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IN THIS ISSUE .....

EDITOR'S NOTE

In the recently concluded AMA Conference at Hong Kong, one of the primary concerns expressed by many ADR leaders and practitioners was the way in which Mediation was presently projected and used as an ADR method of dispute resolution. There is no doubt that mediation is one of best and unique method of resolving dispute, which is also cost-saving, time-effective, confidential and user-friendly. But then why has not mediation attained the growth and acceptability among the Users, that it richly deserves? A global brainstorming to reignite the lost inspiration and momentum of mediation is required. Do you agree?

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ROLE OF ARBITRATION IN INFRASTRUCTURE CONTRACTS

ADITYAPRATAP SINGH & SAURABH SHARMA

Infrastructure facilities include any form of facility that is provided with an objective to be used by public or the society. There are different kinds of disputes arising in Infrastructure Contracts. Since the state is the major bid holder in these contracts, the state does not favor Alternative Dispute Resolution Mechanism. But with the recent developments, Arbitration is being accepted as the ADR in the infrastructure contracts. In the first part, the authors analysed how Arbitration is effective in dispute resolution in infrastructure contracts. In this second part the authors also discuss in detail aspects on Awards, Equity clauses, etc.

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Awards in Arbitration

An award should ordinarily be in writing and should be carefully drafted carefully and checked by an arbitrator, since it cannot be altered later. The essential requirements of an award are that it should decide the matters submitted and no others. It must be certain in its effect, and it must be consistent with any other findings or awards of the arbitrator in the same matter. Once the arbitrator has expressed a decision in an award, he ceases to have further jurisdiction over that matter and is said to be *functus officio.* Thus, the arbitrator must be careful not to decide the matters which either party may wish to argue further. He should not express decisions on matters where he may wish to alter his view and he should never express an opinion on a matter which has not been brought forward or argued.

The 1996 Act clarifies the range of remedies which the arbitrator, subject to the agreement of the parties, may award. These may include the following:

"*48 – (3) the tribunal may make a declaration as to any matter to be determined in the proceedings.*
(4) The tribunal may order the payment of a sum of money, in any currency.
(5) The tribunal has the same powers as the court -

(a) To order a party to do or refrain from doing anything.
(b) To order specific performance of a contract (other than a contract relating to land)
(c) To order the rectification setting aside or cancellation of a deed or other document."

The previous act allowed the arbitrator to award an interim award but this provision was altered by the 1996 Act. Now the question which arises is this that whether an arbitral tribunal can grant a partial remedy, for example, in circumstances similar to those in which the English Court can grant summary judgment on the basis that the claim is worth "not less than" the figure ordered. The jurisdiction of arbitrators to grant such a remedy has never been clear, although such a power was contained in the ICE Arbitration Procedure (1983).[1] This particular question has been answered by the 1996 Arbitration Act where the parties may empower the arbitrator, to grant by "provisional" award or order, any relief which can be granted in an award which is final.[2]

Equity Clauses

The 1996 Act recognizes the validity of an Equity clause empowering the Arbitrator to decide the issues not in accordance with strict legal rules but following equitable principles, "good conscience" or other like expressions. There has been debate on such clauses to be acceptable by the courts.[3] The act provides for such clauses in the following terms –

"46 – *(1)* *the arbitral tribunal shall decide the dispute –*

(a) In accordance with the law chosen by the parties as applicable to the substance of the dispute.

(b) If the parties so agree, in accordance with such other considerations as are agreed by them or determined by the tribunal."

One of the problems generated by equity clauses is the practical impossibility of judicial review of any legal decision embodied in the award. The result of giving statutory recognition to these clauses is that an appeal on law from such a decision will not be available.

(Footnotes)

[1] Rule 14.

[2] S.39(2), Arbitration Act 1996.

[3] *Ellis Mechanical Services v. Wates Construction*, (1976) 2 B.L.R 57.

There were two evil brothers. They were rich and used their money to keep their ways from the public eye. They even attended the same church and looked to be perfect Christians.

Then, their pastor retired and a new one was hired. Not only could he see right through the brothers' deception, but he also spoke well and true, and the church started to swell in numbers.

A fundraising campaign was started to build a new assembly.

All of a sudden, one of the brothers died. The remaining brother sought out the new pastor the day before the funeral and handed him a check for the amount needed to finish paying for the new building.

