%20Publication%20Copy%20(March%206%202016).pdf) (last visited March 24, 2017). Some cities such as Berlin have added additional core questions, to analyze local matters such as a new German law on mediation. E-mail from Jeremy Lack, Global Coordinator of the GPC Series, and ADR Neutral and Attorney-at-Law, to author (April 6, 2017) (on file with author).

¹⁹ *Voting Results, Chats & Comments*, GLOBAL POUND CONFERENCE SERIES 2016 -2017 (March 24, 2017, 12:35:08 PM), <http://globalpoundconference.org/gpc-series-data/local-voting-results#.WNUxiPkrI2x>. To date the voting results of thirteen events that happened in Singapore, Mexico City, Lagos, New York, Geneva, Toronto, Madrid, Austin, Hong Kong , San Francisco, Dubai, Los Angles and Berlin are available on the GPC website.

²⁰ *The GPC Series Final Report*, GLOBAL POUND CONFERENCE SERIES 2016 -2017 (March 11, 2017, 12:50:07 PM), <http://www.globalpoundconference.org/gpc-series-data/the-gpc-series-final-report#.WMboToWcESU>.

²¹ The seven locations in 2016 were: Singapore, Mexico City, Lagos, New York, Geneva, Toronto and Madrid.

whether it has achieved improvements in commercial dispute resolution already, and what the likely next steps are.

II. BACKGROUND OF THE FIRST TWO POUND EVENTS

In August 1906, Roscoe Pound's famous speech on causes of dissatisfaction with the administration of justice made a noteworthy contribution to the United States legal system.²² The occasion was the twenty ninth Annual Meeting of the American Bar Association at the Minnesota State Capitol Building in St. Paul.²³ In his speech, Pound addressed the need to improve dispute resolution procedures.²⁴ Pound's address caught the imagination of the legal profession and provoked years of reform.²⁵ The speech also provided Pound's name to two major subsequent efforts to examine and improve dispute resolution – the 1976 Pound Conference and the GPC Series.

Seventy years after Roscoe Pound's speech, in April 1976, there was a seminal gathering in the same room where Pound had spoken.²⁶ Described as the "National Conference on the Causes of Popular Dissatisfaction with the Administration for Justice", this conference was named the Pound Conference in honor of Pound's contribution to law and justice.²⁷ This 1976

²² Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 40 AM. L. REV. 729 (1906). Roscoe Pound was the Dean of the University of Nebraska College of Law from 1903 - 1906 and Dean of Harvard Law School from 1916 - 1937.

²³ Rex E. Lee, *The Profession Looks at Itself-The Pound Conference of 1976*, 1981 BYU L. REV. 737 (1981).

²⁴ Roscoe Pound, *supra* note 22. (In his 1906 speech, Roscoe Pound, then 36-year-old Dean of Nebraska College of Law, spoke about the "real and serious dissatisfaction with courts and lack of respect for law" which existed in the United States at that time. Pound said that a conversation on the need for reform of the judicial system should be created).

²⁵ Randall T. Shepard, *Introduction: The Hundred-Year Run of Roscoe Pound*, 82 INDIANA L.J. 1153, 1154 – 1157 (2006). (Shepard said that Pound's enumerated 'causes for dissatisfaction' is still a source for today's dialogue about the legal system. Professionals and the public today lament the complexity and high cost of litigation. Such complaints created an environment conducive to reform and to support alternative dispute resolution processes such as problem solving courts).

²⁶ THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN FUTURE 6 (A Levin & R Wheeler eds., 1979).

²⁷ *Id.* at 6.

gathering was a vehicle for a serious and comprehensive examination of questions that had been troubling the legal community.²⁸

The Chief Justice of the United States Supreme Court, Warren E. Burger, delivered the keynote address at the 1976 conference, titled *Agenda for the 2000 AD – A Need for Systematic Anticipation*.²⁹ He suggested areas for examining fundamental changes rather than simply “tinkering.”³⁰ For example, he proposed setting up flexible informal tribunals to resolve minor disputes, and using well-developed forms of arbitration, as opposed to conventional litigation.³¹

Also at the 1976 conference, Professor Frank E.A. Sander of Harvard Law School presented his paper – *Varieties of Dispute Processing*.³² This, particularly within the legal academy, is known as the “big bang” moment in the history of alternative dispute resolution.³³ Sander advocated for a “flexible and diverse panoply of [sic] range of dispute resolution processes (or combination of dispute resolution processes).”³⁴ He envisioned that some disputes would go to trial and others would go to arbitration, mediation, fact finding, or some other mechanism well-tailored for the particular dispute in question.³⁵ The term “multidoor courthouse” was born.³⁶ Professor Sander’s paper led to innovative changes in the United States judicial system.³⁷

²⁸ THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN FUTURE, *supra* note 26, at 6.

²⁹ *Id.* at 23.

³⁰ *Id.* at 32.

³¹ *Id.* at 33.

³² Frank Sander, *Varieties of Dispute Processing* in THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE 65 (A Levin & R Wheeler eds. 1979).

³³ Michael L. Moffitt, *Before the Big Bang: The Making of an ADR Pioneer*, 22 NEGOTIATION. J. 437 (October 2006).

³⁴ THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE, *supra* note 26, at 83.

³⁵ Moffitt, *supra* note 33, at 437.

³⁶ *Id.* at 438.

³⁷ Deborah Masucci, Michael McIlwrath, and Jeremy Lack, *The Global Pound Conference Series*, DISPUTE RESOLUTION MAGAZINE 28, 29 (Winter 2016). Professor Frank E.A. Sander, in his paper *The Future of ADR – The Earl F. Nelson Memorial Lecture*, 2000 J. DISP. RESOL. 1 (2000) recognized the positive innovations in ADR that resulted from his work. They are: (“First in 1998, the Congress of the United States enacted the Dispute Resolution Act which directs each federal district court to establish an ADR program by local rule. Second, dispute resolution

The GPC Series, called the “second Big Bang,”³⁸ has been organized in homage to the thoughtful contributions of Roscoe Pound, Chief Justice Burger, Professor Sander, and others present at the 1976 Pound Conference who laid the foundation for the growth of ADR internationally. The 1906 and 1976 Pound events inspired countless numbers of neutrals, lawyers, advisors, professors and others to create better systems for dispute processing.³⁹

III. THE GPC SERIES 2016 - 2017

The organizers conceived the idea of holding the GPC Series in 2014. Initially, the goal was to have ten events; it became fifteen events in 2015; and the number of events more than doubled by 2016. Over the past three years the interest in GPC has grown tremendously.⁴⁰

Businesses and organizations in the modern economy require adequate dispute resolution tools that are fit for purpose.⁴¹ The GPC Series seeks to “generate actionable data”⁴² on what corporate and individual dispute resolution users actually need and want, and facilitate

clauses, sometimes quite sophisticated, are increasingly being used in contracts of all kinds. Third, some businesses and law firms systematically canvass cases for ADR potential; relatedly some law firms have set up ADR practice groups, where people who specialize in ADR come together. These lawyers also help to raise the ADR awareness of their colleagues. Fourth, the CPR Institute for Dispute Resolution, an impressive New York organization of representatives from 800 leading businesses and law firms, is dedicated to the goal of educating its members and others concerning better ways of resolving disputes. Fifth, a number of states now require that lawyers discuss ADR options with clients or to certify on the pleadings that they have done so. Sixth, for disputes in the public sector, the Administrative Dispute Resolution Act of 1996 requires federal agencies to consider the use of ADR and to appoint an ADR specialist. And there have been some Executive Orders issued by the President to stimulate similar action in the U.S. Department of Justice. Seventh, about half the states now have state offices of dispute resolution that seek to facilitate the resolution of public disputes by providing technical assistance or recommending competent dispute resolvers. Eighth, virtually every law school as well as many schools of business and planning now offer one or more ADR courses. Finally, about 20,000 persons, mostly volunteers, now mediate in 550 community mediation centers all over the country.”

³⁸Michael Leathes & Deborah Masucci, *Time for Another Big Bang in Alternative Dispute Resolution - The World Needs a Global Pound Conference* (January 2014) <http://www.mediate.com/articles/poundconference.cfm> (last visited March 26, 2017).

³⁹ Masucci, McIlwrath and Lack, *supra* note 37, at 29.

⁴⁰ E-mail from Michael McIlwrath, Chairman of COG GPC Series and Chief Global Litigation Counsel at GE Oil & Gas, to author (February 23, 2017) (on file with author).

⁴¹ *Michael McIlwrath and Alex Oddy Introduce the Global Pound Conference Series 2016-17*, GLOBAL POUND CONFERENCE SERIES 2016-17 (March 30, 2017, 1:05:10 PM), http://globalpoundconference.org/media-community/video-gallery#.WN2_jfkrI2w; See Also YOU TUBE, *Extended Interview with Alex Oddy and Michael McIlwrath* (November 9, 2015) <https://www.youtube.com/watch?v=fzqpChIffMY> (last visited March 30, 2017).

⁴² *About the Global Pound Conference Series 2016-17*, *supra* note 14.

development of twenty first century dispute resolution tools for domestic, regional and international users.⁴³ The data collected in all events is owned by IMI.⁴⁴ The GPC is limited to commercial disputes involving businesses arising from contract or tort;⁴⁵ it does not include family, consumer, criminal or other kinds of cases.⁴⁶

A. Vision And Goals Of The GPC Series

IMI launched the GPC Series with a vision of providing a forum to allow commercial users to express their needs for dispute resolution, and also help providers and advisors adapt and be responsive to those needs.⁴⁷ The goal of the GPC Series titled “Shaping the Future of Dispute Resolution & Improving Access to Justice,”⁴⁸ is to stimulate and continue conversations about forms of commercial dispute resolution and how they are practiced throughout the world.⁴⁹ A key objective of the Series is to consider how processes can be better shaped to provide commercial disputants with effective mechanisms and access to justice.⁵⁰ The Series aims to

⁴³ *About the GPC Series*, *supra* note 10.

