

The Future of Dispute Management and Resolution: Determining the Needs of Users Through the Global Pound Conference?

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Our world has changed dramatically in the last 30 years. The hand-held device has replaced the mainframe computer; driverless cars will shortly replace the human driver; snapchat/instagram and other social networks have replaced most physical mail; international travel has replaced vacation in the local mountains; and, internet sales accessing goods around the world have replaced the local department store.

Depending on whom you talk to, these changes and others benefit society or create new challenges. The changes definitely transformed how we work and how we manage and resolve disputes. During the last 30 years arbitration and mediation have developed as not only alternatives to the court, but the preferred way to resolve disputes. A new person decides to become a dispute resolver each day—whether an arbitrator, mediator, Ombuds, or other neutral. Law schools now offer dispute resolution courses and clinical programs understanding that mediation and arbitration are a central component of any lawyer’s toolkit. There is recognition that transactional and business lawyers need to know how to deescalate conflict and manage disputes before litigation is filed. Alternative dispute resolution (ADR) techniques are major tools to efficiently and cost effectively resolve disputes at the right price. Online dispute resolution capitalizes on technology to resolve cross border disputes. However, we also hear that users and others are dissatisfied with the processes available. Dispute resolution professionals comment that the use of ADR has stalled and that users are not taking advantage of the power of the tools. But do we know what business users really need from ADR in our new world?

In late 2015, the International Mediation Institute (IMI) launched the Global Pound Conference¹ (GPC) Series to initiate a modern conversation about ADR around the world in commercial and civil conflicts. The goal is to determine the needs of users and what can be done to improve access to justice. The GPC Series started in Singapore on March 17-18 and will end in London in July 2017. Local events will engage users with other stakeholders in the fields of dispute prevention, management, and resolution. The events are organized locally but coordinated globally. As of January 30, 2016 there are events scheduled in 38 cities in 29 countries worldwide.² A New York event is scheduled for September 12, 2016.

Like the original Pound Conference for which it is named, the ambition of the GPC is to change the culture and methods of resolving conflicts. The GPC Series will culminate in a report at the end of 2017, which will interpret the data gathered globally to help shape how dispute

resolution will be conducted for years to come. The resulting data from all of the events will be publicly available to anyone wishing to research stakeholder views on dispute resolution.

The GPC is an opportunity for stakeholders to come together to define the way disputes ought to be managed and resolved in the modern world. Stakeholders will collaborate at each of the events around the world to discuss existing tools and techniques available in dispute resolution. They will also stimulate new ideas and generate actionable data on what users of dispute resolution actually need and want, both locally and globally. Conversations about what dispute resolution should be today and for years to come will propel the field.

What Information Will Be Gathered?

Professor Frank E. Sander of Harvard Law School is credited with provoking the courts to adopt many innovative changes in the U.S. justice system aimed at providing more procedural choices to disputants. His paper, delivered almost 40 years ago, proposed the now familiar “multi-door courthouse” leading to the many forms of ADR now used. Today there is a relatively developed set of dispute resolution processes but do we understand how they are used globally and whether we can use them more effectively and appropriately in the future, possibly in combination and in more culturally adapted ways in the future?

The GPC events use a core set of questions³ posed to gain an understanding of what and how the established forms of ADR are used globally. Cultural and definitional differences are acknowledged but a baseline should arise to further understanding and provoke conversation. Participants are encouraged to submit formal papers and impromptu thoughts through online technology. In this way a new thought leader like Frank Sanders might influence how dispute management and resolution is shaped in the future.

The topics of the questions range from what do users need, how is the market currently addressing the need, how can dispute management and resolution be improved, and what action needs to be taken and by whom. The questions may seem simple but the motives behind the answers will be far from simple. Each series of questions is followed by panel discussions and attendees are encouraged to comment through technological applications. Participants are physically present. The GPC will have available videos and other resources to deepen the conversation.

The information gathered at each event will be posted on the GPC website. A final report will be issued at the end of 2017. In the interim, each event will be informed by the interchange at previous events.

What Happened at the Singapore Event?

