

Humanization and the digital transformation - dealing with dilemmas of the 'next' normal

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Writing this first 2021 post is a task that leads me to make an inevitable retrospective of the past year – 2020. A year to be remembered and whose events have been unrivalled by any others in recent humankind history.

The past year was indeed a challenging one, a time when negotiation and mediation skills became more necessary, or rather, essential to daily life, from routine to complex situations, to people in all walks of life and simultaneously in the whole world. Under such radical circumstances, new approaches to survival in society have demanded significant amounts of creativity, humanization, collaboration, flexibility from all of us.

It was no different for us at Mediar360. From the very first moment, we were able to identify many challenges to be faced, some unthinkable regardless of their nature until then; others, in turn, inevitable, urgent and no less rewarding ones. The idea of this post is to share one of those particular challenges with you/our readers.

At this point, I have the pleasure to introduce Constança Madureira, a key supporter and partner of Mediar360 who co-authorizes this article. The experience we are about to briefly describe relates to a major project launched during 2020 and aiming at introducing the latest technology and innovation resources to our mediation practice.

Looking back to our starting point then, our previous challenge had been to introduce and design digital platforms to bring more efficiency to companies that needed to mediate in large scales. Suddenly we found ourselves catapulted into the use of ODR platforms on a daily and permanent basis and the challenge became the humanization of the digital environment and improving what had become a hot topic – the User Experience (UX).

In general, by nature, Brazilians tend to be flexible and open to change. The adoption of ADR among us has been quite consistent in the last few years, and we have made significant progresses lately, despite initial strong cultural resistances (e.g., social, professional). Slowly and through consistent efforts from private and public (namely the Brazilian Judiciary) sectors, ADR and ODR practice is advancing and we find it imperative to push them harder and broaden it in order to meet present demands. Investments have been necessary as well as focused research and continued education from all of us in the community.

With all that in mind, our company, Mediar360, launched in November an audacious 40h-course project – Medinovação: Mediação Online e Inovação (MedInnovation - Online mediation and innovation), consisting of three strategic approaches and featuring a wide range of avant-garde topics such as visual law, design thinking, digital marketing, law and economics/behavioral law and economics, online courts/justice, evaluative mediation, sensorial mediation among others.

Ideally, we would like to go deep into all these topics, but for editorial limitations, we selected the following topics to comment on and to illustrate our post:

1) Sensorial justice (or humanized mediation) has been conducted for some time now in the state of Bahia (northeast region of Brazil) by a group of mediators, led by Sheila Rangel. The method developed by Ms Rangel, an active mediator with an engineering academic background, starts off by understanding and approaching conflict resolution through sensorial stimuli. Reconnecting body and mind through this kind of stimuli is viewed as an efficient tool to be used by new and seasoned mediators alike in order to maximize the results in mediations. According to Ms Rangel, preceding mediations and hearings, lawyers, mediators and the parties participate in a preliminary experience which consists of massage, relaxing music therapy, aromatherapy and coffee break sessions.

To her, the sensorial stimulation of touch, through massages helps to ease off tensions arising from conflicting emotions. Aromatherapy serves to stimulate the sense of smell, providing better breathing and balance of ideas; relaxing music therapy comes as an instrument of pacifying sound frequency, and finally the coffee break stimulates the taste of everyone involved. The strategic point is to develop an empathetic bond between those involved in the conflict.

Additionally, on top of the many well recognized benefits to all involved, the methodology has been highly innovative by the fact that it has allowed to train visually disabled individuals to act as mediators, which in turn serves the simultaneous purpose of not only training but opening the Brazilian market to more individuals in the field of ADR.

2) Up to now, basically, two types of mediation – transformative and facilitative – are being taught and practiced in Brazil. There is a trend to expand these conflict resolution techniques to several areas and types of conflicts. However, little attention is being drawn to evaluative mediation as another valuable tool to manage disputes. No matter how successful the international experience has been, and the USA are a good example of it, Brazilians seem to be skeptical towards this style of mediation. Perhaps such an attitude is due to the fact that they have neither heard of it, nor that it could look like it is not 'real' mediation, according to their standards, or it is not even what clients 'really' want. Yet for us at Mediar360, we feel encouraged to find ways to familiarize practitioners with this type of mediation among us. Thus, as part of our course program, we invited (Hon.) Peter Lichtman, a former judge and highly respected mediator, to give us a comprehensive panorama of the use of evaluative mediation in his successful practice in California. We all agreed that it is not a matter of simply 'copying' the evaluative mediation model made in USA, but that with the proper adjustments it can work out as well for us as for them. Our present legal framework is quite ADR-oriented and courts are encouraging alternative dispute resolution in all levels (local, state and federal) but evaluative mediation is not court-mandated or court-referred so far as opposed to the US where it emerged in court-mandated or court-referred mediation. In this sense, we could also point out that here, different from Americans, there are a few former judges acting as mediators among us.

It is worth mentioning too some resistance to evaluative mediation due to the assumption that in evaluative mediation the mediator has substantive expertise (including legal expertise) in the substantive area of the dispute, being this still an 'uncomfortable' area for our mediators as they feel this might affect the neutrality of the process. All in all, based on Mr Lichtman's sound experience, we see a future for this type of mediation in Brazil. Not only he assured us that it can be used in any areas of dispute, but with significant amounts of money involved, and, last but not least, with full/high level of satisfaction guaranteed to all. We are convinced that techniques such as the ones developed and demonstrated by him are a good, reliable start as of now.

As the new year unfolds, uncertainty is probably the first idea that comes to mind for most, if not all, of us for an indefinite period of time. Good planning and strategic vision have never been so crucial to deal with the immediate future and ultimately with clearer timeframes. We at Mediar360 will continue to work hard on new ways to bring the best of the benefits that the digital transformation allows to our business, to our clients, to society in general. The digital transformation has led to a digital economy and to the opportunity to reinvent ourselves and our lives. Technology is allowing us to rethink values companies are delivering to society, in addition to its positive impacts on inclusion and diversity. For us at Mediar360 it is already the next normal.