

Kluwer Mediation Blog - June and July 2019

Digest

Kluwer Arbitration Blog

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"Listening conveys respect to the speaker, which in turn engenders respect for the listener. People who are respected because they listen will have more influence when they speak." Bill Marsh in Don't Sit On Your Ass[ets] - Part 2: The Arguments.

Over the last couple of months, the Kluwer Mediation Blog has offered posts on key legislative developments, initiatives and issues in mediation. These include posts on the Singapore Mediation Convention, on proposed mediation legislation in Scotland, on whether judges should mediate, on mediation and the public interest in openness and accountability, and on a remarkable conflict resolution exercise in Australia led by Aboriginal Tasmanians.

You'll find below a brief summary of, and link to, each post on the Kluwer Mediation Blog in June and July. We hope you find these useful.

In Mediation and Leadership, Sophie Tkemaladze draws on Ronald Heifetz's model on exercising leadership to identify the similarities between leadership and mediation. Sophie applies several of Heifetz's concepts to skills used in mediation, including his guidance on how leaders manage differences, how leaders ask questions rather than give answers, and how listening - both to others and to oneself - is essential for leadership.

In A Negotiation Emergency, John Sturrock identifies the poignancy of words from Genesis' song "Duke's Travels" to the context of Brexit in the UK. John notes that the need for a "Conflict Revolution" is clear and suggests that mediators need their own Extinction Rebellion.

In Across The Great Divide: Unpacking Complex (But Simplified) Conversations, Ian Macduff reflects on a recent and challenging conversation which, when it was later unpacked, opened up a wealth of important historical, cultural and political points that had been missed. Ian identifies two key mediator resources which would be useful in such conversations: hitting the "pause" button and asking questions.

In Simple Questions You Might Ask Yourself More Often, Greg Bond draws on his recent experience of doing mediation training in Tbilisi, Georgia, at New Vision University. The focus of the training was on listening, appreciation, fair and useful feedback, clarity, emotions - and on compassionate leadership.

Greg identifies three valuable questions developed in the workshop in Tbilisi.

In [All You Need Is Love – More Lessons From The Beatles And Indigenous Australians](#), Rosemary Howell introduces Emma Lee’s remarkable story involving the conflict resolution exercise which Emma labels “love bombing”. Emma explains and elaborates on how love and mutual respect have been used to reset the relationship between Aboriginal Tasmanians, government and the broader public away from the violent governance of the past 200 years and towards healthy and functional communities of proud cultural peoples. Emma identifies the numerous and significant gains made through such a methodology which, above all, has come from Indigenous leadership that is deeply rooted in cultural practices that are tens of thousands of years old.

In [Singapore Convention Series – Why China Should Sign The Singapore Mediation Convention: Response To Concerns \(Part I\) and \(Part II\)](#), Wei Sun identifies and responds to concerns regarding whether China should sign up to the Singapore Mediation Convention. The first post in this two-part series identifies and addresses concerns relating to China’s legal and judicial system, and the second post responds to concerns relating to the interests of various bodies of China.

In [So, You Need A Mentor?](#), Dominique Panko draws on her own experience as both a mentee and mentor to provide guidance to young mediators on how to find a mediation mentor. Dominique also explains how mentors can benefit from mentoring young mediators.

In [The Roles Of The Mediator](#), Constantin-Adi Gavrilă acknowledges that there continues to be a genuine lack of understanding about the role of the mediator, particularly in jurisdictions where mediation is not, or is rarely, used. Constantin-Adi explains some of the mediator’s roles in order to enhance understanding of what the mediator can do and how what he/she does might be useful to parties in dispute.

In [And A Little Child Shall Lead Them – Peacemakers 2019](#), Joel Lee shares some of the metaphors created by students at the Peacemakers Conference 2019 (these include “mediation is a microscope”, “mediation is a lighthouse” and “mediation in like braces”). The purpose of the Peacemakers Conference in Singapore is to teach 13-16 year olds how to resolve conflicts amicably.

In [Scotland And Its Mediation Acts](#), Charlie Irvine examines two distinct proposals for mediation legislation in Scotland: the Proposed Mediation (Scotland) Bill and the proposal contained in the recent “Bringing Mediation into the Mainstream in Civil Justice in Scotland” report. Charlie then explores whether the ambitious goal of the proposals– of changing the culture of a justice system – can be done via legislation.

In [A Trip To The World Of Tourism](#), Andrea Maia and Constanca Madureira consider the use of online dispute resolution and alternative dispute resolution in the context of the tourism industry in Brazil. In particular, Andrea and Constanca argue that ADR, including mediation, can be used to prevent or mitigate conflicts inherent in sustainable tourism development in protected area tourism.