⁴⁴ *Voting Result, Chats and Comments*, GLOBAL POUND CONFERENCE SERIES 2016-17 (March 13, 2017, 1:30:55 PM), <http://globalpoundconference.org/gpc-series-data/local-voting-results#.WHvv0dzVnRw>. The Chatham House & Copyright Access Rules provide that all of the data generated during GPC events belongs IMI, which is publicly available, free of charge. Anyone wishing to publish any GPC data or sections of any IMI reports generated during the GPC Series may do so at no cost, provided they refer to IMI as the source of this data or information, and provided they promptly send a copy of their publication after its first date (for e.g. three months) of appearance to gpcseries@imimmediation.org, granting IMI permission to republish it free of charge on its website and on any relevant GPC Series websites.

⁴⁵ *Core Questions For Commercial Disputes To Be Used At All GPC Events*, *supra* note 18. GPC defines commercial disputes in its introduction to the core questions, “For the purposes of the GPC Series, ‘commercial disputes’ includes disputes between business entities, business partners, or business entities and public sector entities, whether arising from contract, tort or any other grounds. They include disputes between individual entrepreneurs, small and medium-size enterprises, multinationals and state-owned enterprises.”

⁴⁶ *Id.*

⁴⁷ E-mail from Deborah Masucci, Chair of the International Mediation Institute, to author (March 17, 2017) (on file with author); See Also Masucci, McIlwrath and Lack *supra* note 37, at 29; *Global Pound Conference Series, Singapore 2016 Proceedings*, SINGAPORE INTERNATIONAL MEDIATION INSTITUTE, <http://www.simi.org.sg/News-Events/List-Of-News-Events/GPC-Singapore-2016> (last visited March 19, 2017).

⁴⁸ *About the GPC Series*, *supra* note 10.

⁴⁹ Masucci, McIlwrath and Lack, *supra* note 37, at 29. (It encompasses all kinds of dispute resolution mechanisms: litigation, arbitration, conciliation, and mediation).

⁵⁰ *Id.*

understand how users can tap into consistent and reliable dispute resolution processes;⁵¹ how these processes should be designed so that efficiencies of time, cost, possible outcomes as well as enforceability are achievable for each dispute;⁵² and how dispute resolution processes can respect users concerns about reputation, relationships and other social or cultural matters.⁵³

B. Motives Of Organizations For Supporting The GPC Series

To date, nine global sponsors⁵⁴ and fifty four global partners⁵⁵ have been supporting the GPC Series. Global sponsors are supporting the event financially and global partners are assisting in finding appropriate speakers and participants for each event with the help of local ADR organizations.⁵⁶

Hebert Smith Freehills,⁵⁷ one of the sponsors, strongly believes in listening to their clients needs, and the GPC Series initiative is consistent with the firm's objective.⁵⁸ To be able to cater to the needs of users in different markets, they are specifically interested in regional results.⁵⁹

PricewaterhouseCoopers (PwC),⁶⁰ another global sponsor, sees the GPC as a unique opportunity to engage with clients and dispute resolution practitioners around the world to

⁵¹ Masucci, McIlwrath and Lack, *supra* note 37, at 29.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Global Sponsors*, GLOBAL POUND CONFERENCE SERIES 2016-17 (March 13, 2017, 10:40:07 PM), [http://globalpoundconference.org/supporters-\(2\)/global-sponsors#.WMdABvkrI2x](http://globalpoundconference.org/supporters-(2)/global-sponsors#.WMdABvkrI2x). Nine Global Sponsors are: Herbert Smith Freehills, Singapore International Dispute Resolution Academy, PwC, JAMS, AkzoNobel, Beijing Arbitration Commission/Beijing International Arbitration Center, Shell, China International Economic and Trade Arbitration Commission, and International Center for Dispute Resolution.

⁵⁵ *Global Partners*, GLOBAL POUND CONFERENCE SERIES 2016-17 (March 13, 2017, 10:50:08 PM), [http://globalpoundconference.org/supporters-\(2\)/global-partners#.WMdBVPkrI2w](http://globalpoundconference.org/supporters-(2)/global-partners#.WMdBVPkrI2w). Global Partners are leading international or regional organizations who wish to support the GPC Series, but are not in a position to do so financially.

⁵⁶ *Id.*

⁵⁷ Freehills, *supra* note 5. Herbert Smith Freehills has donated €100,000 to support the event.

⁵⁸ E-mail from Alex Oddy, Partner, Hebert Smith Freehills, to author (April 4, 2017) (on file with the author).

⁵⁹ Telephone Interview with Alex Oddy, Partner, Herbert Smith Freehills (February 20, 2017).

⁶⁰ PwC, *PwC Global*, <http://www.pwc.com/gx/en/about.html> (last visited March 13, 2017). Price Waterhouse Cooper (PwC) is a professional services firm with offices in 157 countries and more than 223,000 employees. PwC has donated € 75,000 to support the event.

understand why and how clients want the dispute resolution practice to unfold. The results of the series would inform how PwC can shape their businesses going forward to better support their clients.⁶¹

JAMS⁶² is supporting the GPC to help increase access to mediation and alternative dispute resolution (ADR) around the world. Sponsoring the GPC is a natural fit for the work JAMS does everyday: providing education programs, conferences and seminars to support expansion and evolution of ADR.⁶³ JAMS aspires to share its experiences, learn from the other stakeholders, and work collaboratively towards improving ADR processes worldwide.⁶⁴

Singapore International Dispute Resolution Academy (SIDRA),⁶⁵ is dedicated to having conversations on the need to reinvent ways to approach dispute resolution. The GPC is an excellent platform for SIDRA to enhance access to justice through ongoing conversations among different stakeholders.⁶⁶

⁶¹ E-mail from Marc Stephens, Director, PwC, to author (March 13, 2017) (on file with author).

⁶² JAMS, <https://www.jamsadr.com/> (last visited March 13, 2017). JAMS is the largest private alternative dispute resolution (ADR) provider in the world with nearly 350 full-time neutrals, including retired judges and attorneys and 200 employee associates. JAMS has donated € 50,000 to support the event.

⁶³ E-mail from Kathleen Pierz, Global Practice Development Manager, JAMS, to author (March 20, 2017) (on file with author).

⁶⁴ JAMS, *JAMS Sponsors Global Pound Conference Series for 2016-2017* (October 19, 2017) <https://www.jamsadr.com/news/2015/jams-sponsors-global-pound-conference-series-for-20162017> (last visited, March 13, 2017). (JAMS President and CEO Chris Poole described the organization's motive for sponsoring the GPC).

⁶⁵ SINGAPORE INTERNATIONAL DISPUTE RESOLUTION ACADEMY, <http://www.sidra.academy/> (last visited March 22, 2017). The Singapore International Dispute Resolution Academy (SIDRA) is Asia's global thought leader for learning and research in negotiation and dispute resolution. SIDRA has donated €100,000 to support the event.

⁶⁶ *Global Pound Conference Series, Singapore 2016 Proceedings, Key Note Address by Honourable Chief Justice Sundaresh Menon*, SINGAPORE INTERNATIONAL MEDIATION INSTITUTE (March 19, 2017 10:30:55 PM)

<http://www.simi.org.sg/News-Events/List-Of-News-Events/GPC-Singapore-2016> (Singapore International Mediation Institute (SIMI) incorporated in 2014, is a non-profit organization supported by the Ministry of Law. SIMI aims to apply and enforce world-class standards of mediation, to provide impartial information about mediation, to make tools available to parties to make basic decisions about mediation, and to promote mediation education and awareness); *Global Pound Conference Series 2016 – Singapore*, SINGAPORE INTERNATIONAL MEDIATION INSTITUTE (March 17, 2016)

<http://www.simi.org.sg/LinkClick.aspx?fileticket=tIAfpVrnHNE%3d&portalid=0> at 29 (last visited March 19, 2017).

C. GPC Format

(i) Twenty Core Questions

The London Pilot Project organized in October 2014, suggested that gaps exist between the demand and supply side of the dispute resolution market.⁶⁷ This foreshadowed the focus of future inquiry. A list of twenty core questions was developed via an extended consultation process involving six drafts, to verify whether or not these gaps exist.⁶⁸ These core questions are a central part of the GPC Series.⁶⁹ The questions themselves are attached as Appendix A.

(ii) Four Sessions

Each GPC event is structured around four interactive sessions: (1) what do parties need, want and expect (the “demand” side); (2) how is the market currently addressing parties wants, needs and expectations (the “supply” side); (3) what gaps and obstacles may exist to better align demand and supply; and (4) who can do what about making these improvements and when.⁷⁰

D. Demographics In Each Conference

Five ADR stakeholder groups participate in each event.⁷¹

(i) Parties: individuals or businesses involved in disputes who use commercial dispute resolution services, e.g., business managers, in-house counsel.⁷²

⁶⁷ *London 2014 Pilot Project Event*, *supra* note 8.

⁶⁸ *Core questions*, Global Pound Conference Series 2016-17, (March 14, 2017 6:30:45 PM) <http://globalpoundconference.org/conference-series/core-questions#.WMfprPkrI2w> (the questions were designed with the help of dispute resolution professionals from around the world).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Core Questions For Commercial Disputes To Be Used At All GPC Events*, *supra* note 18.

