

# Two Tips for Teams at the ICC International Commercial Mediation Competition 2015

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Once again, we find ourselves on the eve of the annual ICC Commercial Mediation Competition which is about to kick off in Paris, France next week. Last year I posted 10 tips for participants, one of the most important being that mediation remains an oral sport, and the most effective counsel and parties in real life are those who have the confidence to come to mediation with little documentation but with a deep knowledge of both the dispute and their preferred pathway to resolution - so, not only have they prepped the legal case, they have also (and primarily) prepared for settlement.

This year, I would like to add just a couple more, but perhaps go into a little greater detail this time:

## Adopt the mindset of dialogue, not debate.

To give you an idea of the difference;

>debate assumes there is a right answer and that you have it whereas *dialogue* assumes that people around the table have pieces of the answer

>debate is about winning whereas *dialogue* is about exploring common ground

>debate is about listening to find flaws and make counterarguments whereas *dialogue* is about listening to understand, find meaning and agreement

>debate is about defending your own assumptions as truth whereas *dialogue* is about revealing your own assumptions for re-evaluation\*

And these are just not nice to have concepts - you can, very easily, put these ideas to work by simply aligning your comments and questions to a dialogue mindset - and if you do, the judges will notice. But if you treat each encounter like a legal moot you are, I'm afraid, at the wrong competition.

Questions like;

'explain this to us again... I am having a hard time understanding...' (listening to understand)

'we have always thought that X is your priority, but I am not sure that I'm hearing that - were we wrong? can you clarify?' (revealing your own assumptions for re-evaluation)

'yeah, I mentioned in opening that a and b were big drivers for us and that we will have difficulty departing substantially from what we say about those, but of course there is c, d and e where we would very much like to identify where you are at and I think you will find us very flexible...' (protecting interests and exploring common ground)

## Making offers

While there are no points for getting to resolution at this competition, you will probably get as far as making offers - how you do this is very important and doing it well will win you points.

Think about;

>making a contingent offer "if you give us this, then we could look at..."

>playing to interests "you need... and what we need is..."

>giving them a choice - contrast an unacceptable offer with a more acceptable one, making the latter look more favourable

>moving from the general to the specific - use general/conceptual agreements first then move towards specifics to close settlement

>hypothetical settlement "I am not sure if we can, but if we did X, might you do y..."

>make an offer that, on your confidential information, involves risk for you - as risk-taking by one party often induces the other to take risks also: "we might look at doing X, which is a big risk for us because... but we could only take that risk if you were to do y, which we know is difficult for you..."

... and one bonus tip, please don't over-egg your thank you's. Once is enough - "thank you for agreeing to meet with us - there are some big issues on the table and we think this is the best way to address them, so let's get to it..."

I'm afraid I won't see you in Paris this year but good luck to all.

\* Mark Gerzon, HBS Working Knowledge