

Be water, my friend

Kluwer Mediation Blog

February 2, 2020

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Please refer to this post as: *Ting-Kwok IU, 'Be water, my friend', Kluwer Mediation Blog, February 2 2020, <http://mediationblog.kluwerarbitration.com/2020/02/02/be-water-my-friend/>*

I was first introduced to Kluwer Mediation Blog by Professor Joel Lee of the National University of Singapore when he shared "A Mediator's Prayer" in his July 2014 blog entry. Joel is no stranger here. He is not only a prominent mediator but also a Chinese martial arts master. Joel practises and teaches Wing Chun - a kind of Chinese martial arts which was also practised by the world-famous martial artist, philosopher and movie star Bruce Lee (1940-1973).

In 1971, Bruce Lee was interviewed at "The Pierre Berton Show" (commonly known as [Bruce Lee: The "Lost" Interview](#)). During the interview, Bruce Lee was asked about the lines that he had in the famous TV series "Longstreet". Bruce Lee on the spot recited the following which, though not exactly the same as the lines of "Longstreet", have become viral internationally throughout the years. He said:

"Empty your mind.

Be formless, shapeless, like water.

Now you put water in a cup, it becomes the cup. You put water in a bottle, it becomes the bottle. You put water in a teapot, it becomes the teapot.

Water can flow or it can crash.

Be water, my friend."

While I am no martial arts practitioner, I also find the practice of skills of mediation like water.

A mediator has to listen to the parties actively and passively and it is not easy to do so. According to [William Ury](#), we find it hard to listen because "there is so much going on in our minds and there is so much noise and distraction that we do not have the mental and emotional space to be able to truly listen to the other side." The way to overcome this challenge is to "clear our minds". Surprisingly, that is exactly the same concept of "empty your mind" by Bruce Lee. We are now living in a world of information. Mediators, like other professionals, are constantly multi-tasking. We are keen to give the best services to our clients within the shortest period of time while at the same time juggling secondary responsibilities like teaching, writing and speaking at conferences. As such, we do not find it easy to have the sufficient mental and emotional space to listen, to be patient and to be flexible in the mediation process. Both Bruce Lee and William Ury have shared that clearing our mind is of paramount importance before we do something that requires high level of concentration. So for mediators, how do we clear our minds? Possible tips are meditation (no spelling error), listening to yourself, praying for the parties, making your own summary of the facts or any ways that can give you a quiet moment.

Those who have received mediation training will certainly know how difficult it is to be impartial. We cannot help judging the parties and having our own ideas creep into our minds. However, experienced mediators are just like water accommodating, welcoming and facilitating the parties to talk in an honest and uninhibited way with an open attitude. Tactful mediators ask questions rather than give comments to help the parties think wider and deeper. Skilful mediators are able to read into the minds of the parties through active listening without the parties knowing it as the skills deployed are without a specified shape and form. Parties do not feel the application of the skills and techniques even after a settlement has been reached.

As a practising mediator, I share my experience that if we are not able to connect with the parties at an early stage of mediation, the mediation will become very difficult. On this point, I have had an opportunity to speak with a Hong Kong stand-up comedian who has shared with me the secret of making people laugh. According to him, no matter how funny a joke is, one will not laugh if the joke is uttered from the mouth of an enemy or someone that the listener hates or dislikes. As such, a stand-up comedian must make the audience like him/her within the first five to ten minutes of the show, failing which the stand-up comedian may end up with a quiet crowd. Back to the practice of a mediator, the challenge is similar and that is how to connect with each of the parties during the pre-mediation meetings. In this connection, I find Bruce Lee's saying - "Now you put water in a cup, it becomes the cup. You put water in a bottle, it becomes the bottle. You put water in a teapot, it becomes the teapot." very useful. In order to connect with the parties, not only do mediators need to speak the same language as each of the parties, they also need to show empathy to the extent that the parties perceive that the mediator is in their shoes feeling what they feel and is ready to walk the journey with them. In the context of mediation, being in the shape of cup, bottle or teapot is a high level display of empathy.

"Water can flow or it can crash." Mediators must have come across parties and/or their legal representatives saying "we are not going to have a joint session" or "my client will not say anything and I (the lawyer) will do the talking at the mediation". As a facilitator, there is no point to argue with the parties and/or their legal representatives at the early or any stages of the mediation. As water, a mediator will probably follow the flow for a while in order not to upset them and make them feel empathised before nudging them back to the right track of the process. A mediator is not Mr Nice although he/she is nice most of the time. While a mediator will not "crash" the parties with arguments or legal submissions, it does not mean that he will not be hard on the problem. It is not uncommon for a mediator to challenge and then shift the mind-set of a party. Besides, when a party is indecisive and is unable to make the hard choice of settling or not settling, a mediator will assist by empowering the party. Where necessary, a mediator has to reality-test the feasibility of the option(s) on the table by playing the role of a devil's advocate. Like water, mediation skills can flow but they also have a hard dimension.

As a mediation trainer, I always remind my students that there are differences between a mediation assessment simulation and the real life mediation. In real life mediation, it is not sufficient to merely memorise the process model and recite a few key phrases of a mediator such as "tell me more". A mediator when faced with highly stressful litigants who are eager to win over the others, has to be like water going along with the mind-set of each of the parties but at the same time retaining the quality of being able to help them see the other dimensions of the same matter in an unnoticeable manner.

I would like to end this blog entry by a quote of Lao Tzu, an ancient Chinese philosopher, on water: "Nothing is softer or more flexible than water, yet nothing can resist it." The quote applies to mediation skills too. So be water, my mediation friends.

Thanks to Mr Andy Kwok, a young HKMAAL accredited mediator for his assistance in the preparation of this blog entry.