⁷² *Id.*

- (ii) Advisors⁷³: individuals who assist parties in managing their disputes, e.g., external lawyers, experts, forensic accountants.⁷⁴
- (iii) Adjudicative Providers: neutrals offering adjudication based services to their commercial or civil dispute resolution clients, e.g., judges, arbitrators or organizations providing such services.⁷⁵
- (iv) Non-adjudicative Providers: neutrals offering commercial or civil dispute resolution services where the outcome depends on the parties acceptance, e.g., conciliators, mediators, ombudsmen or organizations providing such services.⁷⁶
- (v) Influencers: individuals who do not participate directly in commercial disputes but are influential in the dispute resolution market, e.g., academics, government officials, educators, policy advisors.⁷⁷

E. Methodology Used For Data Collection

- (i) PowerVote Technology

PowerVote is a freely downloadable electronic app⁷⁸ that enables the participants in every GPC event to access all the event information, while taking part in live polls and asking questions.⁷⁹ This electronic voting system is being used to collect the stakeholder votes in all events.⁸⁰

⁷³ *Core Questions For Commercial Disputes To Be Used At All GPC Events*, *supra* note 18. (The term lawyer/advisor is used throughout because in many jurisdictions globally, the person advising a party about alternative dispute resolution processes is not required to be a lawyer).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ GLOBAL POUND CONFERENCE SERIES 2016-17, <http://gpc.powervote.com/globalpoundconference/> (Last visited March 13, 2017) (PowerVote is providing a tailored event app for GPC; this app can be downloaded on mobile phone devices, tablets and computers using an internet connection).

⁷⁹ *Download The App*, GLOBAL POUND CONFERENCE SERIES 2016-17 (March 14, 2017 10:30 PM), http://globalpoundconference.org/gpc-series-data/app#.WMYBa_krI2w.

⁸⁰ *Id.*

(ii) Popularity Ranking

At each GPC event, participants are asked to rank their top three choices from several options presented in the form of a multiple choice question.⁸¹ The scoring that follows is based on the popularity of the choice selected (i.e., reflective of how many times an option was selected as first, second or third choice).⁸²

The results obtained for each question are first expressed as an aggregate bar chart showing the collective votes across all stakeholder groups, followed by a cross-sorted bar chart that compares the preference rankings of each option across stakeholder groups.⁸³

IV. KEY FINDINGS OF THE GPC SERIES

Approximately six hundred and fifty ADR stakeholders⁸⁴ participated in first seven GPC events from March 2016 to December 2016.⁸⁵ The findings are based on the cumulated data of these events.⁸⁶

⁸¹Jeremy Lack, *A Summary of the Preliminary Global Pound Conference (GPC) Data in 2016: Trends and Themes*, <http://www.globalpoundconference.org/Documents/GPC%20Series%20%20A%20Preliminary%20Summary%20of%20the%20GPC%20Results%20in%202016%20by%20Jeremy%20Lack.pdf> at 2, GLOBAL POUND CONFERENCE SERIES 2016-17 (last visited March 25, 2017).

⁸² *Id.* (explaining that “The first option selected receives 3 points, the second receives 2 points, and the third receives 1 point. The number of points collected for each option are then accumulated and compared to the total number of points that could have been awarded for that option had everyone present given it 3 points. All percentages expressed are therefore based on the number of points each option obtained compared to the 100% maximum number of points that option could have received, that is the number of attendees times 3 points”).

⁸³ *Cumulated Data Results March – December 2017*, GLOBAL POUND CONFERENCE SERIES 2016-17 (December 2016) http://globalpoundconference.org/Documents/Aggregated%20Data%20Report%20GPC_28Dec.pdf (last visited March 26, 2017).

⁸⁴ *Id.*, The stakeholders comprised of: 89 parties (13% of participants), 157 advisors (24% of participants), 123 adjudicative providers (20% of participants), 157 non-adjudicative providers (27% of participants) and 104 influencers (16% of participants).

⁸⁵ *Id.*

⁸⁶ *Id.*

A. Outcomes Before Starting Dispute Resolution Processes

(i) What Users Want⁸⁷

Parties, advisors and providers ranked financial outcomes⁸⁸ (e.g., damages, compensation) as their top preference followed by action focused outcomes (e.g., requesting an action to be done or stopped).⁸⁹ Relationship focused outcomes (e.g., terminating or preserving relationships) was ranked third choice⁹⁰ by parties and advisors, but providers and influencers voted for psychological outcomes (e.g., vindication, closure, being heard, procedural fairness) to be more important.⁹¹ The data suggests that there is alignment among all stakeholders on their top two choices, however preferences change when it comes to relationship focused or psychological outcomes.

(ii) What Providers Prioritize⁹²

All stakeholders ranked that providers tend to prioritize action focused outcomes the most,⁹³ followed by financial outcomes.⁹⁴ Relationships are the third most popular in aggregate data.⁹⁵ The data suggests alignment among all stakeholders on the outcomes providers prioritize before starting dispute resolution processes.

⁸⁷ Question 1 Session 1, What outcomes do parties most often want before starting a process in commercial dispute resolution? 1. Action-focused (e.g. prevent action or require an action from one of the parties) 2. Financial (e.g. damages, compensation, etc.) 3. Judicial (e.g. setting a legal precedent) 4. Psychological (e.g., vindication, closure, being heard, procedural fairness) 5. Relationship-focused (e.g. terminate or preserve a relationship) 6. Other: (please specify).

⁸⁸ Combined average ranking by all stakeholders is 70%.

⁸⁹ Combined average ranking by all stakeholders is 63%.

⁹⁰ Cross sorted results parties rank is 34% and advisors rank is 30%.

⁹¹ Cross sorted results adjudicative providers rank is 34%, non-adjudicative providers rank is 40% and influencers rank is 39%.

⁹² Question 1 Session 2, What outcomes do providers tend to prioritize in commercial dispute resolution?

1. Action-focused (e.g. prevent action or require an action from one of the parties) 2. Financial (e.g. damages, compensation, etc.) 3. Judicial (e.g. setting a legal precedent) 4. Psychological (e.g., vindication, closure, being heard, procedural fairness) 5. Relationship-focused (e.g. terminate or preserve a relationship) 6. Other: (please specify).

⁹³ Combined average ranking by all stakeholders is 64%.

⁹⁴ Combined average ranking by all stakeholders is 56%.

⁹⁵ Combined average ranking by all stakeholders is 29%.

(iii) Aligning Demand and Supply

The top two priorities for what parties want and what providers prioritize are financial outcomes and action focused outcomes, suggesting alignment. However, providers place lower emphasis on financial outcomes⁹⁶ indicating room to further align the parties needs with providers actions.

B. Role Parties Want Other Stakeholders To Play In Dispute Resolution Processes

(i) Role of Providers⁹⁷

There is consensus among stakeholders that parties initially do not have a preference and seek guidance from providers regarding optimal ways of resolving their dispute.⁹⁸ Also, the least popular preference across stakeholders is for providers to completely decide the dispute resolution process.⁹⁹ This is what tends to happen in most adjudicative processes, and sometimes even mediators seem to think that they need to control the process themselves.¹⁰⁰ Parties second most popular vote is for having control over the dispute resolution process and how the dispute is resolved, with providers playing an assisting role.¹⁰¹ Adjudicative providers understand parties preferences and mirror the trends¹⁰² but non-adjudicative providers believe that providers have a

⁹⁶ Combined average ranking by all stakeholders for financial outcome is 70% for what users want, and for what providers prioritize is 56%, suggesting a total gap of 14%.

⁹⁷ Question 4 Session 1, What role do parties involved in commercial disputes want providers to take in the dispute resolution process? 1. The parties decide how the process is conducted and how the dispute is resolved (the providers just assist) 2. The providers decide on the process and the parties decide how the dispute is resolved 3. The parties decide on the process and the providers decide how the dispute is resolved 4. The providers decide on the process and how the dispute is resolved 5. The parties initially do not have a preference but seek guidance from the providers regarding optimal ways of resolving their dispute 6. Other: (please specify).

⁹⁸ Combined average ranking by all stakeholders is 63%.

⁹⁹ Combined average ranking by all stakeholders is 27%.

¹⁰⁰ E-mail from Jeremy Lack, Global Coordinator of the GPC Series, and ADR Neutral and Attorney-at-Law, to author (April 6, 2017) (on file with author).

¹⁰¹ Cross sorted results parties rank is 43%.

¹⁰² Cross sorted results adjudicative providers second choice is parties should decide the process and how dispute should be resolved at 37%.

more significant role to play.¹⁰³ The data suggests that parties and non-adjudicative providers are not aligned regarding the role of providers in dispute resolution processes.

(ii) Role of Lawyers/Advisors¹⁰⁴

First and foremost, parties want advisors to work collaboratively with them, followed by their second choice that advisors should speak or advocate for the parties in dispute resolution processes.¹⁰⁵ However, advisors believe that their clients prefer that they should advocate first and collaborate second.¹⁰⁶ This demonstrates a disconnect between the parties and their advisors regarding the role of advisors in dispute resolution processes.

(iii) Aligning Demand and Supply

It is clear that parties want to play an active role and do not want providers to choose a dispute resolution process for them. Parties also want early guidance from providers (i.e., at the beginning of commercial dispute resolution processes) about dispute resolution processes, suggesting a demand for guided choice.¹⁰⁷ Furthermore, parties want advisors to collaborate with them. Both observations suggest improvement opportunities for advisors and providers to facilitate a more effective process for selecting among dispute resolution processes.

¹⁰³ Cross sorted results non-adjudicative providers third choice is parties should decide the process and how dispute should be resolved at 29%.

