

Kluwer Mediation Blog

Student competitions – shining a spotlight on mediation competition judges

Rosemary Howell (University of New South Wales) · Friday, September 22nd, 2023



Dispute resolution competitions are a rich learning space for students.

My 15+ years coaching teams from my university to compete internationally were a rich experience for me and I enjoy continuing opportunities to be part of the competition community nationally and internationally.

It has also been my great good fortune to observe and judge hundreds of local competitions in mediation and negotiation. I have watched a lot of competition judges at work – and it is work. Judging is really challenging.

[In an earlier blogpost](#) I wrote with pride about watching students build confidence and presence as they mastered complex role plays with challenging conflicts that needed resolution. In my view, the standard of student performance is continually being raised. The skills we observe today are light years away from what we observed in the early years – almost 20 years ago.

This year I thought it was time to turn the spotlight on the competition judges and reflect on how they have been enhancing their skills over the same period. As I reflected, I came to the view that the learning trajectory of the competition judges needs some stimulation. Here's my scorecard.

What competition judges do well

- they are generous. They take time away from busy practices to work very hard in a pro bono role.
- they are accessible. They provide opportunities for students to contact them out of session and obtain information and deeper insights into the judging commentary.
- they model collegiate professional behaviour with the competition judging cohort which encourages students to experience the collegiate quality of the dispute resolver community.

What competition judges need to think about

- **Strategy is the most powerful driver in conflict resolution.** It is where the ‘why’ question comes from and it distinguishes interests from positions. A significant cohort of judges continues to focus on the ‘what’ and the ‘how’ rather than starting with the ‘why’. Most of these judges are lawyers or lawyer/mediators and in my view they reflect the longstanding approach of many lawyers. Years ago, focus groups of commercial clients who participated in my research identified lawyers as being tactical rather than strategic. It is time for strategy to take the lead.
- **Brainstorming is where we maximise value creation.** Most competition rules reward brainstorming to develop creative options without evaluation. Students find this very difficult to master and tend to favour the ‘here are some options we prepared earlier’ approach. Judges’ feedback consistently demonstrates a preference for offers over options and lacks insight into how to encourage students to build brainstorming skills.
- **Confidential information offers opportunities** My
experience of over 30 years as a mediator is that opportunities to build value and move closer to win/win are often lurking in confidential information held by the parties. Sometimes this information relates to matters which are potentially very damaging to the relationship or to the project being negotiated. It has been fascinating to watch students becoming bolder and more strategic about revealing this information. Often it is part of a pre-emptive strike to seize the narrative and build trust through disclosure – often much wiser than risking the damage of unexpected exposure.

However, we lawyers tend to be very risk averse and of course we have professional responsibilities to protect our clients’ confidences. The result is judges consistently criticising students for revealing confidential information without recognising the strategic thinking that has gone into the decision to reveal. It is common to hear judges say ‘You should never reveal confidential information – you were lucky this time and it worked to your advantage but it could have done a lot of damage’. For students who have invested a lot of strategic thinking into the decision to reveal, this comes across as patronising and misguided.

- **Situation-specific behaviour tends to produce the best and most appropriate outcome.** However, judges consistently share with students their advice framed in ‘always’ and ‘never’ terms – never reveal confidential information; always try to make the first offer to get an anchoring advantage. The ‘always’ and ‘never’ approach inhibits the development of repertoire and prevents students building a practice of asking themselves ‘what is appropriate in this specific situation?’.
- **The challenge of Intention and Impact is always at work.** The
marvellous analysis in [Difficult Conversations](#) reminds us that whatever our intention and how valid it is, what we actually communicate is revealed in the response we get. With the best intention, we can still communicate something the recipient finds hurtful, offensive or worse.

Judges need to understand the power they have to wound and offend. I write this as someone who has had to console many tearful and wounded students reacting to a judge who failed to display enough emotional intelligence. Judges consistently reveal which team they prefer and give unbalanced feedback. They criticise team behaviour without reference to the rules or the scoring and they make a big dent in student confidence. We can't all be winners but all students should emerge feeling that they have done their best and this has been acknowledged.

- **Some difficult conversations do need to happen** Although I
have stressed the judges' role in encouraging students to be proud of their work, there are some important difficult conversations that we rarely observe. These competitions happen in a high stress environment and there is often significant pressure to 'win.' In this environment it is now not uncommon to observe teams going outside the record in ways which have a substantial impact on the competition experience and outcome. This includes:

- making up facts far beyond a gentle embellishment, which distract and mislead the other party and, more seriously,
- being untruthful – such as a party denying they have any knowledge of a particular problem or piece of evidence when their confidential facts contain detailed information about this.

We lawyers and mediators are part of a professional cohort which requires ethical behaviour and creates significant consequences for breaches. Competition judges need to find constructive ways to have a difficult conversation with students about the breaches they observe and impose the penalties provided in the rules. Otherwise they are simply rewarding unethical behaviour.

Into the future

The generosity of judges makes these competitions possible. They are the backbone of the competitions and everyone who participates is grateful for their generosity. However they are also role models – of a commitment to lifelong learning including how the legal profession in particular is embracing the tools of facilitative mediation.

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