

Kluwer Mediation Blog

A Mediator's Journey – Reflections on Age

Joel Lee (National University of Singapore, Faculty of Law) · Wednesday, June 15th, 2016

There is an Internet meme that goes “Somewhere, there is a 21 year old in a 50 year old’s body going ‘What the hell happened?’”.

I try not to think about age generally; and more specifically, my age. In part because I can’t count that high. And if I wanted to count that high, I would have become a mathematician or an accountant. I ran away to law school instead. Now that I think about it, my Dad’s an accountant. Hmm...definitely daddy issues there.

But I digress. My experience has been that with age, comes an increased tendency for reflection. Psychologists would suggest that this is because older people have less to look forward to and more to look back on. Or perhaps we have simply made more mistakes and have much more material to learn from. Whichever it is, after a mediation the other day, I found myself reflecting upon, not just my day, but my entire mediation journey. Having been involved in Singapore’s mediation movement since its inception, I was struck by how the passing of time and, in essence, my getting older, changed things.

There are of course the obvious things. As one grows older, one gains more experience and skills and this, hopefully, leads to increased competence. The passing of time will also see changes in the mediation landscape which will make it easier (or conversely more difficult) for you to assist parties in resolving their disputes. I call these obvious because they will, or should, happen in the ordinary course of things.

But two things in particular, stood out for me. The first relates to how parties and counsel respond to my older self, as opposed to my younger self. The second are changes to how I internally see and respond to things in a mediation. With your indulgence, I’d like to take this entry to delve into this first aspect.

One of the paradoxes of age is this. When one is young, one is always in a hurry to grow up (as opposed to grow old); to assert one’s individuality and be accepted as an equal. As one grows older, the adage “youth is wasted on the young” becomes more relevant. The problem is that in the context of mediation (or any other professional context), youth is a handicap. While one may be competent, one cannot get work as a mediator because one is inexperienced. And as the vicious cycle goes, one cannot get experience if one cannot get work as a mediator. And even if one can get that first appointment as a mediator (whether through an institutional arrangement or sheer luck), the deck is still stacked against the young. Parties and counsel (who will be older than you) will look at the “wet behind the ears whipper-snapper” and wonder what s/he has to offer. After all,

the parties and counsel would have (as the saying goes in Asian countries) eaten more salt than the mediator has eaten rice. While this is particularly true in countries with a high Power-Distance Index (PDI), it is also true in countries where status and authority are less important (low PDI). And because of this perceptual bias, anything the youthful mediator does will be reactively devalued by the parties and their counsel which will in turn affect the effectiveness of the mediator which will then reinforce the initial perceptual bias. A rock and a hard place indeed. Been there, done that, bought the T-Shirt.

The bad news is there isn't a heck of a lot that a young mediator can do about this problem. One could power dress, or act older or look older (I cultivated a mustache in a bid to achieve this. I'm afraid the mustache remains to this day; you could say it grew on me...).

Of course, time heals all wounds and will solve this problem as well! It certainly did for me! Two decades after my first mediation, what a difference a day (Ok ok! Many days...) makes. For one, you are now generally older than the parties and their counsel. And with great age comes, not great responsibility or wisdom, but a strange sort of "attributed credibility". The reverse of the vicious cycle described earlier operates, this time, in your favor. This doesn't mean that the parties and counsel will buy into everything you say or that you will be the miracle mediator that settles every dispute. All it means that the odds are now more in your favor in the mediation hunger games.

Let me be clear. This isn't about competency or skill. Assume two mediators with exactly the same competencies and skills. The only difference is that one is 21 and the other 50. The former mediator has to deal with a handicap simply by virtue of his/her youth.

Seems unfair doesn't it? Yup. We could rail against it and try to change things. And those that are minded to do so should and be supported in that endeavor. Positive systemic change should be encouraged. However, it is also important to accept that, as a starting point, it is what it is and we still have to work within certain constraints while others are trying to effect positive systemic change. What can we do to work within these constraints?

The good news is that benign biases (those that we unconsciously hold but are not necessarily invested in entrenching them) can be overcome through demonstration of competency. If the mediator's actions, no matter how young s/he is, make practical, legal and business sense to parties and their counsel, initial biases can be overcome.

We, as older mediators, can also help to facilitate the dissipation of these biases. One way I have tried to do this is to give younger mediators a leg up by having them co-mediate disputes. Of course, this may not be possible in every case. But where possible, this allows the younger mediator to demonstrate his/her skill and competence in a context where parties and counsel are more willing to listen because of the more senior mediator's credibility. Of course, in order for this to work, the more senior mediator must be willing to give the younger mediator the space to intervene, test theories, try techniques and, concomitant with these, make mistakes.

And while there are some downsides (all of which can be recovered from), my experience is that the pros outweigh the cons significantly. One of the challenges for a senior mediator is that we can become more entrenched in our world views. In some cases, we become more jaded and get stuck in the habitual way that we do things.

I have found that working with a younger co-mediator has been beneficial for my practice. My co-mediator has seen the same problem in a way that would never have occurred to me, used

techniques that I did not think to do and brought specific competencies from a background which I do not have. In all, the whole is greater than the sum of its parts.

In closing, while this entry is intended to be a personal, reflective and in part humorous piece, my takeaway is this. With age does come responsibility. Not just for ourselves but for the ageless passing on of our collected and collective wisdom as mediators. We can do this through teaching or training or, as has been suggested in this piece, the teamwork of co-mediation that can help mentor the next generation. Namaste.


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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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