¹⁰⁴ Question 5 Session 1, What role do parties involved in commercial disputes typically want lawyers (i.e., in-house or external counsel) to take in the dispute resolution process? 1. Acting as coaches, providing advice but not attending 2. Acting as advisors and accompanying parties but not interacting with other parties or providers 3. Participating in the process by offering expert opinions, not acting on behalf of parties 4. Working collaboratively with parties to navigate the process. May request actions on behalf of a party 5. Speaking for parties and/or advocating on a party's behalf 6. Parties do not normally want lawyers to be involved 7. Other (please specify).

¹⁰⁵ Cross sorted results parties ranked working collaboratively as their first choice at 67% and advisors advocating on a parties their second choice at 54%.

¹⁰⁶ Cross sorted results advisors ranked advocating for parties as their first choice at 77% and working collaboratively as their second choice at 63%.

¹⁰⁷ Lack, *supra*, note 81, at 5.

C. Factors Influencing The Determination Of The Type Of Dispute Resolution Process

(i) When Parties Choose Procedural Options¹⁰⁸

Parties have voted for efficiency, defined as time and cost to achieve outcomes, as being the most important factor in choosing process options, followed by advice (e.g. from a lawyer or other advisor) as their second preference.¹⁰⁹ Adjudicative providers and influencers understand these preferences.¹¹⁰ However, advisors have ranked their own advice as being more important than efficiency.¹¹¹ This suggests that there is a gap between the parties preferences and advisors perceptions with regard to the selection of procedural options.

(ii) When Lawyers/Advisors Recommend Procedural Options¹¹²

Type of outcome requested by parties (e.g., money, injunction) and familiarity with the type of dispute resolution process are the two most popular choices across stakeholders.¹¹³ Also, advisors prioritize the type of outcome requested by parties as the most important factor¹¹⁴ suggesting they are putting their clients needs first.

¹⁰⁸ Question 2 Session 1, When parties involved in commercial disputes are choosing the type(s) of dispute resolution process (es) to use, which of the following has the most influence? 1. Advice (e.g. from lawyer or other advisor) 2. Confidentiality expectations 3. Efficiency (e.g. time/cost to achieve outcome) 4. Industry practices 5. Predictability of outcome 6. Relationships (e.g. preventing conflict escalation) 7. Other: (please specify).

¹⁰⁹ Cross sorted results parties have ranked efficiency as their top choice at 67% and advice is second choice at 44%.

¹¹⁰ Cross sorted results adjudicative providers and influencers have ranked efficiency as their top choice at 66% and 64%.

¹¹¹ Cross sorted results advisors rank is 68% for advice and 63% for efficiency.

¹¹² Question 3 Session 1, When lawyers (whether in-house or external) make recommendations to parties about procedural options for resolving commercial disputes, which of the following has the most influence? 1. Familiarity with a particular type of dispute resolution process 2. Industry practices 3. Impact on costs/fees the lawyer can charge 4. The party's relationships with the other party (ies) or stakeholders 5. The type of outcome requested by the party (e.g. money, an injunction, etc.) 6. Other: (please specify).

¹¹³ Combined average ranking by all stakeholders for type of outcome is 57% and familiarity of process is 57%.

¹¹⁴ Cross sorted results advisors first choice is type of outcome requested by parties ranked at 70%.

(iii) Ways to Improve Parties Understanding of Their Process Options¹¹⁵

Education in business and /or law schools and the broader business community around dispute resolution options is the most popular choice across all stakeholder groups.¹¹⁶

(iv) Aligning Demand and Supply

The strong emphasis parties place on efficiency compared with other factors suggests there is room for advisors to further incorporate those discussions as they help parties navigate the choice of dispute resolution process. Since advisors seem to be aligned on putting their clients needs first, this could be an improvement that could be put in place swiftly. Universal consensus about education in business and law schools and the broader business community suggests that development of educational resources is the most effective way forward.

D. Effective Dispute Resolution Processes Today And In The Future

(i) Most Effective Dispute Resolution Processes Today¹¹⁷

All stakeholders (in the aggregate) agree, that the most effective dispute resolution processes today are ones with mixed modes (i.e., where adjudicative and non-adjudicative processes are combined) and, secondly, ones where pre-dispute or pre-escalation processes are

¹¹⁵ Question 2 Session 4, What is the most effective way to improve parties' understanding of their options for resolving commercial disputes? 1. Creating collaborative dispute resolution centers or hubs to promote awareness 2. Education in business and/or law schools and the broader business community about adjudicative and non-adjudicative dispute resolution options 3. Procedural requirements for all legal personnel and parties to declare they have considered non-adjudicative dispute resolution options before initiating arbitration or litigation 4. Providing access to experts to guide parties in selecting the most appropriate dispute resolution process(es) 5. Requiring parties to attempt non-adjudicative options (i.e., mediation or conciliation) before initiating litigation or arbitration 6. Other: (please specify).

¹¹⁶ Combined average ranking for education in business and/or law schools by all stakeholders is 60%.

¹¹⁷ Question 5, Session 2, Currently, the most effective commercial dispute resolution processes usually involve which of the following? 1. Adjudicative dispute resolution methods (litigation or arbitration) 2. Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation) 3. Encouragement by courts, tribunals or other providers to reduce time and/or costs 4. Non-adjudicative dispute resolution methods (mediation or conciliation) 5. Pre-dispute or pre-escalation processes to prevent disputes 6. Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings) 7. Other (please specify).

instituted.¹¹⁸ The nuance is that parties vote pre-dispute or pre-escalation processes to prevent disputes, as their top choice.¹¹⁹ It is interesting to note that despite the clear popularity of mixed modes across all stakeholder groups, this is seldom done in practice.¹²⁰

(ii) Tools to be Prioritized to Improve Commercial Dispute Resolution in the Future¹²¹

There is consensus among stakeholders that pre-dispute or pre-escalation processes to prevent disputes is the most important tool to improve commercial dispute resolution in the future.¹²² This is aligned with what parties believe to be the most important factor for effective dispute resolution processes today.¹²³ The second choice is for mixed modes.¹²⁴

(iii) Aligning Demand and Supply

There is alignment among stakeholders on effective dispute resolution processes today and tools to be prioritized to improve commercial dispute resolution in the future. It is through pre-dispute or pre-escalation processes to prevent disputes and focusing on mixed modes.

¹¹⁸ Combined average ranking by all stakeholders for combining adjudicative and non-adjudicative process is 57% and pre-dispute and pre-escalation processes to prevent disputes is 42%.

¹¹⁹ Cross Sorted results parties rank for pre-dispute or pre escalation processes is 61%.

¹²⁰ E-mail from Jeremy Lack, Global Coordinator of the GPC Series, and ADR Neutral and Attorney-at-Law, to author (April 6, 2017) (on file with author).

¹²¹ Question 2 Session 3, To improve the future of commercial dispute resolution, which of the following processes and tools should be prioritized? 1. Adjudicative dispute resolution methods (litigation or arbitration) 2. Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation) 3. Encouragement by courts, tribunals or other providers to reduce time and/or costs 4. Non-adjudicative dispute resolution methods (mediation or conciliation) 5. Pre-dispute or pre-escalation processes to prevent disputes 6. Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings) 7. Other: (please specify).

¹²² Combined average ranking by all stakeholder groups for pre-dispute and pre-escalation processes is 52%.

¹²³ Question 2 Session 3, Cross Sorted results parties ranked pre-dispute and pre-escalation processes as their top choice at 61%.

¹²⁴ Combined average ranking by all stakeholder groups for combining adjudicative and non-adjudicative processes is 43%.

E. Future Of Commercial Dispute Resolution

(i) Demands Impacting the Future of Policy-Making in Commercial Dispute Resolution¹²⁵

All stakeholders have voted for increased efficiency, including through technology, as their top preference followed by certainty of outcomes.¹²⁶

(ii) Role of Stakeholders in the Future of Commercial Dispute Resolution¹²⁷

All stakeholders agree that the government has the most important role in taking action to promote better access to justice in commercial dispute resolution, and should be appropriately supported by adjudicative providers (judges and arbitrators) and external lawyers.¹²⁸

(iii) Aligning Demand and Supply

All stakeholders agree on efficiency of processes as being a focal point of future policy making for dispute resolution processes. They are also aligned on the critical role the government, adjudicative providers and external lawyers have to play.

V. “POUNDING” ON: DIRECTIVES FOR THE FUTURE

The data analyzed suggests that there are some gaps between what parties want and what providers prioritize (e.g., parties emphasis on financial outcomes, parties needs for advisors to collaborate more, parties needs for efficiency) in commercial dispute resolution. More

¹²⁵ Session 4 Question 4, To promote better access to justice for those involved in commercial disputes, where should policy makers, governments and administrators focus their attention? 1. Legislation or conventions promoting recognition and enforcement of settlements including those reached in mediation 2. Making non-adjudicative processes (mediation or conciliation) compulsory and/or a process parties can “opt-out” of before adjudicative processes can be initiated 3. Pre-dispute or early stage case evaluation or assessment systems using third party advisors who will not be involved in subsequent proceedings 4. Reducing pressures on the courts to make them more efficient and accessible 5. Use of protocols promoting non-adjudicative processes (mediation or conciliation) before adjudicative processes 6. Other: (please specify).

¹²⁶ Combined average ranking by all stakeholder for first choice is 63% and second choice is 60%.

¹²⁷ Session 4 Question 1, Who has the greatest responsibility for taking action to promote better access to justice in commercial dispute resolution? 1. Adjudicative Providers: judges and arbitrators or their organizations 2. External lawyers 3. Governments/ministries of justice 4. In-house lawyers 5. Non-Adjudicative Providers: mediators and conciliators or their organizations 6. Parties (non-legal personnel) 7. Other: (please specify).

