

The Need of a “Quiet Revolution” in Brazil

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Ever since I started Law School, and for some years throughout my legal career, I was trained to work with the Win-Lose negotiation approach. Our legal culture glorifies the winners, but lacks conciliation alternatives. It provides no other alternative rather than seeking victory at the expense of the other parties.

However, as soon as I joined the legal team of a Brazilian aircraft manufacturer, I was presented an article entitled “The Strategic Lawyer” .

Undoubtedly, it had an immediate impact in the way I viewed my legal thought and behavior. Interestingly, this article was presented to me by an engineer, not a lawyer.

For those who haven't had the opportunity to read it yet, the article advocates the concept of how lawyers should think as legal strategists in order to serve the best interests of business with a problem solving approach:

“Once a lawyer makes this fundamental shift, from legal-centric to business-centric”, it states, “it will shift perspective and alter the way that lawyer practices law”.

Also it wasn't long before I changed my mindset and started to understand that the win-win method was much more valuable, motivating, and worthwhile approach to the exercise of my profession.

Just like myself, slowly but steadily, corporations, lawyers and all of those who have historically been suspicious of the benefits of Mediation and ADR, have started to realize that negotiations do not have to be like the final game in a football tournament. In a negotiation, all parties can win.

Unfortunately, this shift in paradigm happens at a much faster pace in some nations than in others. The Brazilian current situation is a clear proof of that.

Although some advances were in fact achieved in the public sector, the judicial system in Brazil has reached an almost unbearable situation, as it can no longer cope with the growing number of cases.

Among several other interesting data, the 2011 report “Justiça em Números (Law in Numbers)” presents a really alarming fact: there were close to 87 million cases being handled in the judicial systems then. 25 million of those were originated in 2009 alone.

The 2010 regulation (already mentioned in a previous post) highlighted the importance of the incorporation of the Mediation as an alternative means of dispute settlement; it provided an exclusive focus on the public sector, almost ignoring the benefits of a more widespread reach.

There is no question that we need a Quiet Revolution in Brazil, a complete change in paradigm when approaching dispute resolution is probably the only way forward.

There may be light at the end of the tunnel. The Brazilian Congress recently appointed a committee responsible for discussing a possible change in the Arbitration Law with the incorporation of a Mediation section.

However, although important, Legislation by itself is not sufficient. A new culture is needed. Changes in Law Schools' curriculum, professional training and public awareness are just some examples of the enormous tasks ahead.

Refusing to follow the worldwide Mediation and ADR trends means placing Brazilian companies, or any other corporation from nations with similar litigious culture, in a clearly disadvantageous position when compared to those businesses from places which adopted these tools.

No one can argue that the high litigation costs have a strong impact in the already high “Brazilian Trading Cost”. And what in the past was viewed as a local problem, has already become a big issue in the country's competitive nature.

Fortunately, a few local and international institutions are devoting great efforts towards increasing the awareness levels and the promotion of Mediation (and other ADR methods) in the country and the win-lose approach is no longer viewed as the only way forward and is slowly becoming less acceptable.