In [Mediation And The Public’s Right to Know: Has That Ship Sailed?](#) Rick Weiler summarises a developing story in Canada which has raised concerns about whether the public should have the right to know the terms of a high profile, mediated settlement agreement involving the government of Canada. Rick explains that he did not find much guidance on the possible conflict between the public interest in the effective settlement of disputes (as in mediation) and the public interest in openness and accountability, and then shares relevant words from a Canadian mediator regarding the types of cases which are not appropriate for mediation.

In [Bringing Mediation Into The Mainstream](#), John Sturrock describes his approach to his review of

allegations of bullying and harassment in Scotland's NHS Highland. John explains how his subsequent report includes chapters which wrestle with underlying human nature, cognitive biases and neuroscience while placing mediation and facilitation at the centre of a new approach to addressing difficult issues within the organisation. John also refers to the publication of a recent report on how to bring mediation into the mainstream in civil justice in Scotland.

In [Don't Sit On Your Ass\[ets\] - Part 2: The Arguments](#), Bill Marsh identifies how the use of legal arguments in mediation can be done well. Bill emphasises and elaborates on the importance of simplicity (of saying less, but saying it well), of tone and, to borrow Bill's phrase, of the "reciprocity of listening". Bill then considers the importance of moving on from the legal arguments - which he explains are about clarity and influence - to a different discussion about judgment calls, risk and resolution.

In [Complexity, Newton And New Directions In Mediation Research](#), following earlier posts discussing the call for more field-based research into mediation, Rick Weiler shares a series of questions to be addressed at the Pepperdine Past- and-Future Conference (18-19 June 2019) that seeks guidance for further research into dispute resolution, including mediation. Rick ends with the challenging and important question: "What can be done to re-energize, revitalize the mediation process in the public interest?"

In [Mirror Mirror](#), Charlie Woods draws on the significance of the mirror in the ceremony to mark the ascension of the new Japanese Emperor Naruhito to the Chrysanthemum Throne. Charlie explains how the mirror represents wisdom and truth, and served as a reminder for him of the importance of taking time for reflection when learning, checking understanding, and deciding on a course of action. Charlie adds that the mirror also reminded him of William Ury's observation that "the most difficult person we have to deal with is the person we look at in the mirror in the morning."

In [Singapore Convention Series: A Call For A Broad Interpretation Of The Singapore Mediation Convention In The Context Of Investor-State Disputes](#), Mushegh Manukyan considers the applicability of the Singapore Mediation Convention to Investor-State disputes. Mushegh explains that the scope of the Singapore Convention includes gray areas, particularly, whether it would cover all or a limited scope of investment disputes. Mushegh notes that pro-mediation States have the opportunity to adopt implementing legislation that would clearly define the scope of the Singapore Convention in their territories and encompass, among others, a broad range of investor-state disputes.

In [Should Judges Mediate?](#), Alan Limbury identifies and comments on the reasons why the Judge in the Australian case of *Wardman & Ors v Macquarie Bank Limited [2019] FCCA 939* rejected the parties' request that their dispute be referred to mediation to be conducted by a judge. The Judge instead ordered that the mediation be conducted by a Court Registrar. In comparing the roles of mediator and judge, the Judge noted, amongst other points, that "eminence and ability in the judicial role do not necessarily translate into the assumption by a former Judge of the role of a private mediator."

In [We Can Work It Out/You Can't Always Get What You Want](#), Greg Bond identifies the title of The Beatle's song 'We Can Work It Out' as a great title for mediation, with its heartfelt appeal to common sense, trust and understanding. Greg then draws on the lyrics of The Rolling Stone's "You Can't Always Get What You Want" which offer a mediator's mantra.

In [Small Steps Towards Empathy: Some Reflections On Student Learning Journals](#), Ian Macduff draws on a handful of insights from his students' learning journals that reinforce both the core value of negotiation and mediation programmes, and the benefits of personal journals. These include the central themes of trust and process in negotiation and mediation, the interest in cross-cultural communication and the emerging world of online negotiation, and the appeal of the narrative and

transformative modes of mediation.

In DanShaRi - A Modern Decluttering Philosophy That Some Mediators Might Find Useful, Ting-Kwok IU applies the decluttering philosophy of the Japanese author, Hideko Yamashita, to the context of mediation. Ting-Kwok explains the concept of DanShaRi and identifies questions and techniques stemming from this concept which are relevant to mediators.