¹²⁸ Combined average ranking by all stakeholder for first choice is 69% and second choice is 53% and third choice is 33%.

importantly there are areas of alignment especially in how these gaps can be addressed to evolve the dispute resolution marketplace (e.g., need for guided choice based on type of dispute, inclusion of pre-dispute or pre-escalation processes, introduction of mixed modes / tailored processes, continued education in business and law schools on dispute resolution). What follows is a discussion on how these findings can help improve the effectiveness and efficiency of dispute resolution processes.

A. Guided Choice Dispute Resolution Processes

Guided choice is a multi-phase alternative dispute resolution (ADR) process where the parties in a dispute work together with a facilitator to design the process and shape it to their needs.¹²⁹ This process enables parties to reduce the time and expenses required to settle a dispute without compromising on quality.¹³⁰ The essential element of this process is that the parties in dispute should agree to use a qualified mediator as a process facilitator.¹³¹

Guided choice is a mediation-style process in which the facilitator initially works with the parties to analyze the causes of the dispute and determine their needs for settlement.¹³² Then the facilitator helps parties in having a discussion on procedural and potential impasse issues.¹³³ The facilitator does not focus on settling the case.

¹²⁹ William Geisen, *Guided Choice: An Emerging Trend In Dispute Resolution*, LAW 360 (January 24, 2017, 6:07 PM), <https://www.law360.com/articles/884490/guided-choice-an-emerging-trend-in-dispute-resolution> (Last visited March 22, 2017); E-mail from Jeremy Lack, Global Coordinator of the GPC Series, and ADR Neutral and Attorney-at-Law, to author (March 29, 2017) (on file with the author).

¹³⁰ Paul M Lurie and Jeremy Lack, *Guided Choice Dispute Resolution Processes: Reducing the Time and Expense to Settlement*, 8 DISP. RESOL. INT'L 167 (2014).

¹³¹ *Id.* (explaining that the “term ‘Facilitator’ is used in this article to describe a mediator who is appointed for a Guided Choice process” and that the process does not increase costs, it can take more than one day of Facilitator’s time to reach an initial diagnosis of why the dispute has not settled to date).

¹³² *Id.* at 168.

¹³³ *Id.*

By using guided choice, the parties can safely explore how to make the best use of each of the dispute resolution options available to them, and possibly combine them to reach faster, cost-effective and better outcomes.¹³⁴

B. Pre-dispute or Pre-escalation Processes

Pre-dispute or pre-escalation processes are useful for prevention, control and early resolution of disputes.¹³⁵ These processes allow parties in business relationships to think ahead, anticipate and prevent disputes from occurring in the future.¹³⁶ Also, if a problem or unexpected event occurs, these processes allow control and management so that the problem does not escalate to a dispute.¹³⁷ Furthermore, they enable parties and their lawyers to jointly determine what is needed to resolve a dispute at a reasonable time and in an efficient manner.¹³⁸ These processes are most effective when they are instituted proactively at the beginning of a business

¹³⁴ Lurie and Lack, *supra* note 130, at 169 (describing the six core principles of Guided Choice dispute resolution: “a commitment to mediate process issues first; confidential discussions with the Facilitator and diagnosis; process design and option generation based on the diagnosis; information exchange in accordance with the agreed process; anticipating and overcoming impasses; and ongoing role of the Facilitator even if negotiations are suspended”).

¹³⁵ *CPR Prevention Practice Materials*, INTERNATIONAL INSTITUTE OF CONFLICT PREVENTION AND RESOLUTION (November 23, 2010), <https://www.cpradr.org/news-publications/articles/2010-11-23-cpr-prevention-practice-materials> (last visited March 21, 2017). (International Institute of Conflict Prevention and Resolution (CPR) is an independent nonprofit organization for more than 35 years. CPR helps global businesses prevent and resolve commercial disputes effectively and efficiently); *Articles of Interest, Prevention Practice Materials: Reducing Disputes Through Wise Prevention Processes in Business Agreements*, GLOBAL POUND CONFERENCE SERIES 2016-17, <http://globalpoundconference.org/Documents/CPR%20Prevention%20Practice%20Materials.pdf> (last visited March 21, 2017).

¹³⁶ *Articles of Interest, Prevention Practice Materials: Reducing Disputes Through Wise Prevention Processes in Business Agreements*, *supra* note 135, at 9. (The prevention and practice material illustrates a chart “Thinking Ahead To Avert Problems: the typical approach versus the strategic.” This chart describes that a strategic approach of thinking and discussing about future problem in business relationships eventually creates a “positively reinforcing” system).

¹³⁷ *Id.*; *CPR Prevention Practice Materials*, *supra* note 135.

¹³⁸ John Lande, Kurt L. Dettman and Catherine E. Shanks, *User Guide Planned Early Dispute Resolution*, http://www.americanbar.org/content/dam/aba/events/dispute_resolution/committees/PEDR/abadr_pedr_guide.authcheckdam.pdf at 1 (last visited March 21, 2017). (Explaining that in 2011 American Bar Association (ABA), Dispute Resolution Section appointed the Planned Early Dispute Resolution (PEDR) Task Force. PEDR promotes planned early dispute resolution as a method of dispute prevention. PEDR is a general approach designed to enable parties and their lawyers to take advantage of the services of neutral dispute resolution professionals at the earliest appropriate time. The Dispute Resolution Section’s user guide to PEDR states that a comprehensive PEDR system includes: “General plans for preventing and resolving disputes; early warning systems for issues that may lead to disputes; identification and monitoring of disputes; early case assessments to determine the best way to manage each dispute; efficient and effective procedures for handling and resolving disputes”).

relationship.¹³⁹ These techniques are not rigid, they can be adapted to meet the needs of the parties or the expected nature of a particular dispute.¹⁴⁰ An example of a pre-dispute or pre-escalation process is instituting a step negotiation clause in a commercial contract between two construction organizations, where the parties agree that if a controversy or a claim were to arise, they would attempt in good faith to resolve the controversy or the claim relating to the agreement promptly through step negotiations between managers and executives of the parties who have authority to settle the controversy.¹⁴¹

(i) Dispute Avoidance Techniques

Disputes may be avoided by promoting cooperation between contracting parties.¹⁴² This can be done in the following ways:

(a) Realistic Allocation of Risks: This is a practice of balancing the obligations of parties in business relationships.¹⁴³ A potential risk is assigned to the party who is best at managing, controlling or insuring against the risk if that occurs anytime.¹⁴⁴ By adopting this technique a potential problem can be avoided ahead of time.¹⁴⁵

(b) Providing Incentives to Encourage Cooperation: This practice helps when a number of different organizations with diverse interests are involved in business relationships.¹⁴⁶ Incentive programs can be an effective means of aligning the goals of all participants in a business

¹³⁹ James P. Groton, Cathy Shanks and Christi Underwood, *Pre-Dispute And Pre-Escalation Processes To Prevent Disputes: Brief Introduction*, GLOBAL POUND CONFERENCE BLOG (August 11, 2016), <https://blog.globalpoundconference.org/2016/08/11/pre-dispute-and-pre-escalation-processes-to-prevent-disputes-a-brief-introduction/> (last visited March 21, 2017); See also Thomas Barton, *GPC Voting Trends: Strong Preferences For Prevention And Non-adjudicative Processes*, GLOBAL POUND CONFERENCE BLOG (January 13, 2017), <https://blog.globalpoundconference.org/2017/01/13/gpc-voting-trends-strong-preferences-for-prevention-and-non-adjudicative-processes/#more-2046> (last visited March 26, 2017).

¹⁴⁰ *CPR Prevention Practice Materials*, *supra* note 135, at 7.

¹⁴¹ *Id.* at 24.

¹⁴² Groton, Shanks and Underwood, *supra* note 139.

¹⁴³ *CPR Prevention Practice Materials*, *supra* note 135, at 20.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 21.

relationship and prevent disputes from arising.¹⁴⁷ An example of an incentive program is a ‘bonus pool’ which is divided among all participants in a business venture, provided they all meet certain defined goals of cooperation and teamwork.¹⁴⁸ The bonus is payable either to everyone or to no one, thus encouraging the participants to support and assist each other.¹⁴⁹

(c) Analysis of Potential Sources of Disputes: This practice is a joint effort by parties who are about to enter into a business relationship. They identify likely sources of potential disputes and develop ways to prevent and control the disputes.¹⁵⁰ The process involves investigating the kinds of disputes that usually arise in similar business relationships, analyzing the prospective business relationship to identify sources of potential disputes, and considering ways to prevent and control those potential disputes.¹⁵¹

(d) Partnering: This practice is a team-building effort. Parties, usually at the beginning of a business relationship, with the assistance of an expert facilitator, understand each others’ objectives and expectations, and develop an approach to work together.¹⁵² The parties commit to achieving mutual goals and objectives, and establish non-adversarial processes for solving potential problems.¹⁵³

(ii) Dispute Control Techniques

Disputes may be prevented by de-escalation and real time resolution techniques.¹⁵⁴ This can be done in the following ways:

¹⁴⁷*CPR Prevention Practice Materials, supra* note 135, at 21.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Groton, Shanks and Underwood, *supra* note 139.

¹⁵¹ *Id.*

¹⁵² *CPR Prevention Practice Materials, supra* note 135, at 23.

¹⁵³ *Id.* at 22.

¹⁵⁴ Groton, Shanks and Underwood, *supra*, note 139.

