COMMENTARY

In the United Kingdom apparent anti-lawyer attitudes have again surfaced amongst members of The Chartered Institute of Arbitrators. Similar sentiments were also aired at the Institute's 1987 Conference. On the other hand lawyer members of the CIArb are saying that lawyer skills have much to contribute to the achievement of a good arbitration. There is concern amongst non lawyers over the increasing numbers of lawyers joining the CIArb. Lawyers, reflecting client concerns, are expressing dissatisfaction about the inability of arbitration to deliver procedures which are cost effective and timeliness resolution of disputes.

In Australia there have been mutterings about the high cost of arbitration, about "lawyers ruining arbitration" and non lawyer arbitrators determining questions of law "not being up to speed" and so on.

There is no doubt that there are great pressures at work. Parties are increasingly looking for cost effective fast resolution of disputes. There is also competition between the various professions from which arbitrators are drawn not to mention the increasing numbers of organisations offering various resolution techniques and services to commercial users.

In the UK there is wide spread belief that the cost of resolving disputes by arbitration is too high. As a reaction, in the construction industry, conciliation and mediation are increasingly being thought of as having seductive charms despite the lack of finality inherent in them. In fine there is the belief that the providers of arbitral services including arbitrators are not competitive in the present economic climate.

The UK experiences seem to be reflected in Australia.

What we need to do is to address the above issues is to be innovative. Lawyer arbitrators and lawyers generally, with few exceptions, are comfortable when following the procedural path of the courts. Non-lawyer arbitrators are hesitant to suggest and implement procedures of an innovative nature notwithstanding the encouragement contained in the Commercial Arbitration Acts.

Lord Justice Steyn is on record as saying "the greatest cost and causes of delay in arbitrations is the adoption of litigation style procedures."

It is encumbent on arbitrators being legal trained or otherwise to be continually seeking out ways of streamlining procedures and offering suggestions to parties what may ultimately reduce the hearing time and costs. Arbitrators should also personally review their own fee scale. Fees appropriate to the "heady days" of the late 80s and early 90s may be quite inappropriate and excessive in the present day environment.

The services of the arbitrator who develops a reputation for being innovative will be sought after. He who seeks to replicate the procedures of the courts will be left behind in the march of time.

Sir Michael Kerr, a past president of the CIArb was spot on when he said "What really matters is to get the right people to deal with arbitrations in the right way, and a mirror image of litigation is fatal."