

Kluwer Mediation Blog

On negotiating in interesting times

Ian Macduff (NZ Centre for ICT Law & School of Law, Auckland University) · Thursday, October 26th, 2017

Readers might have seen media reports that New Zealand has a new government. In New Zealand this is a slightly delayed conclusion to the general election at the end of September, the delay being the result of our [proportional representation system](#), which left neither of the two major parties, Labour and National, with a sufficient majority to form a government without having to negotiate with one or more of the minority parties. German readers of this blog will be all too familiar with the system, especially as the German Federal elections took place the day after New Zealand's and it's not at all certain that a new government will be formed by Christmas.

The particular oddity of the system in NZ is that, rather than a Head of State, such as a President, inviting the party with the largest share of the electorate and party votes to seek to form a government, we ended up with the leader of one of the minority parties (that leader having lost his own electorate seat but the party having passed the threshold of votes to bring "list" MPs into Parliament) effectively lining up the leaders of the two major parties to determine which party would be anointed as the new government in coalition. Further, rather than either of those two majority party leaders being the one to announce the formation of a new government following the negotiations, it was left to that minority leader – veteran politician, Winston Peters – to announce the "winner" at a press conference . . . which also turned out to be the point in time at which those major party leaders discovered who was about to be Prime Minister and who the Leader of the Opposition.

Those domestic curiosities aside, what's clear now is that this new government – a coalition of Labour, New Zealand First, and the Greens – was forged out of an odd negotiation and will govern only through constant negotiation and collaboration. As Chancellor Merkel will know only too well, a three-party coalition is likely to be challenging. And this one will be all the more so because Mr Peters refused to engage in any preliminary or policy negotiations with the Greens, the other coalition partner, insisting in effect that they'd come into government (if at all) on the strength of a memorandum of understanding that the Greens already had with Labour prior to the elections. Even after the announcement of the three-party coalition, it looks to be a challenge for the new Prime Minister, [Jacinda Ardern](#), to get the parties to play nicely together. At the time of writing, there still has been no meeting between the leader of the Greens, James Shaw, and NZ First's Winston Peters, with the former diplomatically observing that it's been a busy time forming a government and they would be sure to meet soon.

So, the first of the negotiations (which most of us would dearly love to have observed, if not

mediated) concerned broad areas of policy agreement which, as the respective leaders have conceded in press conferences, involved an array of concessions . . . but not such concessions as would lead the party faithful to think that their elected representatives had abandoned principle in favour of pragmatism. As we know from negotiation and mediation practice, there are not only the parties in the room who have something to say, but in pre- and post-electoral negotiations there will always be the electoral parrot sitting on the shoulders of the members of parliament.

The second negotiation – the results of which have just been made public at the time of writing – involved the selection of members of the Executive (Ministers inside and outside Cabinet), which in part will reflect expertise, and in part necessarily involve what might be called the “optics” of the deal – that is, how this arrangement looks to the supporters of the respective parties.

The third negotiation will be a heightened version of the usual process of a Westminster-style of Parliament, in that the Opposition is now the party that actually gained the most electoral votes and therefore the largest number of seats. While this is not the first time a government has been formed by a party not having the majority of electoral or party votes, and it’s unlikely (I hope) that the new Opposition will take the kind of bullish, obstructive stance seen elsewhere, the new coalition does have only a slim margin with which to work, requiring constant internal management of policy and a reliance on the principle of Cabinet’s public face of unanimity.

The area of negotiation – and perhaps mediation – that is likely to be the most interesting arises from the fact that, even as the make-up of the new government was announced, the three coalition party leaders indicated clearly that there would be more than minor policy differences between them and the previous government. The language used, that has many breathing a sigh of relief and others snorting with indignation, was to the effect that while capitalism had produced many obvious benefits, it was an uneven game and was clearly not providing gains across the socio-economic spectrum. The rising tide clearly has not raised all boats. The language of fairness and equity has been reintroduced into national politics, announcing that the priorities for the next three years will be shaped by political and economic principles that, in other jurisdictions, would have establishment and corporate figures denouncing a socialist change in direction.

Also at the heart of the government-formation dialogues has been the subject of environmental sustainability and climate change. As I’ve discussed in earlier blogs, water quality and allocation rights have been contentious and as-yet-unresolved sources of tension, with perceived underlying conflicts between the intensification of agriculture and the demands of water quality (and NZ’s “clean green” brand). Further, the obvious vulnerability of coastal settlements and cities to the long term impact of climate change will now be central to the government’s agenda. All of this brings economic and environmental values and science to the core of the collaborative agenda of the new government.

The prominent theme of economic change – that is, a change to a policy direction that benefits a wider range of the population – is likely to be the element of political negotiation most worth watching. Whatever one’s own leanings, this new government has made it clear that doing more of the same has not worked for too large a part of the population. Not only will the government have to manage its own internal dialogues and those with the “loyal Opposition” across the Parliamentary aisles; it will also need to keep its largest dialogue partner – the voting public – informed, engaged and on side. For those in the mediation business who also have had a steady (and steadying) involvement with public policy and political matters, this looks like being one of those “[natural experiments](#)” which we can hardly wait to get our hands on.


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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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