- (a) Negotiation: This is a voluntary and an informal process in which parties identify issues of concern, explore options for the resolution of issues, and search for a mutually acceptable agreement to resolve the issues raised.¹⁵⁵
- (b) Step Negotiations / Issue Elevation: This process entails successive levels of negotiations to encourage agreement.¹⁵⁶ If both parties most directly involved in a dispute are not able to resolve a problem at their level, their immediate superiors, who do not know the issue of the dispute, are asked to negotiate and resolve the dispute.¹⁵⁷ If the superiors fail, the problem is passed up to higher management of both parties.¹⁵⁸ Since lower and intermediate managers would have an interest in demonstrating to upper management their ability to solve problems, there is built-in incentive to resolve disputes quickly and effectively.¹⁵⁹
- (c) Standing Neutrals and Dispute Review Boards: In this process the parties appoint a trusted neutral person or group of individuals at the beginning of their relationship.¹⁶⁰ If there is a dispute or a problem that the parties cannot resolve, the neutral should be available at a reasonable short notice to provide prompt objective advice to parties.¹⁶¹

¹⁵⁵ *CPR Prevention Practice Materials*, *supra* note 135, at 23.

¹⁵⁶ Groton, Shanks and Underwood, *supra* note 139.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *CPR Prevention Practice Material*, *supra* note 135, at 24.

¹⁶¹ *Id.*

C. Mixed Mode Processes

Combining a variety of dispute resolution processes¹⁶² might be characterized as involving “mixing of modes.”¹⁶³ These approaches help parties select flexible procedure as per their needs and reach a quicker and cost effective outcome.¹⁶⁴ They are an important feature for the landscape of commercial dispute resolution domestically and internationally.¹⁶⁵

(i) Spectrum of Mixed Modes

Over the years many creative dispute resolution professionals have come up with imaginative and useful mixed modes.¹⁶⁶ Some popular examples of mixed modes are:

(a) Arb-med: The process starts as an arbitration, often on an accelerated basis.¹⁶⁷ The neutral makes the award, but instead of immediately announcing it to the parties, seals it in an envelope and keeps it secret.¹⁶⁸ Then the neutral (who could be the same or a different person)

¹⁶² Thomas J. Stipanowich & Véronique Fraser, *The International Task Force on Mixed Mode Dispute Resolution: Exploring the Interplay between Mediation, Evaluation and Arbitration in Commercial Cases*, FORDHAM INT’L L.J. (forthcoming) (manuscript at 17) (on file with author); also available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2920785 (last visited March 24, 2017) Chart A. Illustrates basic taxonomy of dispute resolution processes. The two basic groupings are adjudicative processes and non-adjudicative processes. Adjudicative processes include arbitration and court litigation. Non-adjudicative processes include a wide range of non-binding evaluative processes (e.g., advisory appraisal, advisory expert determination, advisory/non-binding arbitration, conciliation, evaluative mediation, dispute boards, early neutral evaluation, mini-trial) and non-evaluative processes (e.g., non-evaluative forms of mediation).

¹⁶³ Jeremy Lack, *Appropriate Dispute Resolution (ADR): The Spectrum of Hybrid Techniques Available to the Parties*, in ADR IN BUSINESS: PRACTICE AND ISSUES ACROSS COUNTRIES AND CULTURES, VOL. II, 339 (Arnold Ingen-Housz ed., 2010) (“It can thus be seen that ADR, if seen as a collection of Appropriate Dispute Resolution tools, can be used sequentially, in parallel or in combination, to create a broad range of hybrid processes”).

¹⁶⁴ *Id.* at 340.

¹⁶⁵ Renate Dendorfer & Jeremy Lack, *The Interaction Between Arbitration and Mediation: Vision vs. Reality*, DISP. RESOL. INT’L 73 (June 2007).

¹⁶⁶ Michael Leathes, *Dispute Resolution Mules Preventing the process from being part of the problem*, IMI (March 14, 2012) <https://imimediation.org/private/downloads/oYunnfhSzdyVSmrwbjIEw/dispute-resolution-mules--final-.pdf> (last visited March 24, 2017).

¹⁶⁷ *Id.*

¹⁶⁸ Lack, *Appropriate Dispute Resolution*, *supra* note 163, at 358; Alan L. Limbury, *Hybrid Dispute Resolution Processes – Getting the Best while Avoiding the Worst of Both Worlds?*, An expanded version of the paper delivered at the second Chartered Institute of Arbitrators Mediation Symposium, London (October 29, 2009), https://www.cedr.com/about_us/arbitration_commission/Hybrids.pdf at 6. (last visited March 24, 2017); CARRIE J MENKEL-MEADOW, LELA PORTER LOVE & ANDREA KUPFER SCHNEIDER, *MEDIATION POLICY AND ETHICS* 364,365 (Vicki Been et.al eds., 2nd ed. 2013).

becomes the mediator, facilitating the parties to come to a negotiated settlement.¹⁶⁹ The parties agree beforehand that if they are unable to settle (say by a certain time, or if they stop the mediation phase) then the envelope is opened and the parties are bound by that outcome.¹⁷⁰

(b) Med-arb: This process is also known as Binding Mediation, and is the reverse of arb-med described above.¹⁷¹ Here the neutral begins as a mediator. If the parties cannot settle all issues as a result of the mediation, the neutral becomes an arbitrator and renders an enforceable decision on those issues.¹⁷²

(c) Non-binding arb-med and med-arb: In this process, instead of the arbitration resulting in a binding decision, the parties could agree that they would not be bound by the outcome of the arbitration phase.¹⁷³

(d) Early neutral evaluation: In this process, the neutral offers an opinion on the merits of the case before trial and in some cases assists fact development and discovery issues.¹⁷⁴

(e) Mini-trial: This process is like being in a court or tribunal, except that instead of presenting the case to a judge or an arbitrator, it is presented to senior representatives (not involved in day to day running of an organization) of each side who have full authority to settle the case, often in the presence of a mediator.¹⁷⁵ The mini-trial can be handled with or without a mediator, but it helps to have one present to keep the settlement talks on track.¹⁷⁶

(f) Party hat-swapping: In this process, mediators suggest that, at the start of the process, the parties should behave like litigators but assume the role of the other side for a brief period as

¹⁶⁹ Lack, *Appropriate Dispute Resolution*, *supra* note 163, at 358; Limbury, *supra* note 168 at 6; MEDIATION POLICY AND ETHICS, *supra* note 168, at 364, 365.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*; Lack, *Appropriate Dispute Resolution*, *supra* note 163, at 357; Limbury, *supra* note 168, at 5.

¹⁷² *Id.*

¹⁷³ Leathes, *supra* note 166.

¹⁷⁴ *Id.*; MEDIATION POLICY AND ETHICS, *supra* note 168, at 375.

¹⁷⁵ Leathes, *supra* note 166.

¹⁷⁶ *Id.*

an acting exercise and make their opening statements as if they were their opponent.¹⁷⁷ Getting each party to swap hats and present the other sides' case as an acting performance is helpful to break up the blind passion that parties may have for their case.¹⁷⁸

(g) Non-binding arbitration: In this process, parties enter into arbitration but the arbitrator's award becomes binding only if it is accepted voluntarily by the disputants.¹⁷⁹

(h) Baseball arbitration: This process is also called last offer arbitration.¹⁸⁰ It is typically a binding process where each party makes a final offer to settle at a stated figure.¹⁸¹ The role of the neutral is to select one of these figures and he / she may not propose another figure.¹⁸² The idea is that this encourages the parties to make reasonable submissions in order to maximize the chance of their figure being chosen.¹⁸³

(i) Collaborative lawyering¹⁸⁴: In this process, parties agree upfront to use problem-solving advisors to try and achieve a settlement, and to disclose whatever information is needed.¹⁸⁵ They also agree not to threaten court action. However, if the dispute ends up in court, the parties' advisors must withdraw and the parties must find new representatives for litigation.¹⁸⁶

(j) Combining neutrals: Combined neutrals is a co-mediation hybrid using a mediator and conciliator or arbitrator working as a team.¹⁸⁷ It is useful in business relationships where there is

¹⁷⁷Leathes, *supra* note 166; Lack, *Appropriate Dispute Resolution*, *supra* note 163, at 376, 377.

¹⁷⁸ *Id.*

¹⁷⁹ Leathes, *supra* note 166; MEDIATION POLICY AND ETHICS, *supra* note 168, at 373.

¹⁸⁰ *Id.*; MEDIATION POLICY AND ETHICS, *supra* note 168, at 363.

¹⁸¹ *Id.*

¹⁸² Leathes, *supra* note 166.

¹⁸³ *Id.*

¹⁸⁴ Collaborative law is a US born and bred dispute resolution platform based on cooperative strategies pioneered by David Hoffman and Pauline Telser for over 20 years, and is now underpinned by the Uniform Collaborative Law Act 2009. See also David Hoffman and Pauline Telser, *The Alternative Dispute Resolution Practice Guide*, in COLLABORATIVE LAW AND THE USE OF SETTLEMENT COUNSEL, 1, 2 (B. Roth, ed. 2002).

¹⁸⁵ Leathes, *supra* note 166.

¹⁸⁶ *Id.*

¹⁸⁷Leathes, *supra* note 166; Lack, *Appropriate Dispute Resolution*, *supra* note 163, at 369, 370.

need for evaluative and facilitative skills.¹⁸⁸ The idea is to appoint a team of at least two neutrals, one of whom is a mediator (facilitative) and the other is a conciliator or an arbitrator (evaluative).¹⁸⁹ The mediator works closely with the conciliator or arbitrator to optimize the chances of reaching an amicable settlement.¹⁹⁰ By using a combination of neutrals together as a team, the parties can have the benefits of both.¹⁹¹ It allows the parties to understand their alternatives while seeking a deal that maximizes value for everyone.¹⁹²

There is an extensive range of mixed modes described by various authors,¹⁹³ the examples listed in this paper are by no means exhaustive.

