

# THE BEAUTY OF MEDIATION

Kluwer Mediation Blog

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[Andrea Maia \(Mediar360 – Dispute Resolution\)](#)

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Since I was invited to contribute to Kluwer's Mediation Blog I decided to follow the line of writing about all the possibilities of mediation in the corporate Brazilian market.

This month would not be different. I invested a lot of time chasing data and information about the uses of mediation in the Intellectual Property sector. This theme has become a hot issue in Brazil recently, with a lot of publicity, and as I really appreciate the subject, it looked like the perfect post for me.

As I sat in front of the computer, with my cup of coffee and a lot of researched material to write this article, I started to wonder about all the good things that happened to me this last week and, all of a sudden, decided to take off the hat of corporate mediator and talk about my passion for mediation.

My relationship with Mediation was like love at the first sight. It energized and illuminated my professional and personal life.

As it normally happens with many passions, it is not always a rose garden. To work with mediation in Brazil is to struggle with paradigms that are deeply rooted in our society. However, when we manage to overcome them, it brings a great feeling of satisfaction and self-accomplishment.

I started my career as an in-house corporate counsel, a long time ago, and I can easily say today that over the last four years I also broke a lot of my own old paradigms.

As one could imagine, it was not easy for an in-house lawyer of an Investment Bank to preach that lawyers should not only approach disputes as a legal specialist; but rather, they must adopt a broader vision of the spectrum, attempting not only the best legal outcome, but also the overall impact of the decision taken to all stakeholders (employees, clients, suppliers), and, very important: consider the companies' role in the community.

However, after overcoming the pressures and difficulties on any transitional period, it has been a rewarding experience to be able to assist the parties, as a neutral, to think about alternatives solutions to their problems and to help to settle disputes in a quick, less expensive and efficient way, seeking mutual benefits. A successful mediation holds the power to contaminate everyone involved with the enthusiasm for resolving disputes in a mutually satisfying manner.

Day by day I can see how Mediation may help companies to:

- deal with disputes through the identification of their interests and facilitation of the settlement through creative and satisfactory solutions;
- preserve relationships internally and externally;
- secure confidentially of some delicate issues and
- use conflict as a tool for growth.

It is also very interesting to follow the change in attitudes and behavior that go through, from beginning to end, in a mediation process. The initial animosity is slowly replaced by trust and willingness to bring an end to the dispute, especially after the parties realize that there could be other alternatives to conciliate opposing ideas or point of views.

Another positive aspect that is not always realized is that Mediation usually leaves positive effects in the parties involved, even when it does not result in an agreement, as it helps to open a communication channel that may remain open long after the Mediation is over.

Finally, as you can probably realize by now, Mediation reinforced my belief that a corporate counsel should always incentivize settlements controlled by the parties, as their roles and responsibilities should include to bridge communication gaps, to diminish cultural differences and to find the path to logical conclusions, without considering the lazy possibility of length and expensive Court disputes.

Mediation has helped me to promote and follow these values.

This is the beauty of mediation.

So you must wait until the next month post to hear the news about Mediation and the Intellectual Property in Brazil....

## ***"The Road Not Taken - Robert Frost***

TWO roads diverged in a yellow wood,  
And sorry I could not travel both  
And be one traveler, long I stood  
And looked down one as far as I could  
To where it bent in the undergrowth;

Then took the other, as just as fair,  
And having perhaps the better claim,  
Because it was grassy and wanted wear;  
Though as for that the passing there  
Had worn them really about the same,

And both that morning equally lay  
In leaves no step had trodden black.  
Oh, I kept the first for another day!  
Yet knowing how way leads on to way,  
I doubted if I should ever come back.

I shall be telling this with a sigh  
Somewhere ages and ages hence:  
Two roads diverged in a wood, and I—  
I took the one less traveled by,  
And that has made all the difference."