

Kluwer Mediation Blog

The 13th ICC International Commercial Mediation Competition – Reflections On What It Takes To Be A Winner

Rosemary Howell (University of New South Wales) · Thursday, February 22nd, 2018

Winning is wonderful. No question.

As I write this, I am admiring the winner's trophy – earned by my [team](#) from the University of New South Wales in Australia – at the recently concluded 13th annual International Commercial Mediation Competition in Paris.

Two years ago we earned the same trophy and I never imagined we could do it twice in my life time – particularly in the face of such stiff competition from 65 outstanding and extremely effectively coached teams from 32 countries.

In the bookcase behind me sits 'Beyond Winning' an excellent negotiation text which, whilst written for another purpose, prompts me to think about the significance of the title in the context of this competition and others like it because there is a lot more to our recent experience of this competition than winning.

Approached by Kluwer to contribute this blog, I have had the opportunity to consider the broader learning for me and my team and the things that influence the development of consistent, winning performances. My university has been participating in this competition for 12 of its 13 years and we have progressed to the final rounds in all but 2 years. Of course luck plays a part and the diversity of judging styles means that nothing can ever be certain. (In fact feedback from some judges at times has prompted me to wonder if we have actually been observing the same mediation!)

My reflections have helped me to identify some lessons I have learned in these 12 years which have supported team success – not just in the competition, but in the lives of the students as they move on to pursue their chosen careers. This supports my view that we are not just training students to deliver their best performance in a competition, we are giving them valuable skills for life.

Here are my seven lessons distilled from those reflections which may be useful to judges, coaches and participants.

- **Begin with a very rigorous selection process**

To maximise student commitment to training and preparation, students need to be prepared to invest in a competitive and demanding selection process. This weeds out students who like the idea

of the competition but have not really thought through how much work will be required of them. Students are naturally competitive and the best students see winning a place on the team, in the face of fierce competition, to be an important achievement. This approach has maximised the numbers of our students who apply for the competition and ensures that the competition is well recognised and valued within the university. Unsuccessful candidates are also readily identified and available to try out for related competitions. The ICC competition is currently our most popular mooted program and I am sure this is related to the publicity the selection process attracts.

- **Embed the competition in the university's ADR program.**

This has many benefits. Students who have already had the opportunity to study ADR processes (and our university has embedded ADR throughout the law curriculum) see the competition as a natural extension to their study and come with an understanding of principles and practices. This means training for the competition begins with more experienced students.

I have also negotiated for the competition to be recognised as a full 6 unit of credit subject in the law degree. This opportunity for course credit adds an extra incentive to students to maximise their preparation and contribution to the team. Whilst no marks are achieved for a winning result, marks are available for preparation of mediation plans, team-work, session preparation, preliminary round performance and reflective journals. This satisfies a high level academic requirement from the university and ensures it is not seen as 'just another competition'.

- **Be prepared to lose and, when you do, lose with grace**

Winning is not everything (although having been both a winner and a loser I know which I prefer!) and there are powerful lessons from losing. There are times when the result seems perplexing or unfair. That's life and dealing with it graciously is character-forming and builds a positive reputation for the university. For all students it is a valuable lesson for life.

- **Doing the right thing for the right reason should be the ethical and strategic goal of every team**

There are lots of temptations in the competition such as stretching the 'back story' so as to enhance the narrative or concealing inconvenient facts. Everything you do in the competition (and in life) needs to be able to withstand scrutiny. Decisions taken while competing need to advance the client's interests and promote an enduring resolution. Trickery, exaggeration and misleading behaviour do not meet these criteria and do not build our reputation for integrity. Being trustworthy, regardless of the behaviour on the other side of the table, is always valuable.

- **Preparation is everything providing it is not formulaic**

The best competition performances (whether judges identify them or not) are situation-specific. Students who prepare in a formulaic way lack the flexibility to deploy the right tools and behaviours to address the experience they are having with the particular team across the table. Instead of a pre-prepared plan, adhered to strictly, it is much better to build a broad repertoire of behaviours and skills and to encourage students to develop the confidence to use their own initiative and to draw on what is appropriate for the specific situation. Congruence between what is happening at the table and how students respond makes for a good outcome.

- **Focus on maximising the student experience**

We are doing this for the students. Coaches can get very invested in winning and very disappointed when our teams don't win. Some universities compound this by withdrawing funding from teams who fail to do well consistently. We need to encourage our universities to see this competition as a preparation for life and a successful career – it is this which will build the value of the university

experience for our students. If this is the focus, then winning or losing is important but not where the true value lies.

It is also important to include in the training program tools to build student resilience. High performing teams often experience significant pressure, which can lead to anxiety and conflict. In preparing my team I spend considerable time building healthy working relationships which is the best possible investment in student health and welfare. We share mindfulness exercises and do some training (using the Myers Briggs Type Indicator) which exposes our behavioural preferences and our preferred processes for communicating, decision-making and time management. This diffuses many of the tensions that otherwise arise. (I wish I had started to do this earlier in my time as a coach but it is an example of how we coaches experience wonderful opportunities for our own personal development through the coaching experience.)

- **Teach students to think strategically**

My doctoral research indicated that (in Australia at least) clients tend to report that their lawyers are tactical rather than strategic. By this I mean that lawyers have a preference to focus on what they are going to do and how they are going to do it. Commercial clients in the focus groups I conducted noted that fewer lawyers focussed on the ‘why’ question but instead preferred ‘what’ and ‘how’. We know that tactics favour positional thinking and strategy favours interest-based thinking, so spending time in the training program to teach students what strategy is, and the role it plays, is invaluable. I find that this training means that students really understand, when they are preparing their mediation plans, how strategy will support them in pursuing a good outcome. A well-crafted strategy is enduring whatever happens at the table although the tactics to implement it may be subject to significant variation.

This is a further example of a tool for life and for more client-focussed legal practice.

It has been a pleasure and a privilege to have the chance to bring a team to this wonderful competition for the past 12 years. I hope to have a few more years in me – it is certainly the highlight of my professional year.

Congratulations to the dedicated team at the ICC for their hard work in preparing for, delivering and continuously enhancing such an important event.

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