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Views from ADR practice

Interview with Ian Hanger QC

Ian Hanger QC is a barrister and mediator in Queensland. He was interviewed by Laurence Boulle, general editor of the ADR Bulletin.

Ian, you had a successful practice at the Bar, what drew you into mediation?

I had not heard of mediation prior to 1989 when I was invited to attend a one day workshop presented by John Wade, Pat Cavanagh, Jennifer David and yourself to the Queensland Bar Association. I was intrigued and fascinated by what I heard and together with Charles Brabazon we organised what I think was the first of your Bond University Dispute Resolution Centre three-day workshops. I enjoyed that workshop enormously, particularly in view of the fact that within one hour of commencing the workshop you had to mediate a dispute with a couple of our more vocal members who had hoped that the weekend might be a breeze and complained that your insisting on 24 hours of training in the course of a long weekend was unreasonable.

I suppose it would be right to say that I was captivated by mediation right from the outset.

Can you recall what your expectations at the time were about this new appearance on the dispute resolution horizon?

At the conclusion of our three-day workshop you [Laurence Boulle] advised the class not to give up their day jobs because I think it would be fair to say, that you did not think that there was an immediate future in ADR. I disagreed with you and in that respect I was right. Our Bar Association did establish a Dispute Resolution Centre in 1990 and then employed Pat Cavanagh to market our services. He was successful and we did get some mediations fairly promptly. By 1994 I would estimate that at least half of my income was coming from mediation. From day one I thought that it would take off and it did.

Looking back, do you think mediation has changed the legal culture in which you operate?

Of course it has. The legal culture will not be the same again. It has changed

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not only the legal culture but the culture of the whole community. After all, we now teach mediation in schools and we hold competitions in schools to determine which student is the best mediator. As far as the legal culture is concerned almost all lawyers now think of mediation as an alternative to litigation and recommend it to their clients in appropriate cases.

What is the biggest challenge you have faced as a mediator?

Participating in public issue mediation. It is one thing to control my colleagues, but it is another thing to control a group of people, each of whom has a different interest. This has been particularly difficult in cases involving unpleasant odours given off by industrial uses. Some people live very close to the odour and others live a long way away. All of them object to the odour but of course once their individual concerns have been ameliorated, they are less enthusiastic in their concerns for those who are closest to the odour. Add to this as is frequently the case with industrial uses: noise, dust, water pollution etc and you have the makings of a real battle. This is always difficult to control because of the many differing interests of the participants.

You have done some interesting cases involving victims of child abuse and medical negligence. Are you able to give some insights from these experiences?

Apart from individual mediations involving child abuse and individual mediations involving medical negligence. I have mediated about 90 cases in a batch arising from one abuser and I have done over 100 cases in a batch arising from one negligent doctor. They have been very successful mediations and there are two factors which to my mind stand out.

The first is that in every case I saw the victim some days prior to the mediation to take him or her through the mediation process; to explain what was involved and how we were going to go about the mediation; and to build a rapport with the victim. This meant that when the mediation started with all of the lawyers and other relevant people present, the victim would not be too intimated by either the people or the process. I am quite sure the time spent with these people was time well spent. The second procedure which I think worked was this. In respect of the sexual abuse cases that occurred in schools, I thought that there might be a dichotomy of views between the school and/or the church that stood behind the school on the one hand, and an insurer on the other. We therefore divided the mediation into two processes in two rooms. In one room a genuine and profound apology was offered by the representatives of the school and/or church and in the other room, the negotiation as to dollars was dealt with. I learned during the course of those mediations how important the apologies were to the victims. We applied the same principle in respect of the medical negligence cases, but did not use separate rooms. However one person in the room handled the apology and the other person handled the compensation.

I suppose the third comment that I would make on these cases which will not come as a surprise to you is that one must indulge in reflective listening. People in these situations like to have their say and ventilate their grievances.

You are what might be called a 'high status' mediator. Does this mean you tell people what to do?

No, I never tell people what to do (in a mediation setting). However, I do take the view that people are paying a QC to be a mediator because they expect me to have some knowledge of the legal system. I do not think that I am being paid to be purely facilitative. There are many people who are far better qualified than I am to do that.

If you pin me down to say precisely how far I will go along the lines of telling people what to do, my answer is that I might say words to this effect: 'From what I have seen this looks to be a very good offer and in the limited time available to me and from what I have seen, your prospects of success if you go to court don't look great but you have experienced legal advisers etc'.

I know that there are many who would criticise me for going as far as that.

What about the obstructive professionals we have all encountered, do you ever kick them out?

Yes, but I very rarely encounter obstructive professionals and when you ask do I ever kick them out, I would prefer to say that I manipulate the situation so that they are not present. That would not happen once a year.

Ian, you are an accomplished musician. What are the similarities between mediation and playing the flute?

You are on a stage and you are performing. You are interpreting what is happening in the room and what is written in the music and you can interpret well or badly. It can all come unstuck so easily. When you do well it all hangs together and finishes on the right note at the right time.

What should the well-prepared mediator always take with them into the mediation room?

A mediation agreement either signed or ready for signature. Listening skills.

One tip for the aspiring mediator of the future?

Learn to listen, reframe and succinctly summarise. It is very difficult.

Reverting to an earlier question, which of your early expectations about mediation have not been fulfilled?

None. ●

Ian Hanger QC can be contacted at <ihanger@qld.bar>.

contributions

Contributions to the **ADR Bulletin** for 2007 are welcome.

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