(ii) Configuring the Processes to the Circumstances

A dispute resolution process should be configured to fit the substance of the issues in dispute between the parties.¹⁹⁴ The type of process used would depend on the parties' circumstances, needs and goals.¹⁹⁵ Tailor-made processes allow the parties and their lawyers to have a sense of certainty (or predictability), autonomy, relatedness, and fairness, that is likely to lead to a faster, cost-effective and better outcome.¹⁹⁶ They also minimize the risk of the process

¹⁸⁸Leathes, *supra* note 166; Lack, *Appropriate Dispute Resolution*, *supra* note 163, at 369, 370.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ See, e.g. HAROLD ABRAMSON, *MEDIATION REPRESENTATION: ADVOCATING AS A PROBLEM-SOLVER IN ANY COUNTRY OR CULTURE*, 363 -387 (National Institute for Trial Advocacy, 2nd ed. 2010) (describes many of the above-listed hybrid processes in detail).

¹⁹⁴ Lack, *Appropriate Dispute Resolution*, *supra* note 163, at 340.

¹⁹⁵ *Id.* at 372. (figure 17-7 describes the check-list of factors that can be taken into account while combining dispute resolution processes); Stipanowich & Fraser, *supra* note 162 at 31 (describing a list of process goals or values that serve as criteria for shaping processes for the resolution of commercial disputes might include the following: “ a) Party control over the process and outcome (informed decision-making and consent; self-determination; flexible / dynamic / tailored process); b) Independent and impartial neutral; c) Competent and/or authoritative neutrals (neutrals with necessary skills, experience, authority, respect); d) Fair process and outcome; e) Cost-effective / efficient / “proportional” process and outcome; f) Avoidance of adjudication; promotion of a negotiated outcome; g) Confidentiality h) Finality; enforceability of outcome i) Maintaining or improving relationship; reconciliation j) Maintaining community or societal stability and harmony”).

¹⁹⁶Lack, *Appropriate Dispute Resolution*, *supra* note 163, at 372.

itself becoming part of the problem.¹⁹⁷ However, it is important that the parties, their lawyers and the neutrals involved should fully understand the procedures they subscribe to, their consequences, and the issues and opportunities that combining dispute resolution processes can present.¹⁹⁸

D. Teaching Dispute Resolution in Business Schools and Law Schools

Negotiation, a skill vital for lawyers,¹⁹⁹ is also indispensable for business managers.²⁰⁰ There is strong interest for better quality of education about dispute resolution and management throughout the world.²⁰¹

(i) Business Schools

It is important for business managers to recognize the importance of resolving business conflicts than terminating their relationships.²⁰² In assessing business conflict it is crucial to avoid potential risks leading to disputes than winning the dispute later.²⁰³ Therefore it is critical for business leaders to understand dispute resolution processes like negotiation, mediation, arbitration and litigation.²⁰⁴ In the 1990s, Professor Roy J Lewicki²⁰⁵ recognized the value of negotiation courses taught in business schools.²⁰⁶ He further noted that study of dispute

¹⁹⁷ Lack, *Appropriate Dispute Resolution*, *supra* note 163, at 372.

¹⁹⁸ *Id.* at 379.

¹⁹⁹ Cathy Cronin-Harris, *Why Take ADR Courses In Law School*, (March 2008), http://www.americanbar.org/content/dam/aba/directories/dispute_resolution/0177_croninharris_why_take_adr_classes.authcheckdam.pdf (last visited March 24, 2017).

²⁰⁰ DAVID A. LAX & JAMES K. SEBENIUS, *THE MANAGER AS NEGOTIATOR* 1(1986).

²⁰¹ Deborah Massucci, *Access to Justice: The Road Ahead, What is the Role of the Lawyer/ Advisor and Education?* FORDHAM L. REV. (forthcoming 2017) (manuscript at 5) (on file with the author).

²⁰² David S. Weiss, *Business Schools Need to Adopt more Conflict Resolution into their Curriculum*, KLUWER ARBITRATION BLOG (forthcoming 2017) (on file with the author).

²⁰³ *Id.*

²⁰⁴ Weiss, *supra* note 202; E-mail from Professor Joseph B. Stulberg, Michael E. Moritz Chair in Alternative Dispute Resolution, The Ohio State University, to author (March 2, 2017) (on file with author).

²⁰⁵ Professor Roy J. Lewicki teaches Business Ethics, and Management and Human Resources at The Ohio State University.

²⁰⁶ Roy J. Lewicki, *Teaching Negotiation and Dispute Resolution in Colleges of Business: The State of Practice*, 13 NEGOTIATION. J. 253 (1997).

resolution is becoming an interdisciplinary field bridging the gap between business, law and other disciplines.²⁰⁷

Today, business schools need to adopt risk management and dispute resolution curriculum analogous to risk assessment and compliance courses.²⁰⁸ A good risk management program should include training in the field of dispute resolution modalities.²⁰⁹ Such training includes negotiation and mediation classes to build the necessary skills, knowledge and experience that business decision makers will inevitably need today and in the future.²¹⁰

(ii) Law Schools

There has been a marked expansion of course offerings in law schools on the topics of negotiation, mediation, and arbitration.²¹¹ Studying ADR courses like negotiation, mediation and collaborative law are a good platform for students to gain experiential learning in most American law schools.²¹² Furthermore, these courses enhance communication and persuasive skills, and problem solving ability of students.²¹³ Students also learn to appreciate the role of perception and recognize human emotions at play in disputes.²¹⁴ Thorough knowledge of these skills will help lawyers better understand the needs of their clients.²¹⁵

VI. CONCLUSION

It is early to make definite conclusions from the data of the first seven GPC events. This paper only scratches the surface, and a complete review of the final data of all events by the

²⁰⁷ Lewicki, *supra* note 206, at 263.

²⁰⁸ Weiss, *supra* note 202.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Massucci, *supra* note 201.

²¹² Cronin-Harris, *supra* note 199.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Massucci, *supra* note 201.

academic committee would give a clearer picture.²¹⁶ However it is evident from the voting patterns that commercial dispute resolution processes of today can be improved. The preliminary data suggests that advisors and providers have an opportunity to collaborate more with the parties and align with their needs. The data also suggests emerging areas to improve the effectiveness and efficiency of the commercial dispute resolution marketplace.

IMI believes that this initiative already has and will continue to be a valuable source of information on the views and ideas of ADR stakeholders across the same twenty core questions.²¹⁷ It will also provide an ability to compare and contrast responses from civil and common law jurisdictions, as well as emerging and sophisticated markets.²¹⁸

Senior and seasoned ADR stakeholders have reported that they are gaining new insights and understanding across stakeholder groups as a result of attending GPC events.²¹⁹ In the past, they never had an opportunity to appreciate the disparate perspectives that may have been creating unintended and invisible gaps in the ADR landscape.²²⁰

In some countries, the local governments are already planning on taking some of the insights from the GPC Series and develop them further.²²¹ As highlighted earlier, this is critical to the success of dispute resolutions processes. This is particularly evident in Asia, where senior government officials and Supreme Court justices have become involved in local events.²²² There

²¹⁶ *Academic Committee*, GLOBAL POUND CONFERENCE SERIES 2016-2017(March 26, 2017, 10:30 PM), <http://globalpoundconference.org/the-people/academic-committee#.WNgA-fkrI2w>. (The COG Advisory Board comprises a committee of academic experts on all traditional forms of dispute resolutions from across the world. These experts have been asked to oversee the quality of the data being gathered and verify its statistical relevance).

²¹⁷ E-mail from Deborah Masucci, Chair of the International Mediation Institute, to author (March 17, 2017) (on file with author).

²¹⁸ *Id.*

²¹⁹ E-mail from Jeremy Lack, Global Coordinator of the GPC Series, and ADR Neutral and Attorney-at-Law, to author (March 5, 2017) (on file with the author); E-mail from Michael Mellwrath, Chairman of COG GPC Series and Chief Global Litigation Counsel at GE Oil & Gas, to author (February 23, 2017) (on file with author).

²²⁰ Lack E-mail, *supra* note 219.

²²¹ *Id.*

²²² *Id.*

are several “low-hanging fruits” such as pre-dispute or pre-escalation processes and mixed modes that could have a tangible impact on improving access to justice globally.²²³ The GPC Series is also positively imprinting social media channels and our broader community, suggesting the effort is already “worth it.”²²⁴

²²³ Lack E-mail, *supra* note 219; Julian Copeman, *What do you hope the GPC will achieve?* GLOBAL POUND CONFERENCE BLOG (March 2, 2017) <https://blog.globalpoundconference.org/> (last visited March 26, 2017).

²²⁴ *Id.*; JAMS reported that it is proud of the outcome of each dynamic event and is looking forward to the final report and to see the lasting impact from the GPC Series on the growth of ADR around the world. E-mail from Kathleen Pierz, Global Practice Development Manager, JAMS, to author (March 20, 2017) (on file with author).

APPENDIX A²²⁵

GPC SERIES: TWENTY CORE QUESTIONS

SESSION 1

ACCESS TO JUSTICE & DISPUTE RESOLUTION SYSTEMS: WHAT DO PARTIES WANT, NEED AND EXPECT?

Question 1.1

What outcomes do parties most often want before starting a process in commercial dispute resolution?

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

1. Action-focused (e.g. prevent action or require an action from one of the parties)
2. Financial (e.g. damages, compensation, etc.)
3. Judicial (e.g. setting a legal precedent)
4. Psychological (e.g., vindication, closure, being heard, procedural fairness)
5. Relationship-focused (e.g. terminate or preserve a relationship)
6. Other: (please specify)

Question 1.2

When parties involved in commercial disputes are choosing the type(s) of dispute resolution process (es) to use, which of the following has the most influence?

