
Kluwer Mediation Blog

A Tale of Two Conferences

Bryan Clark (University of Strathclyde, Law School) · Monday, October 1st, 2012

It's nice to be asked. It means that someone somewhere is taking notice of your work. Yes conference invitations are generally a good thing. They are a bit like buses though. You hang around for eons waiting on them and then suddenly two come at once. Thus I find myself this May being invited to speak at two conferences on mediation in the same week some 6,000 miles apart. I am up for the challenge though, reschedule my teaching, pack my bags and say goodbye to the family for the next week.

First up is Hong Kong. This is the 'Mediate First Conference on Mediation' organised by the Hong Kong International Arbitration Centre. I am booked to speak at four panel sessions on different aspects of the mediation process alongside some leading academic commentators and practitioners in the field plucked from different parts of the world. Topics to be aired include: regulation of mediation and the related issues of training and accreditation; mandatory mediation; ethical issues arising from mediation practice; and confidentiality and evidential privilege in the mediation context. As somewhat of a veteran of conferences on mediation and civil justice themes I quickly notice that this one is different. The setting is grand. My fellow speakers and I are looked after incredibly well. There is pomp and ceremony. There is extensive press coverage and even television cameras. The volley of flashbulb press photography that greets us somewhat blinds me at first although I am quickly aware that this media frenzy is in no way related to my attendance. Making Keynote Speeches are the Lord Chief Justice and the Secretary for Justice. The Chairman of the Hong Kong Bar Association chairs one of the sessions. In fact, the conference is awash with high profile members of the Hong Kong legal, judicial and political establishment. The discussions that take place are at an advanced stage. There is huge support for the mediation process in the room. Although Hong Kong has received mediation only relatively recently, the process has moved rapidly from the fringes to the centre of mainstream disputing practices. A Mediation Bill, undergirding various aspects of the process, has already been introduced. Its provisions are filleted before us and examined in some detail. The appetite seems strong for further legislative measures.

I return buoyed by my experiences to Scotland where I am presenting at the Law Society of Scotland/Scottish Mediation Network Conference on Embedding ADR in the Civil Justice System. While the setting is more modest, the scope of the conference less ambitious and number of delegates far smaller, I am nonetheless optimistic that the event will be a success. Some big names populate the speakers' list. In the Keynote Session with me is the Scottish Government Minister for Community Safety and Legal Affairs and a Court of Session Judge. An Employment Tribunal Judge and a Sheriff will also be sharing their experiences of mediation with us. A high

profile US academic has been flown in to wrap things up and add further gravitas to the proceedings. Despite the stifling heat in the room, the day goes well. There is no doubt that it is an excellent conference and some useful and sophisticated discussions about mediation's place in Scottish civil disputing ensue. Nevertheless, in the aftermath of the conference I cannot help but feel a slight sense of disappointment. Yes the Minister strikes an encouraging tone about mediation but unlike her governmental counterparts in Hong Kong she leaves shortly after she arrives. Equally, beyond those recruited as speakers, members of the Scottish judiciary are conspicuous by their absence. For the most part there is a sense of preaching to the converted. The agnostics are not in the building. In a way this conference mirrors the continuing fate of mediation in Scotland. There is a growing cadre of mediation supporters and increasing evidence of a small but generally successful experiential base across different dispute contexts. But unlike mediation's heady ascent in Hong Kong, the process has struggled to make an impact in mainstream terms in Scotland.

I am left to reflect on why this might be the case. Mediation has been present in Scotland for a good while longer than in Hong Kong but while those from the higher echelons of that jurisdiction's establishment are queuing up to sing mediation's praises, ambivalence and disinterest towards the process abounds in Scottish legal, judicial and political circles. Expediting 'bottom up' demand is more important in an environment where 'top down' promptings are rare. In this sense, matters are progressing in Scotland even if the pace is glacial. Educational developments in mediation for lawyers and others are increasing. Dissemination of success stories is improving and mediation enthusiasts are becoming more adept at convincing policy makers and professional bodies about the merits of the process.

For my part, I'll keep the shoulder to the wheel, readily accepting any chances to join the debate. Who knows, maybe soon, Scotland will be leading it.

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