"I have only one condition," he said. "At his funeral, you must say my brother was a saint."

The pastor gave his word and deposited the check. The next day at the funeral, the pastor did not hold back.

"He was an evil man," he said. "He cheated on his wife and abused his family." After going on in this vein for a small time, he concluded with, "But, compared to his brother, he was a saint."

Awards under New York Convention and Geneva Convention

I. New York Convention

The Arbitration Act 1996[4] re-enacts previous legislation which implemented the New York Convention[5] by incorporating into English Law the provisions for the recognition and enforcement of awards contained in the New York Convention. It defines a "New York Convention award" as an award made, in pursuance of an arbitration agreement,[6] in the territory of a state which is a party to the New York Convention. Note that there must be an agreement in writing to satisfy the requirement of an arbitration agreement. Some instruments go so far as to provide on their face that the writing requirement is satisfied.[7]

The principal convention which provides for recognition and enforceability of awards made in elsewhere is the New York Convention, which was adopted by the U.K in 1975. Although there are certain treaties under which court judgments are enforceable, these are more limited in application than the New York Convention. For example, there is no treaty between UK and the USA for the enforcements of the judgment but both the countries have acceded to the New York Convention.[8]

It has been suggested[9] that the New York Convention gives an indication of the applicable choice of law rules by providing that recognition or enforcement of an award may be refused if "the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made".[10]

II. Geneva Convention

Part II of the Arbitration Act 1950[11] contains provisions for the enforcement of certain awards[12] made pursuant to an agreement to arbitrate to which the protocol set out in the first Schedule to that Act applies. The Geneva Convention has been almost entirely over-shadowed by the New York Convention.[13] In order for those provisions to apply the place of arbitration and the parties to arbitration must be subject to jurisdiction which has been recognized.[14]

Awards covered Pt II of the Arbitration Act 1950 are enforceable in England either summarily or by action of the award. They will be treated as binding for all purposes on persons as between whom the award was made. The conditions for obtaining enforcement of the award under these provisions are specified in sec 37 of the Arbitration Act 1950.

International Arbitration

This form of arbitration means arbitrations between parties based in different states. In this most of the contracts between parties from different countries are made in English language. In international arbitration similar problems of procedure are faced as in Domestic Arbitration. But here in the contract will specify the arbitration rules applicable

(Footnotes)

[4] S.100-103, Arbitration Act 1996.
[5] The Convention on the Regulation and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on June 10, 1958.
[6] "Arbitration Agreement" is defined as an agreement in writing to submit to an arbitration present or future differences capable of settlement by arbitration.
[7] Refer to *Ecuador v. Occidental Exploration & Production Co.* [2006] 2 W.L.R 70.
[8] Sutton, Gill and Gearing, Sutton on Arbitration, 23rd edition.
[9] *Dicey & Morris,* Para 16-014.
[10] S.103(2)(b) of the Arbitration Act 1996.
[11] S.99, Indian Arbitration Act 1996.
[12] These awards are described as "foreign awards" in Pt II of the Arbitration Act 1950.
[13] Many countries have acceded to both conventions(e.g Austria, Belgium, German and Switzerland) and enforcement will usually be sought under the New York Convention because it contains fewer restrictions.
[14] The recognition is made by order in council under s. 35 of the Arbitration Act 1950.

of the ICC or perhaps the LCIA. The ICE and RIBA limit their functions to the appointment of arbitrators and arbitration under their rules is not institutional. International arbitration institutions exist in many parts of the world including Stockholm, Hong Kong, Singapore, KualaLampur and in the Middle East. A set of rules is issued by UNCITRAL, but these are to be administered through one of the existing institutions.

There are theories of four different laws which may affect the conduct of International arbitration:[15]

(i) The law governing the underlying contract, applicable to the merits of the case(substantive law);
(ii) The law governing the agreement to arbitrate (which will be the same as (i) if contained in the contract);
(iii) The law governing the arbitration proceedings (the procedural law);
(iv) The law governing the submission to arbitration (which may in theory be different from (i) to (iii)).

