

4th ICC International Commercial Mediation Competition

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Marie-Charlotte

Coach: KUNZ Catherine Anne

1. Object of the Competition: commercial mediation

The ICC Competition we attended in Paris was about commercial mediation. Commercial mediation is an alternative way to solve a dispute between 2 or more parties. With the help of a mediator who facilitates the communication, the parties try to find an amicable agreement that can fulfill both parties' expectations and interests. The mediator is neutral and independent and must help both parties. A mediation session usually takes place before a judicial litigation or arbitration and is confidential. Everything that is said during mediation cannot be used in court. Since many disputes between business partners arise because of misunderstandings or bad communication, commercial mediation is very often used. It is a good way to let the parties express themselves, about how they feel or what they really wish. It is also a cheap way to settle a dispute where both parties feel good about the solution they find because they find it themselves. Commercial mediation often takes place through worldwide Chambers of Commerce and the mediators are very often lawyers with a professional expertise like engineering or intellectual property.

2. The competition in general

The International Chamber of Commerce is one of the best-known chamber of commerce in the world and offers its professional services into arbitration or mediation. It was the fourth commercial mediation competition they organized and 40 universities, 150 students and as many professionals from all over the world attended it. There were students from India, United States, Brazil, Canada, Germany and many more.

Each university had a team of four members. The competition took place into four different sessions that opposed two students from each university. One student acted as a client with his interests to reach and the other student acted as his legal adviser. Each session was about a theoretical case we received 2 months prior to start the competition. The four cases were very distinct from one another. Three of the cases were about a dispute between parties and one was a contract negotiation. For each case, opposing teams received general information and a specific to each team confidential information. The objective was to reach our interests but at the same time help the other team to agree gladly to it and also help them fulfill their interests. The teams opposed themselves during a mediation session that lasted 85 minutes with the help of a professional mediator in order to reach an agreement. The session was judged by two professionals (mediators, judges, lawyers, arbitrators...) who gave a feedback right after the session.

3. Preparation

The preparation we had done for the Competition was the main part of our work. To be ready to go to Paris, we used different methods. First of all, we played all the cases of last year's Competition, which was a great help to get used to commercial cases; we also watched and had an analysis with our coach, Catherine Anne Kunz, of the DVD of last year's Competition Final and we met as well two experts to give us some advises in this fields, Me Brigit Sambeth-Glasner and Me Matthias Scherer, both lawyers in Geneva.

Since we knew that practice was the most important method to learn, our coach gave us each week a different case of last year's Competition to prepare. We played four different cases, plus all the cases for this year's Competition once before it. It was for us the opportunity of finding the best way to prepare the case and to find answer to simple question like: how shall we analyze each case, what are the relevant problems, what does our client want and what are his interests, what are we ready to give in for, what not etc. and other questions as well concerning our team work such as: who is the best person to play the client or the attorney in this precise case, who may answer on these points and who may answer on those, who is working in the most efficient way with who, etc.

For each case we had to prepare, we had as well to fill in a representation plan, devised in six parts including the following points: ICC ADR Rule 5(1) analysis (why did we choose mediation to settle the dispute), responsibility sharing (client's and attorney's roles during the mediation), allocation strategy (use of the client's and the attorney's role during the negotiation), our interests, the other party's interests and the negotiation strategy (how are we trying to lead to mediation to find the best agreement according to the previous points). Filling this representation plan was really helpful for us, it cleared the way we had to play and what we were there, what do we want at the end of the negotiation etc.

Nevertheless, before being able to fill in the plan, we had to analyze each case really carefully. For each case, we spent a lot of time finding out the relevant information, the interests we have, how to use both of them etc. We improved a lot with every practice. After every session, Catherine gave us a feedback, explaining what was good and what wasn't, which point we had to work harder on and what exactly we had to change to be more involved in the next case, which was pushing us to work harder on the next case. An other way we used to learn was watching the DVD of last year's final, opposing Sao Paulo Law School and University of California Hastings College of Law and analyze it. It was really important to see how others parties, well trained and from other parts of the world, were competing and using mediation to settle their dispute.

As soon as we received the cases for Paris, we all worked on them conscientiously. Each of us worked specifically on one of them and exposed it to the rest of the team. For each case, we spent time to get really familiar to them, to know our interests etc. It was really important to us to know each case as much as possible, by heart, to be ready for every possible position your opponent may adopt. After having worked dutifully on them, we played them as well between us, to be able to determine which were the points we had to improve.

During the same period, we also had been given the help of two lawyers, expert in mediation and commercial law, Me Sambeth-Glasner and Me Scherer. At the beginning of January, we met Me Sambeth-Glasner in Geneva. She gave us a lot of advise about how to act and how to react during the Competition, since she used to be a judge in the Competition as well. A month after this meeting, we had a meeting with Me Scherer in Geneva too. We played in front of him the first case we had to play in Paris, as a practice. It has been really helpful to have his point of view on the case, having another way of how the mediator can act. It helped us to be clearer in our opening statements and to be more structured through the mediation session.

In conclusion, we met 18 times to prepare all the cases before Paris, for a total average of 77 hours. Although, we worked about 25 hours when we were in Paris on our respective cases, which is at the end a time of work of 102 hours.

