

ICC Mediation Competition 2017: in conversation with the finalists

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Bill Marsh (Editor) (Bill Marsh Mediator) and Anna Howard (Associate Editor) (Centre for Commercial Law Studies, Queen Mary University of London)

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I (Bill) remember doing my first commercial mediation. I was 29, and in the presence of the four parties and their advisers I felt even younger. It was not lost on me that (as Suzanne Rab recently noted in Do You Need Grey Hairs to Mediate?) people expected someone older to walk into the room.

Fast forward 26 years to today and I find myself judging and mediating at the annual ICC Mediation Competition in Paris, sporting my own grey hair, surrounded by those in their early twenties, and feeling very old!

This year there were 65 university teams from 33 countries, joined by over one hundred professional mediators, many of us being ICC competition “junkies” who return each year.

Leaving aside the buzz of the competition and catching up with fellow mediators from all over, what is so deeply satisfying is to see an understanding of mediation being ingrained at university level, together with the commitment to a different way of doing conflict which accompanies it. Even more so, perhaps, is to watch the “light-bulb moments” which students experience as they pit their very considerable wits against contemporaries from around the world, display remarkable skill and judgment, and experience some of the fundamental truths about how it all works.

Anna’s interviews below remind me of what a privilege that is.

This year the two universities in the final were newcomers to the competition and, more surprisingly, neither team had a coach. After catching up on much-needed sleep, the two finalist teams spoke with me (Anna) about their experience. Daniel Winer and Rachel Rhodes from College of Law and Business (Israel) won the competition and second place went to Bernard Fernandes and Sidney Cardoso from V.M. Salgaocar College of Law Goa, Goa University (India). While speaking with Daniel, Rachel, Bernard and Sidney, I very quickly became aware of their infectious enthusiasm for mediation and their sincere gratitude for all they learnt during the competition. Over to Daniel, Rachel, Bernard and Sidney...

What was the most memorable piece of advice you were given during the competition?

Daniel & Rachel: *The feedback that we received from the judges and the mediators was incredible and really helped to guide us throughout the competition. What we took away from all the advice we were given was the importance of really listening, both to your team and to the other side, and of*

having an awareness of the situation before you. What was needed was a balance between knowing your goals and your roots but being flexible, aware and truly hearing what the other side was saying.

Bernard & Sidney: We cannot isolate one particular piece of advice. The advice from the judges was incredibly helpful. In addition to the feedback which we received at the end of the mediation, we made it a point to speak to each judge after the session to get additional feedback. We changed our approach to incorporate the judges' advice.

A piece of advice which we found particularly helpful was that you do not always have to be collaborative: show strength in your case and don't be scared to make the other side aware of your BATNA (best alternative to a negotiated agreement) if need be. There was one mediator whose advice was "I am not here to see you collaborate; get some blood on the table." Put another way, we were being advised to keep the negotiation realistic.

What did you learn from the other teams which participated in the competition?

Daniel & Rachel: Most of the other teams were exceptionally well prepared, perhaps too well prepared. By this we mean that some teams appeared to have a set game plan for the negotiation which meant that at times they were not open to listening to the other party.

Bernard & Sidney: We found that the teams were very prepared and some came to the negotiation with a set plan, particularly in the first four rounds as the problems had been sent to the teams in advance of the competition. We quickly learnt the importance of improvising. Particularly in the preliminary rounds you have to be prepared to be flexible.

What was the key to your success in the competition?

Daniel & Rachel: What clearly stands out for us is the dynamic between us. We feel very comfortable with one another and there is a firm undercurrent of trust between us. A connection between the party playing the lawyer and the party playing the client makes it easier for you to come across as a strong team and to reach an agreement with the other side.

We would recommend that over and above knowing the case and mediation methods, it's essential to work as a team. For some teams there were, at times, moments of friction when both members of the team wanted to speak.

Bernard & Sidney: We tried to incorporate the judges' and mediators' advice as much as possible and we kept learning throughout the rounds. Their advice helped us to grow throughout the competition. We received advice about how to negotiate depending on the nationality of the other party and used that advice to tailor our approach to the particular party.