The procedural law is also subject to the express choice of the parties. In theory this may differ from the law of the place of the arbitration, but there are obvious practical difficulties about an arbitration held, for instance, in Brussels but subject to English procedural law which would include the powers exercisable by the English Courts. International arbitrations take place at different locations at different times, and a more convenient concept is that of a "seat". This is now recognized by the arbitration act 1996 and defined as the "judicial seat of the arbitration" which may be designated by the arbitrators if so authorized, or otherwise determined. Thus the seat will designate procedural law and the national court having supervisory jurisdictions. This cannot however preclude the possibility that the court of some other state might also assert jurisdiction over the arbitration proceedings, which may then create a serious and currently insoluble conflict.[16] Also where an international arbitration is subject to the procedural law of one particular state, it may be found that the state has a separate part of its domestic law designed to apply to international arbitration. Switzerland and France, which are two major centers for international arbitration, have such provisions within their domestic law designed to apply to international arbitration.

International arbitration has a distinct advantage over litigation in that it avoids the perceived bias of selecting, as the forum, the court of one state, which is necessarily more closely connected with one of the parties. An international arbitration tribunal of 3 members can properly reflect the national and cultural balance of the parties as well as selecting genuinely neutral members.

(Footnotes)
[15] *Black Clawson v. PapierWerk A.G.* [1981] 2 Llyod's Rep. 446
[16] *Rupali v. Bunny,* [1995] Con.L.Yb. 155.

ICC rules are referred to in International Arbitration agreement contained in the international FIDIC form of contract and in other standard forms as well. The international chamber of commerce, located in Paris, in addition to other commercial interests, administers a substantial body of international arbitration, much of it in the field of construction. There are many provisions in ICC rules which differ from the domestic arbitration.

Role of New York Convention in International Arbitration

The New York Convention is arguably the single most important instrument in the whole sphere of international arbitration. Without the convention international arbitration would hardly exist, having regard to the difficulties of enforcement of awards and the variety of national concepts of arbitration. The convention provides an exhaustive definition of the grounds upon which enforcement may be refused. The grounds are:[17]

(a) *A party to the arbitration was under some incapacity;*
(b) *The arbitration agreement was not valid under the applicable law;*
(c) *The party against whom enforcement is sought had no proper notice of the proceedings;*
(d) *The award is outside the terms of the submission;*
(e) *The tribunal or the procedure was not in accordance with the agreement or with the law of the country where the arbitration took place;*
(f) *The award has not become binding or has been set aside the country in which or under the law of which it was made.*

The effect of enacting New York Convention is illustrated by the case of *Kuwait Ministry of Public Works v. Snow.*[18]

Conclusion

Arbitration is increasingly used to resolve infrastructure projects in developing markets worldwide.[19] The decision to use arbitration to resolve infrastructure project disputes frequently is not an easy one, however. Infrastructure projects typically involve several different types of contracts, and arbitration may not always be the preferred means of dispute resolution for each of those types of contract.[20] Moreover, the various different participants in infrastructure projects each have their own interests at heart, which often dictate different preferences with respect to dispute resolution procedures.[21] As a result, the various different project contracts frequently contain different choice of law and forum provisions that can give rise to labyrinthine and piecemeal resolution of project disputes.

The general advantages and disadvantages of arbitration relative to national court litigation of international commercial disputes are oft debated.[22] While advice is plentiful on the factors to consider generally in deciding whether and how to arbitrate, certain of those factors assume special importance in the infrastructure project context in particular. Among the potential advantages of arbitration of infrastructure projects disputes are[23]:

(Footnotes)
[17] Arbitration Act 1975, s. 5, re-enacted as 1996 Act, s.103.
[18] [1984] A.C.426.
[19] Philip Le B. Douglas, *Resolving Project Disputes, in* Project Financing: Building Infrastructure Projects in Developing Markets (January 1996) (describing the nature of infrastructure project disputes and various different dispute resolution mechanisms).
[20] Infrastructure projects typically involve the following different types of contracts: site acquisition contracts, construction and completion contracts, fuel and raw materials supply contracts, output or services sales contracts, operation and maintenance contracts, and financing and equity contribution contracts.
[21] For example, while the developers, contractors, sub-contractors, architects and engineers involved in infrastructure projects typically tend to favor arbitration over litigation as a means of dispute resolution, the lenders and insurance carriers traditionally have opposed arbitration clauses in their loan and insurance contracts.
[22] *See, e.g.*, Alan Redfern& Martin Hunter, Law and Practice of International Commercial Arbitration 22-26 (2d ed. 1991); Sir Michael Kerr, *International Arbitration Versus Litigation,* 1980 J. Bus. L. 164 (1980).
[23] Robert H Smith, Simpson Thatcher & Bartlett LPP, International Arbitration of International Infrastructure Project disputes, June 6, 2003.

