

Kluwer Mediation Blog

Rehearsing In Poetry, But Practising In Prose

Geoff Sharp (Brick Court Chambers / Clifton Chambers) · Saturday, February 2nd, 2019

As the global mediation community anxiously awaits the annual ICC mediation competition to be held in Paris next week, many students from universities around the world will be putting the finishing touches to newly acquired mediation skills and all-important competition strategies.

For my part, coming to Paris as a member of the competition faculty is an important *act of renewal* – and most professionals attending the competition will say the same thing when asked – just in different ways and many languages.

Most of us who judge or mediate at the competition are at the mediation coalface – fortunate enough to be mediating anywhere up to 100 mediations a year, seeing the full range of life's ups and downs on parade in the mediation room.

But we are at the coalface, and that's the point I am reflecting on as I flick through the competition scenarios – all clean and shiny, mostly corporate disputes involving breach-of-contract, intellectual property rights – that sort of thing – and circulated ahead of time to allow preparation.

It reminds me that *real life* mediations are usually untidy, often upsetting on a personal level, and many times involving people at a real low point in their lives – coming to the mediation table to resolve life changing events, seeking to regain some control as a result of financial collapse, deep family or business conflict, personal injury or even death.

So when we come to Paris, and we see a new generation light up, many of us are reminded of the sense of wonder we felt when we first embarked on our mediation careers – that wonder now perhaps tempered after years of growing a sustainable practice, juggling cash flow, sweating our tax returns and decades of being in the midst of constant conflict.

My point I guess is that mediation is not all linear and purposeful as it might appear in the competition environment, with polite openings with the usual platitudes, logical issue identification, measured joint meetings, ordered caucusing and win/win agreements.... it's... well... *messier*, I guess.

Messy, as it has to be – when the family of a young teenage boy stares across the mediation table at the prison authorities and asks why their son, sentenced for stealing a car, was placed in the back of a prison van with a violent murderer who looped his handcuffs around the boy's neck and strangled him during the journey back from the court room.

Messy, as it must be – when an elderly sexual abuse survivor, raised in a series of homes run by her church, sits down with the Bishop, 46 years later, and asks why she was not protected as a vulnerable young woman and later, for the Bishop to administer communion in a corner of the mediation room as an act of *her* forgiveness.

And I know, most students coming to Paris next week will not specialise in mediation in their future careers and will continue with their studies enriched by it, but not fundamentally changed by it – but for some, *for the few*, it will forever alter their trajectory.

Those few will *get* mediation. And they will get that it is not, in real life, about the folders of documents or the ingenious legal arguments dreamed up late at night back at their law firm... and while those maybe necessary accoutrements, it's really about the people.

He aha te mea nui o te ao? He t?ngata, he t?ngata, he t?ngata

[What is the most important thing in the world? It is people, it is people, it is people]

Any active mediator or mediation advocate will experience a huge range of mediations from corporate to personal, from cash and carry to multi party, multi-faceted, high conflict emotional situations. And for those who go on to represent clients in mediation and then perhaps become mediators, it will be a considerable surprise that the skills needed are not the ones that many teams will have spent most time on when preparing for this year's competition.

Because, one of the several paradoxes of mediation is that in many cases, the more logical, the more persuasive the argument, *the more contrary and extreme the response*. And in fact, what is needed, is the ability of advocates, and more so mediators, to build trust and create rapport.

A mystical concept for some, instantly understood by others. But this is for another post.

Instead, my wish is that, whatever the formal judging criteria for the ICC competition, judges and mediators will recognise those students who get this and nurture them in whatever way they can.

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