

Understanding the increasingly important role of Mediation in a rapidly evolving world

By Helga Akao

Sid Wang, a partner at Clayton Utz in Sydney described litigation as slow, distracting and expensive¹. His views reflect a growing trend in favor of alternative dispute resolution processes especially mediation. With a fast growing and ever changing world in which everything is increasingly accomplished within a shorter time period, it is clear to see why the field of conflict resolution has been affected too by changes and the need for growth. In our fast developing world, there is need for fast and tailored solutions to ever changing demands.

Mediation is a form of alternative dispute resolution where conflicting parties negotiate and arrive at a binding solution to their dispute with the assistance and facilitation of a neutral third party. It has garnered a lot of attention recently and grown significantly as a preferred mode of dispute resolution globally. This article explores why.

Many states, multinational organizations and individuals have embraced mediation and in legal circles there has been an increasing call for the integration of mediation in court processes involving civil matters². The 2011 Fortune 1000 Survey³ of Corporate Counsel indicates that leading international corporations are very favorable to the use of mediation. Global leaders in the dispute resolution market such as Singapore are touting new and improved brands of international mediation⁴ and longstanding institutional proponents of International Commercial Arbitration like the International Chamber of Commerce (ICC) have placed increasing emphasis on mediation⁵.

¹Napley, 2014, A Global Trend Towards Mediation: Views From Lawyers in 13 Countries, Lexology

² Drummond, 2013, Should Mediation be Mandatory? Lexology

³ Stipanowich, 2016, The International Evolution of Mediation: A call for Dialogue and Deliberation, Pepperdine University Legal Studies Research Paper No.2016/1

⁴ Ibid.,

⁵ Ibid.,

Mediation has been adopted in several legal jurisdictions including the Commonwealth with countries⁶ like Australia, Germany, Romania and Singapore going so far as to make it a mandatory requirement in the resolution of civil matters. In East Africa, mediation is widely accepted and in Uganda and Kenya it is a mandatory part of court processes. In 2002, the United Nations Commission on International Trade Law (UNCITRAL) adopted a Model law on International Commercial Conciliation⁷, a document intended to facilitate the development of harmonious legal frameworks for “proceedings in which a person or a panel of persons assists the parties in their attempts to reach an amicable settlement of their dispute.”

Why the growing interest in mediation? It is most likely the flexible nature of mediation and the several advantages that people in different contexts continue to discover in the process. Business people love mediation because it is less costly and time consuming compared to litigation. This is a huge advantage because in business, time is money. Furthermore mediation enables both parties to find a solution that works business wise. In a different context, mediation has also developed a reputation as the best dispute resolution option when it comes to family matters and highly sensitive conflict situations. It is less likely to traumatize children, for instance compared to a full on court process. The fact that parties are given the chance to express themselves and air out their frustrations also means there is a high likelihood that an amicable and well-fitting solution can be arrived at and relationships saved. A person can consider mediation too, at the workplace, in a restaurant or the next time someone refuses to pay back their money.

What’s more, anyone can become a mediator, given the right qualifications. Perhaps the most sensational moment for mediation was in 2013⁸ when Russian billionaire Roman Abramovich became the mediator for two Russian businessmen Mr. Deripaska and Mr Potanin in a matter that involved the parties’ interests in Norilsk Nickel, the world’s largest producer of the silvery white metal Palladium. Mediation is not restricted to lawyers and the legal profession but it is necessary for all professions.

⁶ Drummond, op. cit.,

⁷ Stipanowich, op. cit.,

⁸ Napley, op. cit.,

The trends show that the field of dispute resolution focuses more and more on encouraging the preservation of relationships and fast efficient workmanship with as little bureaucratic delay as possible. Mediation with its broad and flexible nature fits perfectly in this progressive atmosphere.



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