1. Infrastructure project disputes often involve technical subject matter that is more suitable for resolution by an arbitrator hand-picked by the parties for his or her specialized competence than by a national court judge or jury with little or no prior knowledge or experience in the field. The arbitrator's specialized competence may enhance not only the quality of decision-making but also the efficiency with which the proceedings are conducted.

2. Arbitration offers a potentially more neutral forum to the multi-national participants in infrastructure projects, each of whom may be reluctant to litigate disputes in each other's national courts.

3. Arbitration, with its limited discovery and appeals, offers a potentially faster and less expensive means of resolving project disputes than litigation.

4. The confidentiality and relative informality of arbitral procedures (which may include site visits), as well as the flexibility arbitrators have in fashioning appropriate remedies in arbitration, may be better suited to preserve the long-term relationships established in connection with infrastructure projects.

5. One of the most important advantages of international arbitration generally, and of infrastructure project arbitration in particular, is that arbitral awards are readily enforceable almost worldwide as a result of the New York Convention, whereas the enforceability of national court judgments is not similarly enhanced by any international treaties of comparable scope.[24]

Countervailing considerations exist too, however:

- Arbitration generally offers less certainty and predictability than national court litigation. This is attributable, among other factors, to arbitrators' tendency to decide cases based on perceptions of fairness rather than strict application of contracts or law as well as the extremely limited scope of judicial review of arbitral awards.

- Particularly in large disputes, as infrastructure project disputes frequently are, arbitration may not in fact be faster or less expensive than litigation. Jurisdictional disputes frequently delay arbitral proceedings and party misbehavior and delay is more difficult to control in arbitration than in litigation.

- Arbitration of infrastructure project disputes raises several important issues concerning the scope and efficacy of the relief available, including:

  √ The arbitrability of certain aspects of the infrastructure project (such as the effect of the local regulatory or tax regime), and hence the enforceability of arbitration agreements and awards encompassing those matters, remains limited and/or uncertain in various parts of the world;
  √ Arbitral relief is generally not available or enforceable against non-parties to the arbitration agreement and proceedings;
  √ The availability and efficacy of interim relief, which may be vital in infrastructure project disputes, is generally limited in arbitration.

Ultimately, each party's decision as to whether to agree to arbitrate infrastructure project disputes should take into account the particular circumstances of the transaction and that party's anticipated strategic objectives.

(Footnotes)

[24] Arbitration of disputes involving government parties (as infrastructure project disputes often do) also provides an effective means under U.S. law of avoiding defenses based on doctrines of sovereign immunity and act of state. *See generally* Carsten T. Ebenroth& Thomas J. Dillon, Jr., *Arbitration Clauses in International Financial Agreements: Circumventing the Act of State Doctrine*, 10 J. Int'l Arb. 5 (1993).

TRANSITION MATTERS (PART - I)

TONY WHATLING

A mediator has to understand that there is a major transition to be made from pre-existing work roles and responsibilities to the work of the dispute resolution practitioner. The importance of this transitional journey cannot be overstated and yet, surprisingly, it is rarely ever discussed or referred to in mediation literature. The author explains this transition and emphasises that restoring the balance between the two hemispheres may be necessary to succeed at mediation. It is this difference that justifies the need for significant changes in thinking and in practice.

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To what extent are novice Mediators aware of and discussing the experience and implications of the transitional process from previous professional roles - and does it matter?

Transition: *the process or a period of changing from one state or condition to another:* Oxford dictionaries

Professional practice transitions, from one state of being to another, are rarely simple or particularly comfortable experiences. In fact they commonly create a sense of disequilibrium, discomfort, confusion and dis-ease.

Knowing this we might at times be inclined to heed the words of Hamlet and: *"rather bear those ills we had, than fly to others, that we knew not of".*

Or as LP Hartley put it - *"The past is a foreign country: they do things differently there".*

Or, to raise the intellectual tone to an even higher level, we might also invoke the wisdom of Snoopy's pal Lucy:
Lucy - Adversity builds character. Without adversity a person could never mature and face up to all of the things in life!
Charley Brown - What things?
Lucy - More adversity!

