

# Kluwer Mediation Blog

## ICC International Commercial Mediation Competition – A coach says goodbye and thank you for your contribution to the next generation of mediators.

Rosemary Howell (University of New South Wales) · Monday, March 22nd, 2021



The International Commercial Mediation Competition made a brave online appearance this year – the 16<sup>th</sup> year in which the ICC has delivered the most important competition of its kind in the world.

For 15 of these 16 years it has been my privilege to be part of this experience as the coach for my team from UNSW in Sydney, Australia. As the selection process for the 17<sup>th</sup> competition in 2022 approaches I have decided this is the right time for me to hand over the coaching role to a new pair of hands. This fulfils my joint objectives of effective succession planning and ‘quitting while you are ahead’. Paris in February will always have a special place in my collection of precious memories.

I’m proud of the ICC and the dedicated team which takes responsibility for this competition. The determination to run the competition this year, despite the challenges, was remarkable. It required managing an international cohort of teams across multiple time zones plus developing a purpose built, multi-function platform to manage all aspects of the competition online – from registration, through document management to mediation sessions, social events and networking.

It was a great success.

Hopefully in 2022 a vaccinated cohort will once again be able to gather in Paris.

## Exploring the gifts of the competition

As I leave, I would like to share my reflections on the gifts from the competition which has given so much to so the many students, coaches, professional mediators and judges.

The most important gift has been the contribution to the development of the next generation of mediators and conflict professionals who are about to assume leadership of the field. As a result of the behaviours encouraged by the competition structure, students emerge to flex process ‘muscles’ which, despite what the theory promises, are not hallmarks of mediation practice. The competition rounds DO NOT mirror what happens most often in real life – instead students are encouraged to explore what best practice really looks like.

### So what are these gifts?

#### 1. The gift of strategic preparation

Our pressured lives make us very susceptible to the ‘action man/action woman’ syndrome – diving in with a focus on the ‘**what**’ and the ‘**how**’. This is the tactical approach demonstrated by busy practitioners who are lawyers and mediators. My doctoral research confirmed that commercial clients consistently identify lawyers’ failure to think strategically and instead to favour a tactical approach. This rush to act overlooks the need to ask and answer the question which will ensure that we do the right thing for the right reason – the why question.

This competition requires students to complete a mediation plan prior to each mediation session. The first section of the plan requires the development of a mediation strategy. The scoresheet for the plan rewards the best students under the strategy element with 3 times the marks available for the other elements of the plan. This impacts students in 2 significant ways. It headlines the significance of strategy and it signals where students should begin their preparation. Powerful tools for their future professional practice.

#### 2. The gift of an interest-based approach

The scoresheets for both the mediation plan and the individual mediation rounds also reward students for:

- identifying their interests;
- identifying the interests of the other team; and
- actions taken to advance their interests.

In real life we don’t often experience mediation advocacy as a rigorous exploration of interests and what it might take to meet them. Far more often what we experience is a dogged pursuit of legal rights and penalties. This behaviour mirrors the parties’ positions – which separate them – rather than identifying common interests which may lead to the acknowledgement of a shared problem.

Recognising that opportunities for resolution lie in identification of interests is the most effective path to a good outcome.

#### 3. The voice of the client

In our mediation practices many of us are accustomed to mediations where lawyers silence their

clients, refusing them the opportunity of sharing their narrative across the table as they eyeball the other party. In fact some lawyers require caucus-only mediations with no opening addresses at all. So many opportunities are lost by this behaviour. However, the competition puts the client front and centre. The client has an important role. The marks allocated for teamwork reflect this and reward teams where the client owns the commercial voice and continues to use it throughout the mediation.

#### 4. The gift of brainstorming

Real life behaviour also blurs the separation between options and offers and suggests that the making of early offers confers some kind of mediation advantage. In fact what we know from the [scholarly work](#) of researchers, such as Marquette University Law School's Professor Andrea Kupfer Schneider, is that much of our behaviour ensures that we leave the table without taking advantage of all the value available to us or our clients.

Taking the time to explore options via brainstorming, without judgement or evaluation, is where value creation lies. [The Pareto Optimal](#) is within our grasp if we can resist the temptation to settle at the first opportunity a reasonable deal presents itself. This competition gives students a great opportunity to practise brainstorming and explore the benefits it offers with encouragement from a scoresheet which identifies and values this behaviour.

**So Long, and Thanks for All the Fish** as Douglas Adams fans like to say.

I am so grateful for my 15 years of learning and sharing. I will remain a very avid observer and well-wisher of this competition as I watch my former students flex the conflict resolution muscles they explored and enhanced in this wonderful competition.

Thank you ICC!

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