4. The Competition as Experienced by the Fribourg Team

Our Fribourg team had the chance to compete against four different teams in four different rounds in four different cases on four days. It might be of some interest to list the adversary teams, the mediators and the judges. In round one on Saturday 7 February at 14:15, two members of our team, Marie-Charlotte and Benjamin, faced the Stockholm University team, composed of two students coming originally from Venezuela. As mediator acted Mrs Isabelle Vaugon, the judges were Mrs Ruth Behan and Mr Niall Lawless. The next day, in round two on Sunday 8 February at 8:15, quite early to be in full control of your wits, to be honest, although the adrenalin flush came just in the right moment shortly before the start, the two other members of our team, David and Andreas, competed against the team of Chulalongkorn University (Bangkok). The mediator was Mr Alan Limbury, the judges were Messrs Anthony Connerty and Niall Lawless. On Monday 9 February in round three, at 8:15 again, Marie-Charlotte and Benjamin were opposed to the Cornell University (NY) team. Mr Ronald Austin acted as mediator, Mrs Kileen Dagg Centurione and Mr Jacob Grierson gave their feedbacks as judges. The fourth round took place on Tuesday 10 February, at 17:00. The mediator was Mr Peter Aeberli, Messrs Claude Amar and Ronald Austin judged the teams, namely on the Fribourg side David and Andreas, and on the other side, two members of the Fordham University School of Law (NY), probably the most prestigious opponents, since Fordham made 3rd place in the 2008 Competition.

The overall experience during this competition was one of utmost fairness, mutual respect, open-mindedness and friendly curiosity between all the involved parties, on the students' side, on the professional side and between the professionals and the students. The critiques we received from the judges and the mediators were always very detailed, well structured, most of the time recapitulating the sessions chronologically, and always encouraging. A big challenge was to adapt to the opposed teams, to their ways of interpreting the adversary parties' roles and respective interests, to the teams' cultural background, and, accordingly, to their individual behaviour and team performance. Knowing the cases by heart and having it talked and played through for hours and hours with your already familiar teammates is one thing; sitting at the mediation table being watched professionally is something quite different. Sitting in the audience, watching your teammates performing during eighty-five minutes, by the way, is again something completely different, a most thrilling and breathtaking experience, which could get you so excited and nervous, because you wanted your teammates to succeed, of course.

Although our Fribourg team has not managed to enter the quarterfinals, we feel very proud of what we were able to achieve. Also, none of the teams we played against has succeeded to get through to the quarterfinals either. We were able to follow our pre-developed strategies for the various cases and to follow our Representation Plans, one thing that the judges explicitly complimented us for. We gave the best we were able to give, taking into consideration our preparation time of only two months, in comparison to other teams which had specific annual courses on mediation. We achieved the goals we have set to ourselves before. It came out clearly that you only could get through to the final rounds with much more and much longer mediation training and practise, which we lacked, not because of insufficient commitment or coaching, but because of non-existing mediation training in general within the regular university curriculum.

What remains from this Competition? A lot of important and valuable knowledge you never would have acquired elsewhere. A feeling of thankfulness for having met so many interesting

people, for having been supported so intensely and successfully by our main coach, Ms Catherine Anne Kunz. Many wonderful memories from spending time with fellow competitors, thus making new friends—for example, with the Cornell team who stayed at the same hotel, even sharing with them some original fondue, brought from Fribourg. And, last not least, it remains our enthusiasm to pass on our knowledge if possible to new teams hopefully forming at our Fribourg University in order to compete in Paris, being supported by the University administration and by the Jäggi Foundation—just as our 2009 Fribourg team hopes to get the support by the Jäggi Foundation.

5. Administrative

The ICC proposed a list of hotels to all of the participating teams, for which there was supposed to be a reduced fee. It was very important to be located nearby the ICC, since we had cases starting at 8 in the morning. However we had no intention of having an extravagant or luxurious stay so we chose the cheapest hotel on the list, the Hôtel Elysée Union which turned out to be a cosy little 3-star hotel at 44 rue de l'Amiral Hamelin approximately a 10 minute walk away from the ICC and we therefore could avoid costs for transportation.

During our stay we incurred other expenses, since only the breakfast was included at the hotel. Most of the time we had picnics either in the hotel rooms or somewhere else in the beauty of Paris. Only twice did we eat in restaurants in order to keep our expenses as low as possible.

We were told we would get 2 ECTS for the competition, which we are very grateful for, since the experience went far beyond the gathering of credits. However we would like to accentuate the fact that we worked far more hours than 2 credits would require. Subsequently 3 or even 4 credits should be offered to the students participating in this competition. If it is not for us, this adaption should, in our opinion, seriously be considered for the students participating next year.

6. Conclusion/Comments

We spent an amazing week in the most beautiful city of the world expanding our horizon as lawyers as well as human beings, so first and foremost we are grateful for having been given this opportunity and would like to thank everybody who supported us, namely Professor Pascal Pichonnaz, Professor Marc Amstutz, our coach Catherine Kunz and last but not least the Fondation Pierre Jäggi for even helping us financially.

We hope having left an acceptable impression and that we could pave the way for a participation of Fribourg's Law School in next year's ICC mediation competition.