What were the particular challenges of negotiating with people from very different cultures and backgrounds? How were you able to respond to these?

Daniel & Rachel: Clear cultural differences were easily apparent. At the risk of over-generalisation, teams from certain countries were more open and friendly while others were a little more stern and disciplined. As in real life, for certain combinations of cultures there was a greater chance of chemistry than for others. When two people from different cultures look at a case, cultural differences can lead them to draw different interpretations from the same set of facts. What we really tried to do was to understand the other party, to really understand where they were coming from and to truly listen.

We'd like to add that we initially thought that, on occasion, language might be an issue. This was not

the case at all. Many of the teams came from countries where English is not the native language. We were astounded by the very high level of English across the teams.

Bernard & Sidney: *This question brings to mind a mediation in which the cultural differences meant that the message which we were seeking to convey was not being understood by the other party. We tried to be clear but continued to experience difficulties. We therefore used the mediator to help us to convey the information to the other side so that it would be understood by the other side.*

What has the competition taught you about mediation itself?

Daniel & Rachel: *To be honest, we're not sure that we took mediation that seriously before the competition. If you could have sat down and resolved an issue, then surely you'd have done that. And we'll also admit to thinking that mediators were not something special. We've changed our view: the competition taught us that mediation is an incredible tool. After seeing mediators in action we have full faith and confidence in the mediation process and mediators.*

Bernard & Sidney: *We learnt a lot from seeing the mediators in action. We noticed that the mediators intervened at exactly the right time. And whenever the parties needed help, the mediators knew how to help them.*

Do you think your experience in the competition will have an impact on your future career? If so, what might this impact be?

Daniel & Rachel: *Without a doubt. We are seriously considering incorporating mediation into our future careers. We would like to practise international commercial law and pursue an ADR route within that. We think that parties will increasingly turn to ADR methods and this is where the future of dispute resolution lies.*

Bernard & Sidney: *In India, litigation is preferred over mediation and negotiation. People in India love to litigate and most are unaware of mediation. Our professors have mentioned that reaching the final of the competition puts us in a good position to spread the word about mediation and negotiation. Our achievement will also add to our credibility if we choose to pursue a career in mediation in the future.*

Is there any advice which you would give to future participants in the competition?

Daniel & Rachel: *In our law studies the focus seems to be on attaining knowledge disconnected to emotion. No one mentions the feelings of the parties – there are no psychology modules in law courses. With mediation you have to be emotionally sensitive to the case. Over and above learning the different methods of negotiation and mediation, try to be more sensitive to the emotional aspects, to the needs of your client and the other side. And, of course, study hard.*

Bernard & Sidney: *Our key piece of advice would be to listen to the judges. Also learn to really listen to the other side, use active listening. And be prepared to improvise. Finally, have fun. One piece of advice we received was "If you're not having fun, you're not doing it right."*

Is there anything else which you would like to add about your recent experience in the ICC competition?

Daniel & Rachel: *The experience was life-changing. It has, for us, opened up the world of ADR. It has made us believe in mediation, not from reading about it in a book but from seeing it in action and meeting leading mediators from all over the world. There was an exceptionally broad pool of talented mediators at the event from whom we learnt so much.*

It was wonderful to see hundreds of people, disconnected from the politics we often see in international arenas, enjoying themselves and learning from one another. There were many good hearts and open minds there. We have come away inspired.

Bernard & Sidney: We would like to say thank you to the ICC competition's organising team. It takes a lot of work to get the competition up and running. Thank you to the team for all the experiences we had and for the memories. We would also like to thank the mediation experts from all over the world who came to the competition. It was a wonderful opportunity to go beyond theory and to learn about mediation from those who conduct mediations.

What I (Bill) love most about these interviews is the willingness to learn displayed by Daniel, Rachel, Bernard and Sidney - and in truth by all the participants I meet at the competition each year. If you are a competitor, thank you. If you are a mediator, please find ways to pass your stuff on to the next generation.