The first event was held in Singapore on March 17-18. Over 400 people participated in the event. Attendees came from all over the world including the U.S., Australia, New Zealand, Japan, China, Pakistan, Great Britain, Fiji, and more.

Chief Justice Sundaresh Menon used his Opening Address⁴ to outline changes in the economic landscape that are leading to greater numbers of cross border disputes and the recognition that access to justice needs to take place outside of the courtroom. He announced three responses to this shift that Singapore is undertaking to better shape the future of dispute resolution and improve access to justice. The first response is to emphasize “appropriate” dispute resolution rather than “alternative” dispute resolution. This shift recognizes the broader tools available to disputants that may be invoked even before a lawsuit is filed. The key is customization of the dispute management and resolution process to meet the parties’ needs. The Chief Justice emphasized that this shift will not diminish the role of the courts but instead the courts will hold a special place as “guardians of the rule of law and ultimate resolver of disputes.”

The second response is greater collaboration and sharing of information among the courts and governments around the world that will create frameworks and international best practices that will create processes to meet the needs of users in both civil and common law countries. The exchange of information occurs through Conferences, memorandum of understanding and guidance adopted in multiple jurisdictions to address questions of law, and Conventions on enforcement of court judgments to name a few. These efforts will improve consistency of outcomes across jurisdictions and may reduce incentives for parties to “forum shop.”

The third response is to recognize and embrace the internationalism of delivery of legal services. Singapore has already recognized the increase in foreign lawyers practicing in the country and instead of restricting access, established a common disciplinary and regulatory framework to manage and strengthen the global talent pool, thereby strengthening Singapore’s position as a legal hub in Asia.

The Chief Justice proudly reviewed the many institutions established in Singapore to promote effective dispute resolution. The institutions include the Singapore International Arbitration Centre, the Singapore Mediation Institute and the Singapore International Mediation Centre. These institutions are now joined by the launch of

the Singapore International Dispute Resolution Academy, dedicated to training and educational excellence in dispute resolution.

The Chief Justice’s remarks kicked off two days of vigorous discussion that was “no holds barred.” The information collecting is the beginning of the road. Success was demonstrated by the fact that participants returned for a second day and fifteen more events were added to the schedule.

For me, three themes were apparent. First, the courts will continue to play an important role in the development and evolution of dispute management and resolution. Second, law schools and continuing education programs will support and enhance knowledge of effective dispute process and sharing of best practices. Third, technology will play an important role in the future delivery of dispute management process. These are my reflections but there may be other areas seen by different stakeholders that may or may not form a thread with future events. You can access pictures, videos and other information collected in Singapore by going to the Facebook, Twitter and Linked-in links on the Singapore website at <http://singapore2016.globalpoundconference.org/Pages/default.aspx#VvCsMsfDNSV>.

Next Steps

The GPC is an ambitious undertaking that has attracted substantial support. Many people from around the world are poised to see the results and act to shape the future of dispute management and resolution. The excitement is palpable and the possibilities are limitless, if we allow it.

Endnotes

1. The GPC was named after the 1906 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice where the dean of Harvard Law School, Roscoe Pound, delivered remarks on reforming the justice system. The event was followed in 1976 by a Conference—“2000AD—The Need for Systematic Anticipation” where remarks were made by the then Chief Justice of the U.S. Supreme Court, Warren Burger.
2. See <http://www.globalpoundconference.org> for a list of events and more information about the goals of the GPC.
3. To see the actual questions go to <http://www.globalpoundconference.org>.
4. A full copy of Chief Justice Menon’s speech can be found at <http://www.supremecourt.gov.sg/news/speeches/chief-justice-sundaresh-menon-global-pound-conference-series-2016-singapore-shaping-the-future-of-dispute-resolution-and-improving-access-to-justice>.

Deborah Masucci is Chair of the Board of the IMI. The GPC Series is Chaired by Michael McIlwrath also an IMI board member and Global Chief Litigation Counsel of GE Oil & Gas, a division of the General Electric Company. Jeremy Lack is the Global Coordinator of the GPC Series.