

Kluwer Mediation Blog

Trusting Thoughts

Joel Lee (National University of Singapore, Faculty of Law) · Tuesday, August 14th, 2012

I was fortunate to have been in Belfast, Northern Ireland for the International Negotiation Competition for Law Students hosted by Queen's University. This is a competition that is run every year where students from law schools all over the world meet to negotiate simulations where they represent clients in deal-making or dispute-resolving contexts.

As part of the activities, my wife and I took a Black Cab Tour which took us to areas in Belfast that were connected to what the locals referred to as "the troubles". Apart from learning that the Black Cab Tours did not always come in the form of a black cab, we were given a history of the troubles between the differing groups in Northern Ireland and the cabbie's personal hopes that the existing peace will last.

What has stuck in my memory was seeing this wall, incredible both in length and height, that separated two different communities. My initial emotional response was sadness that such an artificial barrier was used to separate people. Of course, as I have discovered often in my life, the reality is often far more complex than I can see. This, in itself, is a valuable thing for mediators to keep in mind. There is often far more going on under the surface than what appears as the presenting problem.

The cabbie told us three things that changed how I saw things. First, he said that the wall was something that was requested by both communities. It wasn't something that was an imposition to the communities and they were by and large better off, at this point, having the wall there.

Secondly, when I asked why, the cabbie said it was a matter of trust. Or more accurately, non-trust. The two communities were not yet in a position to trust one another. The wall was a necessary evil. At this point, one could easily despair and project into the future a dismal future where the status quo would remain.

Which brings us to the third thing. The cabbie pointed out the elaborate murals that populated the wall amidst messages of goodwill and peace (obviously left by tourists). The cabbie told us that these murals were the collaboration of the two communities to decorate the wall. No quite trust yet, but certainly a step in the right direction and perhaps in the long run, a Belfast without walls. He ended that segment of the tour by offering us markers and inviting us to leave our own messages on the wall. Which, of course, we did!

Upon reflection, the tour prompted four thoughts about trust that might be useful to readers in context of mediation.

First, we often speak of trust as a thing; it is something that we have or don't have and if we don't have it, how we can acquire it. In linguistic terms, the word "trust" is an abstract noun (the technical term of an abstract noun is "nominalisation") like "love" or "relationship". Unlike concrete nouns like "pen" or "cup" which are items that physically exist, an abstract noun is essentially a continuing process. One does not gain trust more than develop and strengthen (or weaken) it over time.

Secondly, as mediators, one of our key tasks is to develop trust as between the mediator and the parties and as between the parties themselves. Sometimes, this happens over the entire process of mediation so that at the end of the mediation, there is an acceptable level of trust between the parties. Of course, in order for the mediation process to work, it is predicated on the assumption that parties are at least open to come to the table and speak about their concerns. The problem sometimes occurs in that parties are not even in that position of being able to do that. It is important in those situations to explicitly acknowledge that situation of non-trust and to discuss and set up processes by which the mediation can proceed even in the context of that non-trust. This may include implementing ways of verifying information that is shared and ensuring that information shared is kept confidential.

Thirdly, it is important to remember that parties will have different evidence procedures for whether they can trust someone. Put another way, when deciding whether we can trust someone, we all look for different things. If we assume that everyone shares the same criteria, this could lead to a situation where we assume one party is being distrustful and difficult when it is simply a matter of that party's criteria not having been met. In such cases, it may be useful to explicitly discuss one's criteria of trust so that expectations are clear and can be managed.

Finally, and this is related to the previous point, when parties are in conflict, the question uppermost in parties' minds is "Can I trust you?" and they will of course look for behaviours on the part of the other party to see if it meets their own criteria for trust. This is of course part of attribution bias where we assume the best of ourselves and the worst of others. A useful role reversal a mediator can use is to have parties ask, "Can you trust me?" or "What am I doing that gives you reason to trust me?". It has parties thinking not just about trusting but also about being trustworthy.

Admittedly, While these thoughts may be more relevant to mediators operating in a non-commercial context, I hope that even in commercial mediations, these ideas may prove to be of some service.

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