

Kluwer Mediation Blog

Putting the spotlight back on hybrids

Alan Limbury (Strategic Resolution) · Tuesday, March 22nd, 2022



One of the important things that struck me about Dr. Anna Howard's brilliant research into [Mediation](#) is the discovery that the General Counsel she interviewed for her project feel disappointed that the promise of mediation has not been realized.

I feel the same disappointment – although my disappointment has a somewhat different source.

What seems like a very long time ago now I wrote [enthusiastically](#) in 2009 about the opportunities presented by hybrid processes. I have continued to write about the possibilities despite the enthusiasm-dampening approach of many of my contemporaries and despite encouraging legislative change in 2010: [Don't be scared, this is the future — avoiding the pitfalls of arb-med-arb.](#)

Encouragement from Student Competitions

My hopes were raised in 2015 when [CDRC Vienna](#) was established – a brave new student competition offering the opportunity to experience hybrids in action. The competition piggybacks off the world-famous Vis Arbitration Moot. It is based on the premise that an arbitration hearing has been completed with the arbitrator's award to be handed down in a week.

Using the same facts, 33 teams of students from around the world compete in a mediation with the goal of attempting to reach a mediated outcome before the arbitrator's award is released.

The competition has run annually since 2015 and I have seen it as a great way to showcase to students what a hybrid process – in this case arb-med – could look like. I also hoped that the significant number of professionals from around the world who give their time to judge all the mediations in the competition would also gain an exposure to hybrids even if the concept were novel to them and that they might consider where hybrids might fit into their dispute resolution

practice.

Sadly, the competition remains an ambitious experiment which has not yet shown evidence of students going on to be ‘hybrid ambassadors’ nor of professionals returning to their practices to share reflections about what they might have learned from their experience.

The ‘silo’ approach to Dispute Resolution inhibits flexibility

The greater significance of this discussion is that hybrids are just one part of the ‘infinitely flexible’ process that mediation has positioned itself to be. For all the enthusiasm, mediation and arbitration still continue to sit in their watertight containers with no real interaction.

For example, as [Jeremy Lack explains](#), adjudicative processes remain the first port of call in the field of intellectual property, despite non-adjudicative processes having been actively promoted within IP circles for over a quarter of a century and despite the practice of combining mediation and arbitration by the same neutral being traced back to ancient Greece and Ptolemaic Egypt. *See* Roebuck, D. *The Myth of Modern Mediation* (2007) 73 *Arbitration* 1, 105 at 106.

As Claire Wilson noted her 2012 blog [The Arb-Med hybrid in Hong Kong – Much ado about nothing?](#), “Arbitrators are not yet comfortable with mediating, and this is something that even some arbitrators (but not all) are willing to admit”. Sadly, this phenomenon has not changed since 2012 and is not confined to Hong Kong.

Encouraging mediation and arbitration integration is one of the [Seven Keys to Unlock Mediation’s Golden Age](#) published by Mediate.com in 2020.

Is it time to abandon hybrids or.....?

In July the eighth edition of the CDRC will fill Vienna with another 33 teams of enthusiastic students. The endurance of the competition is a credit to the organisers and sponsors and also to the students, coaches and professionals who still see value in exploring the hybrid world.

My view of the world is that in so many of our current challenges and crises we are counting on the next generation to succeed where we have not and to find a way forward that is different and better. We have powerful examples already.

I am not ready to abandon the promise of hybrids yet and I am committed to continuing my investment in encouraging a flexible, creative and cross-disciplinary approach to dispute resolution. I am hoping that the students I have the privilege of encouraging and influencing will give their energy to exploring what might be possible for a future filled with appropriate dispute resolution.



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