

Jon Lang : mediator

Diana Bentley

Once a litigation partner of a prestigious international firm, Jon Lang is now a professional mediator. He talks about the realities of the job.

Mediation may now be seen as the rising star of dispute resolution but while trial lawyers often have a high profile, mediators tend to be the unsung heroes and heroines of the world of the legal fray. They come from a wide range of backgrounds but some hail from the legal profession and bring with them a keen appreciation of the benefits of mediation as opposed to the high-octane-fuelled world of litigation.

Now Vice-Chair of the IBA's Mediation Committee, mediator Jon Lang has had plenty of experience on the other side of the fence. A litigation lawyer for 20 years, Lang spent his last six years in practice as a partner in the disputes group of the London office of international firm White & Case. Then, in May 2005, he left to establish his own practice as a commercial mediator.

Excitement

So what persuaded Lang to relinquish a partnership in a prestigious, global firm to set up on his own as a mediator? 'I enjoy mediation very much and there's plenty of excitement in it. I always liked the cut and thrust of litigation and you get a good adrenalin rush at a trial but I'm very completion-focused. You get to the coalface of the dispute quickly in mediation and you're not involved in protracted correspondence and pleadings.'

Lang holds particularly positive, but pragmatic, views on mediation and sees it not so much as an alternative to the courts but a valuable supplement to bilateral negotiations. 'It's a big concentration of effort and focus, which is difficult to create in normal bilateral discussions. A mediator brings traction to the process', he insists. 'The mediator helps parties

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get over the hurdle that's preventing them from resolving their problems. You stop people walking out. In normal negotiations, there's no one to do that.'

Lang's progression into mediation was gradual and came through his litigation work. After serving time in the county courts in the East End of London while training as a solicitor, Lang went on to a range of positions in big City of London firms and had a spell as in-house counsel in LIFFE – the international futures exchange. Then, in 1999, he joined the London office of White & Case where he was a litigation partner, handling an array of commercial, intellectual property (IP) and information technology (IT) work, litigation and international arbitrations. He became more aware of mediation's attractions in the mid-1990s as it was gaining ground in the United Kingdom.

Litigators had started to take note of mediation, he recalls, when in *Dunnett v Railtrack*, the English Court of Appeal severely penalised Railtrack on costs for having refused to mediate. 'That was a real wake-up call', Lang comments. 'Mediation isn't compulsory in the English courts, but it became clear that parties could be clobbered on costs for failing to mediate.' Wanting to understand the process more, he undertook mediation training. His expertise in commercial litigation, IP and IT work helped him get started as a mediator and as he became more drawn to mediation, he got on the lists of mediation service providers like

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the Centre for Effective Dispute Resolution (CEDR) and the ADR Group.

Lang found, however, that working as a mediator and as a partner in an international firm could be problematic. ‘In large firms you can run into conflict issues. Doing a lot of mediations can also make it hard for you to meet the high billing targets of large firms and it’s difficult to get junior lawyers involved. So it was difficult to combine being a partner of a large US-based law firm and developing a serious mediation practice.’ Even so, he developed a zeal for mediation, which led to a desire to devote himself to it and which was, he says, a natural career progression.

Robust process

While people can view mediation through rose-tinted glasses, it is still a robust process and mediators, Lang points out, need certain attributes to do the job effectively. ‘You need to be pretty patient and resilient. You can face extreme opposition from people, particularly when you question their strongly held views on their case or their ideas on how to negotiate.’ Mediators must harmonise people’s negotiating styles but also, critically, be able to build trust and a rapport with people quickly. ‘You also need to know when to stop pushing. You can’t force people into a bad deal. Not every case can be resolved. But then you can try to change the relationship so that later litigation is less destructive’, he says.

Most mediations can be accomplished speedily but he is noticing changing patterns in the process. He books most mediations for one day, although some very complex cases need longer. As people have begun to see it as their ‘day in court’ they are putting more resources into it and he is seeing a greater level of sophistication in how people approach it. Most people bring along their lawyers and some experts and factual witnesses, he says. ‘It’s useful not just to have litigation partners present but relationship partners too – they can change the dynamics and be very completion-oriented.’ Experts, he says, are more relaxed in mediation and can be particularly helpful. ‘If the experts agree on how a matter should be resolved, it’s very persuasive for the clients.’

Litigators often have adjustments to make when representing clients in mediation or in making the transition to being a mediator, he warns. Litigation and arbitration are adjudicative and litigation delivers a knock-out blow, but mediation aims to create a meaningful dialogue between the parties so that they can resolve their problems themselves, he says. ‘You must avoid being judgmental. You must listen and lawyers are often on “transmit”, not “receive”.’

His cases cover a broad range of commercial and corporate matters: outsourcing arrangements, IT and IP matters: confidential information, film and partnership disputes and copyright infringement agreements. Work has come to him from a range of service providers, but now, much of it comes direct from law firms, barristers and in-house counsel or commercial directors.

Compulsory schemes

Cases best served by mediation are those that would be subject to a limited range of remedies in litigation or in which the stakes are particularly high, he believes, as mediators can help parties negotiate any manner of settlements. Nonetheless, he is not convinced that compulsory mediation is the way forward. ‘Compulsory schemes produce volume but there are drawbacks. Mediation conducted too early isn’t helpful and generally compulsory schemes produce lower settlement rates. People are sometimes reluctant to do what they’re compelled to do’, he says, noting that the success rates in the United Kingdom, which does not have a compulsory scheme, are around 80-90 per cent.

Lang now teaches mediation skills and has produced a book on the subject – *A Practical Guide to Mediation in Intellectual Property, Technology & Related Disputes*. He has provided training on mediation and conflict management systems for the Financial Services Authority, law firms and public authorities. He is keen on proactive work too and helps clients design and implement conflict resolution systems and dispute management strategies.

In 2005, he became the publications director for the new IBA Mediation Committee and is now its Vice-Chair. ‘It’s done really well and has generated a lot of interest’, he confirms. Mediation, he thinks, may enjoy a greater following currently in the United States and places such as Australia than in England where there is now an abundance of mediators. But he is convinced that mediation will continue to grow in popularity organically and through the support of the courts. ☒

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