

Kluwer Mediation Blog

An Asian Switzerland, Expectation and Regret

Geoff Sharp (Brick Court Chambers / Clifton Chambers) · Tuesday, April 1st, 2014



Having last week returned to New Zealand from Singapore where I was honoured take part in the launch of the ICC Mediation Rules, I saw first hand the support for mediation in Singapore from powerful institutions like the Singapore Judiciary and the Ministry of Law.

Singapore, and my guess is Asia in general, is in the grip of a trade boom – from my hotel window it showed. I counted well over 100 large ships at anchor in the bay awaiting their turn to come along side the container port. This amazing country, lacking in land and natural resources of its own, unloads raw materials and later exports them after refining, value adding and reshaping them. In this way, Singapore has become the world's busiest transshipment port.

I was in no doubt that I was in the footsteps of many neutrals before me who, down through the ages, had learned to follow the trade routes in an effort to ply their craft.

So it is no surprise that the recent Government Working Group charged with mapping Singapore's transformation from a domestic mediation market to a hub for international cross border mediation has recommended a series of initiatives to consolidate Singapore's claim to be the 'Asian Switzerland'.

The Working Group members include the glitterati of the Asian mediation scene including Edwin Glasgow QC of 39 Essex Street in London, George Lim SC of Wee Tay & Lim LLP, Lok Vi Ming SC – President of the Law Society of Singapore, Valerie Thean from the Ministry of Law, Josephine Hadikusumo of Texas Instruments, Professor Lawrence Boo of The Arbitration Chambers, Professor Nadja Alexander of Hong Kong Shue Yan University, Associate Professor Joel Lee of National University of Singapore and Michael Leathes of IMI.

[Here for more](#) on the Working Group.

But, Dear Reader, the focus of this post is not to extol the virtues of a young, vibrant mediation market with plenty of room to grow – it is what happened next that preoccupies me.

On the long plane ride home, I fished into my bag for some reading that I hoped would pass the time and take my mind off the fate of Flight MH370.

So, as I opened Peter Adler’s 2013 keynote address to the Civil Mediation Council, [Expectation and Regret – A Look Back At How Mediation Has Fared In The US](#), I had expectations of my own as I have always admired Peter’s writing – mainly for its energy and independent thought – he is truly one of our founding fathers who has taken his own road in all things mediation.

And I was saddened by what I read – especially after the promise of the last few days.

It would be too easy to see Peter’s article as black hatting our wonderful, precious profession – although that was my initial response as I read of missed opportunities, unrealised promise and, as he says himself, overwhelming regret.

In fact, it read more like a eulogy with “its corners of sadness” experienced by some US mediator pioneers.

Adler tells of 25 interviews with other experienced mediators and the five interconnected stories that emerge *“all of them careening into each other, and all of them full of smaller and larger paradoxes: lots of “goods” and lots of “bads” in a cocktail of odd flavors that no one really ordered. Frankly, for me, interpreting all this was a bit like is like reading Mark Twain’s writings. Twain was for war and against war, boldly in favor of rich people, unabashedly supportive of poor people. He loved God and the devil and was famously for alcohol and strongly against it. The landscape of themes I heard was similar”*.

He orders his thoughts into the 5 stories, calling them;

1. The Decline and Decay of True Mediation – ‘with a few exceptions, most of the people I interviewed talked about a loss of first principles and an erosion of the fundamentals articulated three decades ago. Mediation no longer looks like what we imagined’

2. The Pull of the Courts – ‘the courts have given a strong and important imprimatur to mediation but not without unintended and, for some at least, corrosive consequences’

3. The Domination of Lawyers – ‘two problematic aspects of the lawyer love affair with mediation. The first is simple: hegemony, a takeover of mediation work and a slow but steady disenfranchisement of non-lawyers. The second matter is attorneys “gaming” the process’

4. The Profession that Isn’t – ‘the overall story however is about what is missing: a professional platform that can legitimately unify many diverse styles, applications and practices together in a common affiliation’

5. The Search for Identity – ‘mediators don’t have a unified identity. We don’t have a way of saying to the world who is kindred and who is not. What this leaves us with is a yearning for something that would distinguish the “us” from people who are not “us”, not in a pejorative way, but in a way that is somehow more factually and verifiably grounded. We don’t really have this. What we

have instead are a lot of smaller micro-market places’

The full article repays reading and you can decide for yourself – is this glass half empty or more a canary down the mine?


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