
Kluwer Mediation Blog

Civil Justice, 1906 – 2016. Time for an update?

Callum Murray (Murray & Duncan) · Thursday, December 17th, 2015 · Young Mediators Initiative (YMI)

The last day of the year is referred to, in Scotland, as Hogmanay. Hogmanay has for centuries, been a cause for celebration. Many traditions are associated with it, though the ubiquitous singing of ‘Auld Lang Syne’, is fairly recent, having been written by Robert Burns in 1788. One of the more important customs is the visiting of friends and neighbours, whilst of course raising a glass of whisky to toast the year’s successes and to anticipate what the forthcoming year might bring.

Given the timing of my YMI guest blog post, I find myself being in the fortunate position to reflect on what has been, but more importantly what lies ahead for Appropriate Dispute Resolution (ADR).

As I type, I’m in Edinburgh, the capital of Scotland and part of the UK. Here I can enjoy the freedom of expression, the right to roam and the right to remain silent. I also enjoy the benefits of a government which is working to build a civil and just society. While the weather can be a challenge, I’ve never been concerned for my health, safety or security. For the most part, life is good.

Unfortunately this can’t be said for many hundreds of thousands or rather millions of people in other places across the world. Happiness is of course subjective, so the right to a fair trial or access to justice might not be of upmost importance for everyone, when you consider that food, shelter, and basic health care are denied to so many. In my opinion, the access to justice, both criminal and civil, is another fundamental right.

In 1906, Roscoe Pound spoke at an annual American Bar Association meeting to voice the need for the implementation of comprehensive reforms to the American justice system. Some seventy years later, the Pound conference was held in his name, honouring his drive for pioneering justice, based on reforms to reduce the reliance upon traditional litigation. This conference started the concept and development of Alternative Dispute Resolution, as we know it today.

In 1919, shortly after the ending of World War 1, a group of traders, financiers and industrialists met and collectively initiated the beginnings of the International Chamber of Commerce (ICC) – forging rules, standards and dispute resolution mechanisms relevant to the commercial world. These merchants of peace believed in the values and power of commercial trade; in linking countries of the world, in a hope this would reduce conflict. Without initial government intervention, the ICC began improving national and international relations, effectively building a better world through business.

Today, the ICC now represents many thousands of companies across more than 120 countries. The shared interests of economic growth, health and happiness, are aspirations shared by the vast proportion of the world as well as the United Nations. Nevertheless, conflict, war, death and destruction are to be found on almost every continent.

To understand fully how we've managed to facilitate war, destruction and multi billion pound disputes to the extent which now exist today is a formidable undertaking. I see a clear parallel between litigation, ADR and the relationship between war, truce and how this is achieved. War is the most severe and destructive form of adversarial dispute. The conclusion of war is often only achieved after the mass destruction of resources and population, followed by a truce or settlement, agreed after months, or years of discussion.

So, what is the relevance and where does modern day dispute resolution come into this? Beliefs, thoughts and opinions are based upon and shaped by peer group thinking, situational bias, media influence and learnt behaviour, subject to education and life experiences. As individuals, we all have different motivations and aspirations.

If your personal aims are to gather as much power and financial capital that you can muster in your lifetime, then you and I differ in outlook. We will however still be able to agree on certain matters and it shouldn't necessarily prevent us from agreeing on others. Sometimes regrettably, opinions, beliefs and behaviours do of course prevent dialogue in the first instance prior to escalation.

Today, living in the information age – it is all too easy to observe mobile footage of armed conflict, hear of mass kidnapping on another continent whilst simultaneously learn about the most recent venture capital backed, multi-billion pound company valuation in another. Marshall McLuhan's postulation of The Global Village is with us. A discussion concerning the reasons for the unbalanced access to capital and continuation of conflict is however, a discussion for another day and another forum.

A simplistic extrapolation from the above, I think, shows that most individuals act and take decisions based on their beliefs, environments and information available to them. As a result, conflicts can occur between those who hold different perspectives, blinded by their own understanding of the facts known to them. In turn, this opens the door for ADR and enabling technology as a means of accessing justice and improving the potential to resolve disputes prior to drastic escalation.

Generation Y or the Millennial generation – born between 1980's – early 2000's are recognised as having certain character traits. In particular they have an affinity for the use of technology and its continual evolution. They can grasp and understand future possibilities which they want to develop. This 'new breed' has created an industry in itself to train, amongst others, senior partners of law firms and other professional service companies on how to best work and gain results from this type of employee. This demographic has also been noted to possess a pragmatic idealism towards concepts of social change, innovation, flexibility and a strong work – life balance.

In 20 – 30 years' time, this generation of value orientated leaders will be the CEO's of multinational corporations; they will be the managing partners of tax and accounting practices and globally dominant law firms. Therefore, in theory, in 20 years' time, the ideals of ADR will perhaps become the norm, stabilising the world, as new political leaders will be advised and involved in the new thinking and ideology.

However, there is much to do now, to help shape the future of dispute resolution. Primarily, what does the end user need, want or require from this process? Do they want instantaneous access to experts, with secure and convenient processes to handle matters with applicable costs? Perhaps they would rather send letters and wish to have face-to-face meetings?

Capturing data, developing appropriate systems to handle commercial disputes and understanding what users require, should be a prime concern for today's decision makers and indeed mediators, arbitrators, litigators and judiciaries. Failure to understand the end user's needs, wants, or interests means we can't conceivably deliver a solution or process which provides value or purpose. This is quite a thought, given the ideals of mediation.

Luckily for us all, in 2016 and 2017 [The Global Pound Conference Series](#) will gather essential data and provide an opportunity for a reboot of the commercial and civil dispute resolution landscape. Opinions matter, and of course vary by jurisdiction; the series (at present) is scheduled to be held in 26 countries and 36 cities to allow for a broad representation of views and opinions.

I would urge all who play a part in commercial dispute resolution to attend. Make your voice heard, whether in-house counsel, full time mediator, arbitrator, litigator, university professor, undergraduate student, Judge, political advisor, or most importantly of course, a business owner or end user of commercial dispute resolution processes.

Here's to many successful resolutions, in the coming New Year.

Callum Murray

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