So why open this topic?

It would be surprising, and indeed perhaps somewhat worrying, if trainee and novice mediators did not

experience some level of cognitive dissonance, as they progress through the transitional process from one professional role to another.

Given the potential importance of this issue, it is surprising how little reference there has been to it in mediation literature – in fact I have not so far found one single source.

To quote from my first book: *One of the first crucial lessons to be understood by the novice mediator is that there is a major transition to be made from pre-existing work roles and responsibilities to the work of the dispute resolution practitioner. The importance of this transitional journey cannot be overstated and yet, surprisingly, it is rarely ever discussed or referred to in mediation literature. Many of those, like myself, who had the good fortune to be trained by John Haynes PhD, a leading American authority on ADR and family mediation, will recall his wise words on this issue during many of his training events in the UK. John cautioned that, when the going gets tough for us as novice mediators, what we tend to do is to slip into the more familiar activities of the 'day job' – our current professional role. Thus, if we are unsure as to what to do or say as a mediator, and have a background in marital therapy, we tend to start doing some couple counselling. Alternatively, if our professional background is that of a lawyer, we start giving out some legal information, or, worse still, some legal advice. In short, the trainee and novice mediator are embarking on a journey during which they must develop the necessary knowledge, understanding, values, and associated skills and strategies, so as to be able to mediate 'in the style of a mediator', not in the style of any other practitioner role in which they may have been trained or qualified. This transition issue should always be discussed regularly throughout, and in practice supervision, during the novice stage of development. Depending on the novice mediators' workload, we could be talking here about one or two years' practice experience before fully developing this capacity to operate as a mediator, consciously and in a way significantly different from the other roles they are engaged in professionally.* (Whatling 2012, pp.14–15).

If my initial hypothesis is correct – that trainees and novices tend not to articulate this experience of psychological dissonance – then what reasons and inhibiters might lay behind that reluctance?

DOING NOTHING?

Certain people complain that some people don't take time seriously - they simply sit, doing nothing. The duration of life is limited and the indifference to the passage of time that most people evince seems like folly. A life that is slack is a life being lived inefficiently.

But wait for a second. We all agree that wasting time is not good, but sometimes even sitting quietly doing what appears to be nothing is still doing something.

The people viewed as "doing nothing" could have been thinking about things, praying or even watching others. Much is gained by all of those things and you are still doing something. Some would even say they are constructive things.

What one perceives as wasting time may not be the same to another. Sometimes sitting quietly doing what "appears" to be nothing can be calming and good for the soul. Our great God created the world in 6 days and even God rested on the 7th day.

If our awesome Creator of the universe rested a day, who are we to think that we don't need to rest sometimes too and how we choose to do that is individual, often sitting and appearing to be doing nothing.

(Adapted from a writing of Rose Dunkerley)

Some potential 'blockers / resisters / inhibiters':

It may not be a nice experience. The state of disequilibrium, discomfort, confusion and dis-ease – is not a comfortable place to be, particularly for those already holding pre-existing qualifications and experience – for example in counselling, therapy, law, teaching. As professionals, our customers tend to expect us to be confident, competent, wise, knowledgeable and skilful. Any awareness of experiencing the opposite of any of these states may make for uncomfortable times.

Paradoxically, being prepared to stay with such confusion, discomforting as it may be, is often the path to greater insight and learning. Such confusion is essentially constructive and very likely to lead, not just to greater knowledge, but better still, to greater learning and understanding.

As if we don't have enough to do anyway.

For example getting to grips with new knowledge, values, development of new skills and techniques. Many of these in reality are probably already familiar from existing professional roles, yet the capacity to apply them towards different outcome objectives, can create doubts about competence.

Why focus on problems?

Or in the words of an old popular song:

You've got to ac-cen-tuate the positive
Elim-inate the negative
And latch on to the affirmative
Don't mess with Mister In-Between
(Lyrics by Harold Arlen and Johnny Mercer)

It is less than surprising – when involved in the demands of study, particularly where an assessment is involved, if we were not inclined to focus on the *affirmative* of our competence and abilities, rather than dwell on the *negative* of any shortcomings.

It is a deeply embedded historical feature of our meritocratic education system that has tended to reward success and punish failings.

