

A Mediator Prepares

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Those who have practised theatre may have heard of Constantin Stanislavski's "An Actor Prepares" – a book on acting published in 1936. The book is popular in Hong Kong not only among those in the performing art but also fans of the Asia famous Hong Kong comedian, Stephen Chow, who posed to be reading the book at a scene of his blockbuster movie – King of Comedy. So, how is "An Actor Prepares" relevant to this post?

About a year ago, I was invited to participate in a drama demonstration of mediation which was part of the "Mediate First" Pledge Event organized by the Hong Kong Department of Justice. In the short drama, I played the role of a mediator who was also the author of the book "A Mediator Prepares", which in real life is a book yet to be written. Towards the end of Event, those who took part in the production of the drama and some of the audience on the floor did jokingly talk about publishing a book with the title of "A Mediator Prepares" one day.



(Photographs from IDAR office Facebook photo album)

Now a year has gone and nothing has happened. I am still in my active mediation and legal practice and at the same time working on different projects including authoring chapters of a book under the leadership of Professor Nadja Alexander. The idea of writing "A Mediator Prepares" keeps coming back to me and I must find a way to resolve it. As such, I make use of this post to share several of Stanislavski's timeless quotes and explain how such quotes are also relevant to mediation practice.

"There are no small parts, only small actors."

It is not uncommon that junior mediators are tasked with cases involving a relatively small amount of money in dispute and with a humble mediator's fee or under a mediation pro bono scheme. If the disputed amount is small and it could not be settled by negotiation, it is possible that the emotions are high and/or there are in fact other issues underneath the "apparent" main issue. Besides, since the amount is small, the parties may be more ready to turn to the small claims tribunal (or an equivalent body) for adjudication without worrying too much about legal costs. If it is under a pro bono scheme, the service may be limited to a fixed number of hours and that makes the mediation more difficult as the mediator has to proceed to the bargaining stage without sufficient time for the exploration stage. A small case does not mean that it requires small efforts.

My first case as a family mediator for a divorcing couple was conducted with me as a voluntary mediator for a non-government organization. The husband was a Frenchman and the wife being a Hong Kong Chinese lady. One could say it was a simple case since they did not have much money and assets, nor did they have children. However, there were issues of domestic violence, emotional outburst, accommodation and division of a relatively small amount of money/assets on a clean break basis. Furthermore, I had to switch between my mother tongue, Cantonese and my working language, English in the process and address some cultural differences between the parties in the perceived meaning of a divorce. Not only was I not remunerated for the case, I even had to pay for the transportation expenses out of my own pocket. I was willing to do so because at that time, I was merely focusing on how to mediate more effectively and efficiently as well as how to assist the parties better without even considering my personal interests. That case had opened a door for my career. The case has not only given me confidence for my future practice but the lawyer acting for one party has since then been giving me cases to mediate until today as her client gave very positive comments on my small services. Since the lawyer has become more and more successful over the years, my practice grows too. The small case has a big impact on me.

"If you are looking for something, don't go sit on the seashore and expect it to come and find you; you must search, search, search with the stubbornness in you!"

This is a quote of Stanislavski from another book – "Building A Character". Successful mediators are getters. They possess an unquenchable thirst for knowledge and a solid work ethic. These mediators acquire advanced mediation skills through extensive research and tireless practice. While successful mediators have to be flexible when dealing with the parties, they also have a "stubbornness" that allows them to persevere through any challenge that may present itself. Mediators who do not put in the effort required to hone their craft will never earn the praise of mediation advocates, referrals or have the parties knock on their door.

Preparation can come in many forms requiring different levels of effort and yielding different levels of results. Some mediators feel that it is sufficient to read the papers in preparation for a land dispute mediation while others will not only read the papers but also take the effort to conduct a site visit to the disputed land in order to gain more information. Some mediators keep a medical dictionary in hand when they read the papers of a medical case whereas others reach out to doctors and patients of the relevant branch of medicine to gain a deeper understanding of the ins and outs of the case in addition to reading the papers. Although it is technically not wrong to put in the smallest amount of effort expected of a mediator, going the extra mile in one's preparation puts a mediator at a better position to connect with the parties successfully. In my career, I have crossed paths with experienced and well-respected family mediators who are single and without children. But how can these mediators understand the intricacies and dynamics of a family structure without personal experience? Clearly, their thriving practices are built upon long-term accumulation of sound efforts.

As mediation has an element of confidentiality, a mediator no matter how experienced will not get a referral until and unless people around the mediator genuinely feel that the mediator is a trustworthy neutral who has the competence to take up the case. It is not easy to win the trust of others and merely sitting on the seashore or one's office will never help. So how a mediator is able to build up the image of being trustworthy? A mediator must live as a good listener, a creative option generator, a broad-minded thinker and a widely-read problem solver. Once again, the image cannot be built up without efforts and the conscious desire to improve.

"Create your own method. Don't depend slavishly on mine. Make up something that will work for you! But keep breaking traditions, I beg you."

Most of the mediators have learned the process model and certain micro skills. However, we must not be bound by what we have learned from our trainers or coaches if we are to be successful in our mediation practice. A mediator will face a different set of facts, a new list of legal issues and a new group of professionals and parties with unique communication styles and chemistry among them. If there were only one uniform method to settle the dispute, Professor John Wade would not share the different ways of crossing the last gap in negotiations in his learned article "The Last Gap in Negotiations. Why is it important? How can it be Crossed?". With new circumstances like the present outbreak of Covid-19, mediators have to explore new ways to provide services such as taking advantage of online mediation. I am sure with the use of online mediation, there must be new skills to negotiate and cross the last gap in addition to those referred to in the leaned work of Professor Wade. Mediators have been taught to be creative in generating options and we need to be out-of-the-box in every aspect of mediation in order to meet the needs of the changing world. Remember, changing is the eternity.

Although my own professional acting career started and ended at my fifth year of primary school after taking up the role of a bit player in three episodes of education television, I believe that knowledge has no boundary and mediators have got a lot to learn from Constantin Stanislavski and his books. It is never a small part that we mediators play the role of a facilitator among disputants. I conclude this post with a quote from Shakespeare: "All the world's a stage, And all the men and women merely players."

NB - This post is dedicated to Mr Tat-Ming Cheung, who is a well-known Hong Kong actor, comedian, director, writer and a cancer-fighter. Tat-Ming had patiently shared his comments with a group of amateurs on a pro bono basis on several evenings in May 2019 before the mediation drama. With a good heart and a wealth of skills, he clinched the title of Best Supporting Actor in the 39th Hong Kong Film Awards (2020).