

Kluwer Mediation Blog

Why Tap Water May Be Mediation's Biggest Competitor

Marcus Lim (Singapore International Mediation Institute) · Saturday, October 10th, 2015 · Young Mediators Initiative (YMI)

When someone asks me to explain what mediation is, I often find it easier to tell them what it is not.

Sometimes I will start by asking them if they are familiar with litigation or arbitration, and use those modes of dispute resolution as a point of comparison. I often see workshops and seminars introduce mediation in this manner, often with a table that highlights points of similarities and differences.

I believe I am certainly not alone in adopting the above approach. However this may lead to a narrow view of the market for mediation. We end up defining the scope for mediation only with reference to litigation or arbitration. We risk missing out on aspects of mediation that cannot be compared to other dispute resolution forms simply because such points of comparison do not exist.

Ask any beverage company CEO who their biggest competitor is and you might expect to hear the names of other beverage brands. Yet for some of the biggest names in the business, [they see their biggest rival in tap water](#).

Tap water! Surely that must be an exaggeration?

During the 2012 Olympics, Gatorade commissioned a mobile app [Bolt!](#) as part of their marketing campaign. In Bolt!, you take control of an avatar based on, you guessed it, Usain Bolt, to navigate numerous obstacles to accumulate points. Players would speed up if they collected “Gatorade bottles” power-ups and would slow down if they ran into any icons labelled as “water”. In 2010, Coca-Cola ran a marketing campaign, “[Cap the Tap](#)”, aimed at encouraging restaurants to learn how to convert requests for tap water into orders for ‘revenue-generating beverages’. Needless to say, such an explicit condemnation of a necessity did not go unnoticed on social media and both Gatorade and Coca-Cola have since ceased the above activities.

These case studies were not just fascinating for me from the perspective of a business undergraduate. I was intrigued by the possibility of applying the same methodology used by beverage makers – to mediation. Instead of comparing mediation to litigation and other forms of dispute resolution, what if we considered mediation's greatest competitor to simply be the decision not to pursue any dispute resolution – in other words, tap water.

I can think of several advantages. We immediately connect with parties whose alternative to a

mediated settlement isn't to go to court but to simply walk away. We stop looking at ways to distinguish mediation from other forms of dispute resolution and simply talk about the benefits that mediation brings. Period. Perhaps a consequential benefit would also be that it gives credence to the shift away from the use of "alternative" in ADR too.

Hold up. If we take this suggestion all the way, would it not result in the same kind of backlash from consumers that we are pushing them to resolve disputes even when it would not be advisable to do so? It would be tantamount to convincing consumers to drink soft-drinks over tap water by virtue of soft-drinks being a healthier option.

I do believe that with the growing number of organisations involved in setting high standards for mediators as well as training and service providers, such ethical dilemmas can be adequately managed. After all, this is part of my day-job at the [Singapore International Mediation Institute](#), where we work to ensure that all of our mediators and partners maintain a high degree of professionalism and ethical behaviour.

What I do hope to achieve by introducing this perspective is to give mediation advocates another way to help parties identify their reasons for not wanting to go to the table, which may have nothing to do with how much better mediation is over litigation! After all, one of the biggest obstacles to a mediated settlement is simply getting parties to the table.

At a more abstract level, one could also see how just like tap water, disputes are an essential feature of everyday life. Would it not be admirable if as mediation advocates, we are able to encourage people to follow the spirit and principles behind mediation whenever they are faced with disputes? Sure they may not take their dispute to an administered or formal mediation but it would certainly build a stronger community and culture.

Are we afraid of change? Yes we are. Change seldom comes gently. It simply is not natural for most people to make peace instead of war. Which is why the fight to make mediation accepted and embraced has to take place at a level beyond simply comparing it to litigation or arbitration.

We have to take the fight to tap water.

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