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

1. Advice (e.g. from lawyer or other advisor)
2. Confidentiality expectations
3. Efficiency (e.g. time/cost to achieve outcome)
4. Industry practices
5. Predictability of outcome
6. Relationships (e.g. preventing conflict escalation)
7. Other: (please specify)

Question 1.3

When lawyers (whether in-house or external) make recommendations to parties about procedural options for resolving commercial disputes, which of the following has the most influence?

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

1. Familiarity with a particular type of dispute resolution process

²²⁵ *GPC Series 2016-17 Core Questions For Commercial Disputes To Be Used At All GPC Events*, Global Pound Conference Series 2016-17, [http://www.globalpoundconference.org/Documents/GPC%20Series%202016-17%20--%20Core%20Questions%20--%20Publication%20Copy%20\(March%206%202016\).pdf](http://www.globalpoundconference.org/Documents/GPC%20Series%202016-17%20--%20Core%20Questions%20--%20Publication%20Copy%20(March%206%202016).pdf) (last visited March 24, 2017). Some cities such as Berlin have added additional core questions, to analyze local matters such as a new German law on mediation. E-mail from Jeremy Lack, Global Coordinator of the GPC Series, and ADR Neutral and Attorney-at-Law to author (April 6, 2017) (on file with author).

2. Industry practices
3. Impact on costs/fees the lawyer can charge
4. The party's relationships with the other party (ies) or stakeholders
5. The type of outcome requested by the party (e.g. money, an injunction, etc.)
6. Other: (please specify)

Question 1.4

What role do parties involved in commercial disputes want providers to take in the dispute resolution process?

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

1. The parties decide how the process is conducted and how the dispute is resolved (the providers just assist)
2. The providers decide on the process and the parties decide how the dispute is resolved
3. The parties decide on the process and the providers decide how the dispute is resolved
4. The providers decide on the process and how the dispute is resolved
5. The parties initially do not have a preference but seek guidance from the providers regarding optimal ways of resolving their dispute
6. Other: (please specify)

Question 1.5

What role do parties involved in commercial disputes typically want lawyers (i.e., in-house or external counsel) to take in the dispute resolution process?

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

1. Acting as coaches, providing advice but not attending
2. Acting as advisors and accompanying parties but not interacting with other parties or providers
3. Participating in the process by offering expert opinions, not acting on behalf of parties
4. Working collaboratively with parties to navigate the process. May request actions on behalf of a party
5. Speaking for parties and/or advocating on a party's behalf
6. Parties do not normally want lawyers to be involved
7. Other (please specify)

SESSION 2

HOW IS THE MARKET CURRENTLY ADDRESSING PARTIES' WANTS, NEEDS AND EXPECTATIONS?

Question 2.1

What outcomes do providers tend to prioritize in commercial dispute resolution?

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

1. Action-focused (e.g. prevent action or require an action from one of the parties)
2. Financial (e.g. damages, compensation, etc.)
3. Judicial (e.g. setting a legal precedent)

4. Psychological (e.g., vindication, closure, being heard, procedural fairness)
5. Relationship-focused (e.g. terminate or preserve a relationship)
6. Other: (please specify)

Question 2.2

The outcome of a commercial dispute is determined primarily by which of the following?

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

1. Consensus: the parties' subjective interests
2. Culture: based cultural and/or religious norms
3. Equity: general principles of fairness
4. Rule of Law: findings of fact and law or other norms
5. Status: deferring to authority/hierarchies
6. Other: (please specify)

Question 2.3

In commercial disputes, what is achieved by participating in a non-adjudicative process (mediation or conciliation) (whether voluntary or involuntary - e.g. court ordered)?

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

1. Better knowledge of the strengths/weaknesses of the case or likelihood of settlement
2. Compliance (e.g. avoiding cost sanctions, meeting contractual obligations)
3. Improving or restoring relationships
4. Reduced costs and expenses
5. Retaining control over the outcome
6. Tactical/strategic advantage (e.g. delay)
7. Other: (please specify)

Question 2.4

Who is primarily responsible for ensuring parties involved in commercial disputes understand their process options, and the possible consequences of each process before deciding which one to use?

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

1. Adjudicative Providers: judges and arbitrators or their organizations
2. External lawyers
3. Governments/ministries of justice
4. In-house lawyers
5. Non-Adjudicative Providers: mediators and conciliators or their organizations
6. Parties (non-legal personnel)
7. Other: (please specify)

Question 2.5

Currently, the most effective commercial dispute resolution processes usually involve which of the following?

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

1. Adjudicative dispute resolution methods (litigation or arbitration)
2. Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation)
3. Encouragement by courts, tribunals or other providers to reduce time and/or costs
4. Non-adjudicative dispute resolution methods (mediation or conciliation)
5. Pre-dispute or pre-escalation processes to prevent disputes
6. Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings)
7. Other (please specify)

SESSION 3

HOW CAN DISPUTE RESOLUTION BE IMPROVED? (OVERCOMING OBSTACLES AND CHALLENGES)

Question 3.1

What are the main obstacles or challenges parties face when seeking to resolve commercial disputes?

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

1. Emotional, social, or cultural constraints
2. Financial or time constraints
3. Inadequate range of options available to resolve disputes
4. Insufficient knowledge of options available to resolve disputes
5. Uncertainty (e.g. unpredictable behavior or lack of confidence in providers)
6. Other: (please specify)

Question 3.2

To improve the future of commercial dispute resolution, which of the following processes and tools should be prioritized?

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

1. Adjudicative dispute resolution methods (litigation or arbitration)
2. Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation)
3. Encouragement by courts, tribunals or other providers to reduce time and/or costs
4. Non-adjudicative dispute resolution methods (mediation or conciliation)
5. Pre-dispute or pre-escalation processes to prevent disputes 1
6. Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings)
7. Other: (please specify)

Question 3.3

Which of the following areas would most improve commercial dispute resolution?

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

1. Accreditation or certification systems for dispute resolution providers²
2. Cost sanctions against parties for failing to try non-adjudicative processes (e.g. mediation or conciliation) before litigation/arbitration.
3. Legislation or conventions that promote recognition and enforcement of settlements, including those reached in mediation
4. Quality control and complaint mechanisms applicable to dispute resolution providers³
5. Use of protocols promoting non-adjudicative processes before adjudicative processes (e.g. opt-out) ⁴
6. Rules governing third party funding⁵
7. Other: (please specify)

Question 3.4

Which stakeholders are likely to be most resistant to change in commercial dispute resolution practice?

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

1. Adjudicative Providers: judges and arbitrators or their organizations
2. External lawyers
3. Governments/ministries of justice
4. In-house lawyers
5. Non-Adjudicative Providers: mediators and conciliators or their organizations
6. Parties (non-legal personnel)
7. Other: (please specify)

Question 3.5

Which stakeholders have the potential to be most influential in bringing about change in commercial dispute resolution practice?

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

1. Adjudicative Providers: judges and arbitrators or their organizations
2. External lawyers
3. Governments/ministries of justice
4. In-house lawyers
5. Non-Adjudicative Providers: mediators and conciliators or their organizations
6. Parties (non-legal personnel)
7. Other: (please specify)

SESSION 4

PROMOTING BETTER ACCESS TO JUSTICE: WHAT ACTION ITEMS SHOULD BE CONSIDERED AND BY WHOM?

Question 4.1

Who has the greatest responsibility for taking action to promote better access to justice in commercial dispute resolution?

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

1. Adjudicative Providers: judges and arbitrators or their organizations
2. External lawyers
3. Governments/ministries of justice
4. In-house lawyers
5. Non-Adjudicative Providers: mediators and conciliators or their organizations
6. Parties (non-legal personnel)
7. Other: (please specify)

Question 4.2

What is the most effective way to improve parties' understanding of their options for resolving commercial disputes?

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

1. Creating collaborative dispute resolution centers or hubs to promote awareness
2. Education in business and/or law schools and the broader business community about adjudicative and non-adjudicative dispute resolution options
3. Procedural requirements for all legal personnel and parties to declare they have considered non-adjudicative dispute resolution options before initiating arbitration or litigation
4. Providing access to experts to guide parties in selecting the most appropriate dispute resolution process (es)
5. Requiring parties to attempt non-adjudicative options (i.e., mediation or conciliation) before initiating litigation or arbitration
6. Other: (please specify)

Question 4.3

To promote better access to justice for those involved in commercial disputes, where should policy makers, governments and administrators focus their attention?

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

1. Legislation or conventions promoting recognition and enforcement of settlements including those reached in mediation
2. Making non-adjudicative processes (mediation or conciliation) compulsory and/or a process parties can "opt-out" of before adjudicative processes can be initiated⁶
3. Pre-dispute or early stage case evaluation or assessment systems using third party advisors who will not be involved in subsequent proceedings⁷
4. Reducing pressures on the courts to make them more efficient and accessible

5. Use of protocols promoting non-adjudicative processes (mediation or conciliation) before adjudicative processes
6. Other: (please specify)

Question 4.4

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

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

1. Demand for certainty and enforceability of outcomes
2. Demand for increased efficiency of dispute resolution processes, including through technology.
3. Demand for increased rights of appeal/oversight of adjudicative providers
4. Demand for increased transparency
5. Demand for increased uniformity and standardization
6. Demand for processes that allow parties to represent themselves, without lawyers
7. Other: (please specify)

Question 4.5

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

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

1. Changes in corporate attitudes to conflict prevention
2. Enhanced understanding regarding how people behave and resolve conflict (e.g. from brain and social sciences)
3. Greater emphasis on collaborative instead of adversarial processes for resolving disputes
4. Greater emphasis on personal wellbeing and stress reduction of parties
5. Harmonization of international laws and standards for dispute resolution systems
6. Other (please specify)