

Mediation in the Arbitration House

Kluwer Mediation Blog

October 21, 2016

Nadja Alexander (Editor) (Singapore International Dispute Resolution Academy)

Please refer to this post as: *Nadja Alexander (Editor), 'Mediation in the Arbitration House', Kluwer Mediation Blog, October 21 2016, <http://mediationblog.kluwerarbitration.com/2016/10/21/mediation-arbitration-house/>*

Throughout the 20th century the arbitration house has dominated the landscape of international commercial dispute resolution. In the 21st century foundations are being laid for construction of a free-standing mediation house in international dispute resolution practice. Meanwhile a closer inspection of arbitration house reveals the ongoing construction of mediation and other ADR windows in its design. Mediation windows is a term which refers to the use of mediation within other dispute resolution procedures, typically arbitration. The combination of mediation and arbitration processes in dispute resolution settings is not without controversy. Objections to the use of mediation windows and other hybrid forms of mediation and arbitration are particularly strong in situations in which the same person or team acts as mediator and arbitrator. Typical objections relate to:

- potential bias or perception of bias (see, for example, the [Keeneye](#) case discussed in a previous posting)
- the negative impact on the integrity of the mediation process insofar as parties may be less willing to share information where they are aware that the mediator may also become the decision-maker of their dispute.

Something that is less frequently discussed is the lack of real dialogue and understanding between the professional communities of mediators and arbitrators. The multi-faceted relationship between mediators and arbitrators as professional communities has become apparent in the ongoing discussions of the [UNCITRAL Working Group II](#) on arbitration and conciliation concerning the enforcement of international commercial settlement agreements resulting from conciliations (MSAs). Scholars such as [Stacie Strong](#) have highlighted this point also. The UNCITRAL deliberations have made clear that despite the many common interests shared by the arbitration and mediation processes, such as privacy, confidentiality, efficiency, procedural fairness and party autonomy, these two professional communities continue to focus on their differences rather than their shared values.

One way to begin to deal with this challenge is to offer more opportunities for mediators and arbitrators to move beyond their separate worlds and come together. An event organised by the IBA's Mediation Committee hopes to draw mediators and arbitrators together to do just that. So if you have yet to plan your professional events for December this year, this might be what you are looking for: [Mediation v Arbitration: Best Friends of Best Enemies? A View from Asia](#).