

Kluwer Mediation Blog

Do You Need Grey Hairs to Mediate?

Suzanne Rab (Serle Court) · Tuesday, March 21st, 2017

In 2017 we find that the mediation market is lumpy. There is a relatively small pool of mediators, including the founding fathers and mothers of mediation, who firmly established credibility and respect for the discipline, who have honed their craft over the years and who are now the “go to” individuals for probably the majority of mediations. The 2016 CEDR Mediation Audit notes that the UK civil and commercial mediation market is dominated by a select few.

At the same time, a wide range of individuals are embarking on mediation courses. They may have been impressed by high quality mediators, they may have experienced first-hand the benefits which mediation can bring and now they want to forge a practice in this area. The challenge for mediators starting out can often be a ‘chicken and egg’ one. The mediator is seeking to grow their practice yet their value proposition is perceived to be linked to the experience they do not yet have. A party may want a mediator who already has a roster of at least 50 or even 100 mediations. How does the newer mediator secure their first early mandates and begin to develop their practice, which is truly one of learning and developing on the job?

As someone with an established professional identity as a lawyer, I perhaps face the best and worst of these two worlds. On the one hand, I am known for my subject matter expertise in my focus practise area (competition and regulated industries) which can help establish threshold credibility for mediations with a regulatory angle. In fact, it’s been said to me by a client that they selected me as a mediator because they knew that their mediation wasn’t going to be my first rodeo. However even with 20 years of dispute resolution experience, my lack of grey hair can be an issue for some clients seeking reassurance that their mediator has done enough mediations to inspire confidence.

I would like to hope that the opportunities for mediation are sufficient in number and diversity to accommodate a range of mediators who bring a rich set of skills and attributes. Perhaps a way of reframing the challenge of overcoming resistance to appoint newer mediators would be to approach the question in terms of what you want from a mediator. Do you want someone who can inject energy, dynamism or a new perspective when parties have reached an impasse? Do you want someone to shine a light in a passage, which up to now has been dark? Do you want someone who has the vision to look beyond accepted ways of doing things? Does the mediator need to have specialist subject-matter expertise that they might have gained from experiences outside their role as a mediator? Do you want someone with specific sector knowledge? Do you want someone who can command the respect of your client which may mean appointing someone who shares their culture, language, gender or professional experience? And here I would like to make very clear that I am not linking these attributes with any particular experience profile or years spent mediating.

These are attributes which can be demonstrated by newer and more established mediators alike.

What's more, these qualities and attributes may not all be present in one individual. In these circumstances, it may be optimum to consider co-mediation so that the process can benefit from these diverse skillsets. I want to make clear that I am not suggesting that newer mediators should always mediate alongside a more senior mediator. I am just giving an option for how more diverse preferences can be addressed, and this should not relieve less established mediators from the need to develop, market and profile their own distinctiveness and what they can bring to mediation. From my experience, just saying that you can be all things to all people isn't likely to be that effective. I have had more success in breaking traditional resistance to using a mediator who is a few years behind other candidates by focusing on what I am good at, on what makes me different – whether in terms of style, approach, experience and sometimes subject-matter expertise – and sticking to that.

But I do fear that unless we address what could be regarded as a sub-conscious or even conscious reluctance to use less established mediators, we will be left in the next decade with more limited options in terms of the quality and range of mediators available. It would be a source of regret if that happened. The greyer-haired mediators who were the trailblazers of their discipline at some point will hang up their caps and those coming in to the profession owe it to them, to clients and the profession to continue to develop the area. What's needed is an eye on succession planning on the part of clients and mediators themselves. Mediators need to constantly strive to develop their skills but they also need the opportunities to demonstrate these skills. Good mediators come with grey hair, brown hair, ginger hair, even platinum blond and some may have no hair at all.

Suzanne Rab was interviewed by Anna Howard in London.

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