As a one-time competence assessor, it was noticeable that candidates tended to present only their very best work and most successful cases as evidence. Such has been the norm for generations of students and their assessors. Personally, I tended to be more impressed with those who also provided evidence of what they regarded as their failures, and especially when commenting on what they had learned from such unsatisfactory outcomes. As a trainer, Professional Practice Consultant (PPC), and former assessor of competence a favourite question of mine was. "What was the best and most important thing that you learned from the worst case you had?"

'I'm a natural mediator I do it routinely in my day-job – I can do it standing on my head'

This concerning, but not unknown condition of egotistical denial may derive from a psychological defence mechanism that leads to a denial of any differences in mediation practice from other professional activities.

I have often heard it said, particularly during workshops run for solicitors. To be fair to them, once they had engaged in some role-play, such claimants did tend to own up to a lack of awareness as to just how very difficult, and indeed how different it really was from their day-job. One such trainee announced that having tried it, he now realised that mediating between two people in the same room was, as far as he was concerned, 'completely impossible'. He also admitted that he was incapable of being unbiased and impartial between the parties.

So what are some examples of the more technical differences in professional orientation that can generate disequilibrium for trainees?

One common example relates to the skill of using particular types of questioning technique.

Open-ended questions, are the 'stock-in-trade' of the creative problem-solving element of the mediator's task. …..Mediators from other professional backgrounds may have difficulty in adopting such question styles and values, in practice if not in principle. From experience and involvement with the training of many mediators, this may be explained by the other professional role responsibilities these people may also carry – for example, in social work, probation and law. Such professionals are frequently called upon to give information and advice, and, as we know, information and advice are easily confused in the mind of the listener, if not the speaker. Trainee lawyers in particular have frequently identified the very different style of questions they are being asked to use as mediators, compared with the training they received as lawyers. In the latter role, the questions they use are predominantly designed swiftly to focus down, somewhat in the form of a funnel, on the essential facts and circumstances, from which to dispense legal information and advice – because of course that is what their clients expect of them. …Mediators, on the other hand, work mostly with open-ended questioning – as it were, with the funnel reversed. As such, for much of the time they have no idea what the answer to a particular question will be, particularly in the early stages of engaging with clients. (Whatling 2012, p. 78).

This last paragraph clearly illustrates elements of differences between professional practices. There is one that searches for potentially useful evidence, facts and certainty, in the case of the lawyer and barrister. Conversely, the mediator inhabits a world wherein they are required to live with an inevitable uncertainty. Whilst it is to be hoped that, when intervening with a particular strategic question, they will know what it is they anticipate the outcome to be, the reality is they have little or no control of the reaction/response, control of which is in the hands of the respondent. Only when that response is known will they be able to formulate their next move and hence it is to a very large extent, an 'on your toes' business.

Note taking

A very common concern of trainees and novice mediators is that they will fail to remember important facts and information. The concern is inevitably framed as a question as to whether it is OK to take written notes. From training experience, trainee lawyer mediators in particular have a problem with this, compared with trainees from a social sciences, counselling or therapeutic background. This can be understood by the nature of their legal training and practice from which they are expected to take almost verbatim notes when interviewing clients. To require them to stop doing this is almost of the order of tying their hands behind their backs, and it creates a period of significant cognitive dissonance. So why is it so important not to be taking written notes, particularly in the early stages of the session? The answer to this question lies in the clients' need to know that they have the full and undivided attention of the mediator – often referred to by therapists as 'free attention'. At that particular moment in time they the clients, are more important than facts, details or anything else. Hence the importance of the regular 'bite-sized' or micro summaries in embedding details in the memory bank of the mediator. (Whatling 2012, pp.97 – 98)

Active listening

The capacity to be a good and understanding listener is perhaps the most fundamental skill of all. (Nelson Jones 1988 p 17)

The word "listen" is derived from two Anglo-Saxon words: hylstan, meaning hearing and holsnian, meaning to wait in suspense. (Wolff et al 1983 p 6 in Hargie et al 1981, p.195). Again, this not-knowingness state of 'waiting in suspense', may not be a particularly comfortable place to inhabit for some professionals

Active listening occurs when an individual displays certain behaviours which indicate that he is overtly paying attention to another person. The second sense of the term 'listening' emphases the cognitive process of assimilating information. (Hargie, E. et al. (1981, p. 196) The writers go on in pages (198-199) to define four types of listening: *Comprehensive, Evaluative, Appreciative, Empathic.*

From these quotations, it becomes clear that to fulfil all these crucial human interactive functions is unlikely to be enhanced by note-taking.

