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ADR REVIEW

Broadening its scope of arbitration advocacy

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APRIL 2017



Prof. Art Autea discusses the nuances of the ADR Act of 2004.

PDRC holds third ADR road show in Angeles City

PDRC recently held the third run of its alternative dispute resolution (ADR) road show in the highly urbanized city of Angeles in Pampanga province. Angeles City has a population of almost 400,000 and is home to the Clark Economic Zone.

The forum on “How to Avoid Costly Lawsuits through ADR” was held on March 11, 2017 at the ballroom of the Century Hotel in Balibago, Angeles City. PDRC member and IBP Central Luzon chapter Atty. Millet Salazar hosted the forum, which was attended by close to 40 lawyers.

PDRC Trustee Prof. Arthur A. Autea spoke on avoiding litigation through arbitration, followed by PDRC Trustee Prof. Shirley F. Alinea who discussed contractual disputes and ADR as well as careers in ADR. After introducing PDRC and discussing the arbitration process flow chart, PDRC Secretary General Roberto N. Dio talked on mediation and dispute adjudication. The presentation was followed by a lively open forum and a book signing by Prof. Autea of his 2013 treatise, Notes and Cases on Commercial Arbitration under Philippine Law.

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PART ONE

The human element in arbitration

By Roberto N. Dio

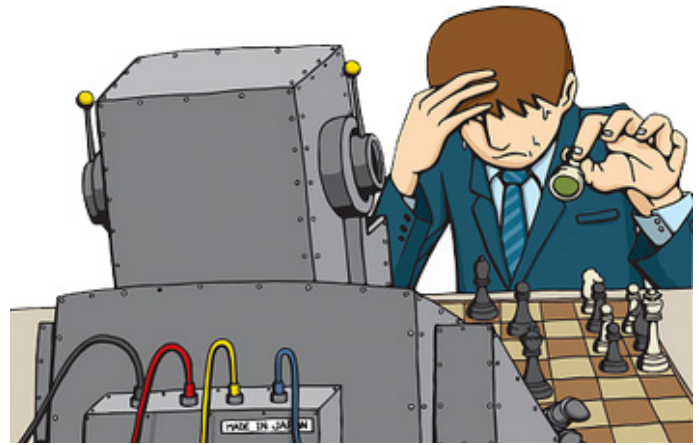
In this article, the author explores the promise of artificial intelligence and its application to arbitration.

In October 2011, General Electric (“GE”) announced plans to apply online arbitration to resolve its Italian oil and gas unit’s disputes with suppliers involving values of up to up to €50,000, or about \$65,00 at that time. The decision was made after the company realized that settling a dispute over €10,000 often ended up costing each side more than that amount.

GE required its suppliers to include an online arbitration clause into its agreements. Once applied, the system resolved disputes automatically. Upon payment of a \$500 filing fee, the supplier and GE would upload supporting documents that both sides could view. The claimant, which could be GE or its supplier, would then enter offer amounts in ascending and descending order, which were not disclosed to the other side. If any of the offers overlapped, the computer settled and each party split the \$500 fee.

The system, which was closer to automated negotiation than arbitration, resulted in about 65 percent of the cases being successfully resolved, according to a report published online by Argyle Journal. If there was no settlement, the claimant could pay another \$1,000 to have the dispute arbitrated online by an engineer. The engineer reviewed the evidence and rendered a verdict online, without any face-to-face hearings or contact.

Despite the apparent success of the GE system, some suppliers were unhappy because the automated dispute resolution system lacked a human element. They preferred a living, breathing human being who applied his knowledge, skills and discretion to the resolution of the dispute. This human element gave arbitration its credibility as a private, neutral dispute resolution process. This credibility, according to Sanford Ring, general counsel of Hino Motors Manufacturing, stamped with all the shortcomings of human frailty, was “very important” to arbitration.



Machine arbitration

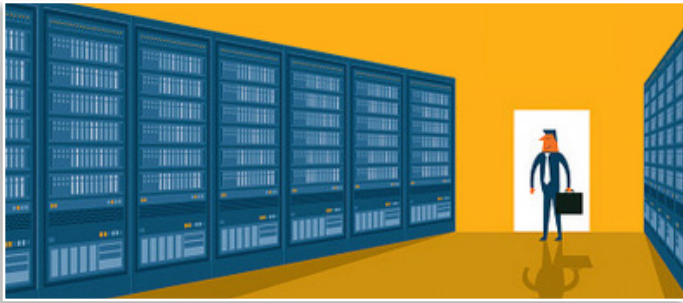
In a recent article, “Machine Arbitration and Machine Arbitrators,” published in the Young ICCA Blog on July 28, 2016, Jack Wright Nelson of King & Wood Mallesons explored a futuristic scenario where the arbitration clause stipulated that “The sole arbitrator shall be version 3.2 of the machine arbitrator program ‘DecisionMakerPlus,’ as released by Dyno Corporation on 31 August 2022.” After analyzing the clause against the current Hong Kong International Arbitration Centre arbitration rules, he opined that the clause was a valid arbitration agreement and that it was enforceable.

However, Nelson was less certain if an award “written, reasoned and signed” by a robot could be recognized and enforced. Concerns about the possible compromise of fundamental notions of morality and justice in case of machine arbitrators could lead to their awards being set aside on public policy grounds, he said. It is doubtful if people could trust machines to compute what is fair and just based on some mathematical formula. Nonetheless, he was optimistic that if commercial users eventually opt for the widespread use of machine arbitration, it would weaken the court’s resistance on public policy grounds.

Artificial intelligence and the law

According to a recent New York Times article, the United States hit a manufacturing record in 2016, producing more goods than ever but without employing a lot of people. Thanks to automation, the U.S. now makes 85 percent more goods than it did in 1987 but with only two-thirds the number of workers.

