Kluwer Mediation Blog

Tracking the Path Through the GPC and Acknowledging the Footsteps Along the Way.

Alan Limbury (Strategic Resolution) · Sunday, December 22nd, 2019

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At a lunch at Globe House, Temple Place in London in early 2006 on a balcony overlooking the Thames, the host, Michael Leathes, then an in-house corporate counsel with some years of user experience in mediation and the arb-med hybrid, asked me and the others present – Jeremy Lack, Tina Monberg, Miryana Neši? and Irena Vanenkova – a simple question: how, if we could, might we "**improve the dispute resolution world**"?

We were all involved in and enthusiastic about Alternative Dispute Resolution, inspired by Harvard Professor Frank E. A. Sander's famous paper delivered at the 1976 Pound Conference in Minneapolis, named after Roscoe Pound (1872–1964), Dean of the Harvard Law School, who addressed the American Bar Association annual meeting in 1906 on '*The Causes of Popular Dissatisfaction with the Administration of Justice*'.

Frank's paper, '*Varieties of Dispute Processing*', proposed the idea of a 'Dispute Resolution Center', later dubbed the 'Multi-Door Courthouse', in which:

"**the grievant would first be channelled through a screening process (or sequence of processes) most appropriate to his type of case**".

Just over a year before our lunch, in October 2004, the Commission of the European Communities had proposed that the European Parliament and Council adopt a directive on certain aspects of mediation in civil and commercial matters. This happened in May 2008, and sharpened the focus of attention on mediation in Europe.

In 2006 Mark Appel of the American Arbitration Association/ICDR (AAA), Annette van Riemsdijk of the Netherlands Mediation Institute (NMI), and Loong Seng Onn of the Singapore Mediation Centre (SMC), planned the establishment of an international body to promote mediation as a profession. A year later, this became the **International Mediation Institute** (IMI) with Michael McIlwrath of General Electric, a prominent user of dispute resolution services, as its first Chair.

Although he was planning to retire, Michael Leathes was persuaded to develop the IMI in 2007 as a charitable organisation, declining payment for his services.

On October 29, 2014, at the Guildhall in London, the IMI gathered together users of mediation, lawyers, mediators, academics and others involved in dispute resolution processes, to answer questions aimed at finding out to what extent the various participants held common or different views. I noted at the time a stark disparity between the demand and supply sides of the market: disputants, such as executives and in-house counsel, said that mediation should be attempted as soon as possible after a dispute arose, whereas many external lawyers said mediation should be left until just before trial.

This reminded me of the then Chair of the New South Wales Bar Association, appearing in the early 1990s before an Australian Senate inquiry into the cost of justice, saying:

"**mediation, jolly good…**"

[It was too late by then to maintain the earlier view that mediation was a passing fancy, so if we just hunkered down it would go away]

"**…but mediated settlements require informed consent. And for consent to be informed, mediation needs to take place after the pleadings have closed, after interrogatories have been answered, after discovery and inspection of documents, after exchange of witness statements, in fact the first moment when one can reasonably expect informed consent is at the door of the court**".

Some lawyers even today still regard mediation as all about the issues rather than the interests.

The 2014 Guildhall meeting was the precursor to the **Global Pound Conference** (GPC) Series, conducted under the auspices of the IMI in 2016-2017 in 28 cities around the world, beginning in Singapore and finishing back at the Guildhall in London.

Entitled "**Shaping the Future of Dispute Resolution & Improving Access to Justice**", the aim of the GPC Series was to provoke debate amongst stakeholders on dispute resolution tools and techniques; stimulate new ideas; and generate actionable data on what corporate and individual dispute resolution users actually need and want. It was led by Michael McIlwrath and Jeremy Lack.

The key findings and recommendations of the Singapore GPC event have been analysed and presented in a report by Emma-May Litchfield and Danielle Hutchinson, Australian academics and partners in Resolution Resources. Their analyses and reports of the events in North America will be published shortly by IMI.

As Emma-May has noted in a blogpost, the results already reported have identified education as

key to facilitating change, shifting the focus of education from increasing awareness of the various dispute resolution processes to providing practical and skills-based training, particularly for lawyers, so as to enable them to adapt to the needs of disputants, particularly those who are "dispute-savvy".

I suggest that one way to bring this about may be to require successful completion of dispute resolution skills training as a condition of admission to practise as a lawyer. This, in turn, would put pressure on universities to include skills training in their law courses, something some universities presently disdain.

The Dean of one law school responded to my enquiry some years ago as to whether Negotiation would be introduced as a subject there by asking if I was seeking to impugn the "**two post-holder rule**". This is a rule that for any new subject to be introduced to the curriculum, there need to be two existing academic post-holders prepared to undertake the burdens of teaching and marking. The Dean said there were at the time insufficient teachers of traditional subjects, such as Real Property and Tax.

I concluded that, for Negotiation to become part of the curriculum at that law school, it would have to be the secondary interest of two people who weren't even there yet.

So there's still a long way to go. But as Rosemary Howell has said of the GPC, Roscoe Pound would have been proud.

As for my companions at lunch that day beside the Thames, in 2006 Tina published the **Pangaea Initiative**, noting that "**The barrier of 'old paradigm' mindset pervades all others**". This reflected Frank's mention in his Pound Conference paper of "**the deadening drag of status quoism**". The Pangaea Initiative aimed to achieve greater stability and sustainability in relationships by developing the mindset, across cultures, that the natural way to resolve conflicts, at all levels – conflicts among nations, businesses and individuals – is through dialogue and interest-based negotiation aided by neutral mediators.

Michael Leathes remained a director of IMI until 2015. Irena joined IMI at its inception and stepped down after many years as Executive Director in January 2018, though she remains a director of the Singapore International Mediation Institute (SIMI), one of the professional bodies inspired by the IMI. Jeremy supported the IMI at its inception, orchestrated the GPC Series around the world and is currently Vice-Chair of the IMI Independent Standards Commission and a member of several IMI Taskforces. Miryana was a leading mediation author, educator, trainer and practitioner and one of the first members of the IMI Independent Standards Commission. Sadly, she died suddenly in 2011. The IMI tribute to Miryana is here. I became an IMI Certified Mediator and contributed to the IMI Mixed-Mode Taskforce.

It has been a very important path and a privilege to have contributed one pair of footsteps. I look forward to watching the footsteps of others as they take these ideas forward.

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