(to be continued)

NEWS & EVENTS

NEPAL INTRODUCES ACT TO LEGALISE COMMUNITY MEDIATION

In a move that is expected to ease justice delivery, the government has introduced Mediation Act to give wider ownership to mediation at the community level. The Act, however, does not make mediation mandatory in civil suits as in the case of Philippines.

The Act has the provision of Mediation Council (MC) which will formulate policies regarding the alternative dispute resolution and will recognise license of mediators and register institutions and firms interested in mediation. The MC will be headed by a Supreme Court justice appointed by chief justice on the recommendation of the Judicial Council.

SHORT FILM MEDIATION TO SCREEN AT BEVERLY HILLS FILM FESTIVAL

Award-winning filmmaker Francisco's short film "Mediation" is set to screen at the upcoming 14th Annual Beverly Hills Film Festival, taking place April 23-27th, 2014 as well as the 9th Annual Sunscreen Film Festival.

"Mediation" is the first project released by the brand new Film/TV production company entitled Top Rebel Productions - the brainchild of actor Freddy Rodriguez, Francico Lorite and veteran producer Bill Winett. The short tells the story of a divorce mediation that spirals completely out of control for a husband (Freddy Rodriguez), his soon-to-be ex-wife (Marley Shelton) and their court-appointed mediator (Marilyn Sanabria).

WORKSHOP ON THE NEW ICC MEDIATION RULES

A workshop on the new ICC Mediation Rules is scheduled at the ICC Headquarters at Paris on 17th September 2014. The workshop gives the participants an opportunity to acquire a comprehensive overview of the new Rules and to have a direct exchange with several of the members of the Drafting Group, who will give a detailed presentation of the main provisions of the new Rules. Interactive group exercises and case studies will be used to provide participants with a practical insight into how the new Rules work.

Upcoming Training Programs from

INDIAN INSTITUTE OF ARBITRATION & MEDIATION
institution for dispute resolution & management

MEDIATION TRAINING PROGRAM

IIAM will be conducting a commercial Mediation Training Program at Cochin, India from 9-13 June 2014. The program is designed for 5 days – 40 hours.

It is now manifestly clear to both entrepreneurs and practitioners that a comprehensive professional exposure to negotiation and mediation is necessary to engage in cutting edge and high quality practice for effectively making deals and resolving conflicts. Effective conflict resolution skills is the key to prevent destructive conflict, enabling lawyers and consultants to better assist their clients in business deals and disputes. Mediation has become a truly global profession, earning international recognition.

The training program combines the theory of ADR through highly interactive, skill-based courses in negotiation and mediation. The program will enhance the understanding and ability to negotiate and resolve conflicts, as well as provide a solid foundation in ADR processes and to serve as ADR practitioners and neutrals. Through discussion, simulations, exercises and role-plays, the program will focus on the structure and goals of the mediation process and the skills and techniques mediators use to aid parties in overcoming barriers to dispute resolution. The training also gives emphasis on the code and ethical standards of mediation. As per IIAM Mediator Accreditation System, based on the International Mediation Institute, The Hague (IMI) standards, a candidate having successfully completed Mediation Training Program will be categorized as Grade B Mediator and eligible for empanelment with IIAM.

For further details about the training program, please see the link: http://www.arbitrationindia.org/htm/events.html.

CERTIFICATE IN DISPUTE MANAGEMENT (CDM)

CDM is an ongoing distance learning course of IIAM, valid for six months from the date of enrolment. You can enroll at any time of year and you study entirely at your own pace, submitting your assignments when you are ready. Your tutor will be available to mark your assignments and give feedback on your progress for a period of six months from the date of enrolment. You will be sent four 'reading and study assignments' with your course materials, and these form an essential part of your distance learning course. They are designed to help you to work through the course manual and understand the concepts. The course will provide a good basic knowledge of ADR – Negotiation, Mediation & Arbitration – in theory and practice. On successfully completing the assignments included in the course a certificate will be awarded. For more details mail to training@arbitrationindia.com

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"We are in a prison of our own making but the bars are invisible.
To get out of the prison, you must first realize that you are in it."
~ From the Book, *Way of The Peaceful Warrior* ~