In a widely-circulated article he wrote on May 31, 2016, Dr. Robert M. Goldman, president emeritus of the National Academy of Sports Medicine, predicted that artificial intelligence (AI) would become the norm of life. He said that computers would “become exponentially better in understanding the world. This year, a computer beat the best Go player in the world, 10 years earlier than expected.”



Computers have surpassed the best human players at chess, checkers, backgammon, and go. In January 2017, two computer programs called Libratus and DeepStack separately won two poker tournaments, beating several professional poker players. And driverless cars, after hitting several snags, are now ready to be commercialized.

Dr. Goldman had dire predictions for lawyers, whom he saw as being replaced by robot programs. "In the U.S., young lawyers already don't get jobs. Because of IBM Watson, you can get legal advice (so far for more or less basic stuff) within seconds, with 90% accuracy compared with 70% accuracy when done by humans. So if you study law, stop immediately. There will be 90% fewer lawyers in the future, only specialists will remain," Dr. Goldman wrote. "By 2030," he said, "computers will become more intelligent than humans."

The human element

For all the potential and promise of automation, however, there are sober realists who send the reassuring message that all the hype about AI is, well, just hype.

Author Nick Jankel, for example, who has spent 20 years investigating how breakthroughs can be created, sustained and communicated, wrote in a February 2015 article on The Huffington Post that the belief in a future world populated by AI-powered machines is premised on the mistaken belief that brains are essentially computers. Since computers run on algorithms, unique bits of code that make computations, AI advocates think that once computers have sufficiently advanced algorithms, then they will be able to enhance, and then replicate, the human mind.

Although algorithms make computers do complex computations, they do so only by following a series of fixed rules, which explains why a chess or Go program can beat a world champion. These rules are set by human programmers.

The human brain, however, is not limited by fixed rules. It can create, destroy and recreate rules, concepts, ideas, business models and, yes, computers. Every single human cell, including

the brain's cells, can in fact recreate itself. No machine, however advanced, has ever reproduced itself. Robots have to be programmed by humans to reproduce other robots.

As Jankel wrote, while our most advanced machines and algorithms make complex calculations according to a series of rules, disruptive innovators and creative geniuses such as Steve Jobs, who gave us the sleek Apple products that we all love, constantly break the rules. While algorithms make results predictable, breakthrough creativity is inherently unpredictable.

A robot arbitration program will produce the same result when fed with the same inputs, but a human arbitrator will conclude differently when faced with the same facts five years from today. Compared to the robot, the human arbitrator will have a far better understanding of individual and group behavior, economics, commercial values, contract law or even the arbitration process, which is in constant development as people strive to make a better, simpler and more efficient mode of dispute resolution. Because of human inventiveness, "Version 3.2 of the machine arbitrator program 'DecisionMakerPlus,' as released by Dyno Corporation on 31 August 2022" would likely be obsolete by the time the parties make a submission to arbitration six months or one year down the road.

A report released in January 2017 by McKinsey Global Institute, the research arm of the consulting firm McKinsey & Company, has concluded that many tasks can be automated and that most jobs have activities that are ripe for automation. But the near-term impact will be to transform work more than to eliminate jobs. Globally, 49 percent of time spent on work activities can be automated with current technology but only five percent of jobs can be entirely automated. Hence, contrary to Bob Goldman's bleak scenario, lawyers and arbitrators will not be replaced by robots any time soon.

Next issue: The human element in surviving a plane crash in the middle of New York City.

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About the Author

Atty. Dio is the editor of The Philippine ADR Review. He is a senior litigation partner of Castillo Laman Tan Pantaleon & San Jose, where he has practiced for the past 32 years. He is an accredited Court of Appeals mediator, construction arbitrator, and bankruptcy practitioner. He has represented claimants and respondents in both domestic and foreign arbitrations.



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Atty. Shirley Alinea talks on careers in ADR.



Prof. Autea signing his treatise on commercial arbitration. At left is Prof. Shirley Alinea with Atty. Joenar Pueblo.

PDRC holds third ADR road show in Angeles City

(Continued from page 1)

PDRC held road shows in Cebu City on November 25, 2016 and in Iloilo City on February 24, 2017. More road shows are planned for the year in other highly urbanized cities like Cagayan de Oro, Davao, Naga and Baguio. In addition, PDRC will reach out to the banking and insurance sectors to include them in future road shows. 

Sec. Gen. Boy Dio speaks on mediation of commercial disputes.



MEMBER SPOTLIGHT




Atty. Jose Raulito E. Paras co-founded the firm, Andres Padernal & Paras. He is currently a trustee of the Philippine Bar Association and a member of the Philippine Constitutional Association.

Atty. Paras studied political science at the University of the Philippines in 1993 and obtained his law degree in 1997, class valedictorian, from San Beda College where he received the Judge Agustin Montesa Memorial Award as most outstanding law graduate.

He placed fifth in the 1997 Philippine bar examinations and was conferred the Order of Kalantiao Award as outstanding bar examinee in 1998. In 2003, he finished his Masters of Environmental Law, with distinction, from the University of Sydney. In 2005, he received the Presidential Award of Merit from the Philippine Bar Association.

Atty. Paras began his practice as a junior associate in Ponce Enrile Cayetano Reyes & Manalastas in 1997. He moved on to become the legal manager of Lepanto Consolidated Mining Company and Manila Mining Corporation in 2000. After gaining sufficient experience, he subsequently established the Quial Gines Paras & Beltran in 2003 before managing his current law firm in 2004.


Atty. Paras was an adjunct professor at San Beda College, Pamantasan ng Lungsod ng Pasay and Centro Escolar University. He likewise served as legal consultant to the Office of the Vice President of the Philippines from 2004 to 2010. 

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