Kluwer Mediation Blog

On inquiry

Ian Macduff (NZ Centre for ICT Law & School of Law, Auckland University) · Monday, April 27th, 2015

This blog entry arises not so much from any mediation, but from one aspect of regular social encounters that is all too normal a part of negotiation and mediation. As the title suggests, it's about the role of inquiry, asking questions – not merely gathering information, but going beyond that in the expression of interest in one's social contacts and especially the other disputant. This note also arises from several recent and typically frustrating experiences with people – perfectly regular, friendly, non-combative people – who in, their various ways, exemplified the apparent inability to ask questions.

We've all met them; and of course we've all seen them in mediations, and if we're honest, we can also see ourselves in them at times. Think of the times you've come away from social encounters which, by all appearances, were congenial and cordial, and yet you have the sense that, while you know a lot about the other person – because they told you – but they know little or nothing about you – because they didn't ask. And, if you sought to offer reciprocal information, it appeared to land on barren soil, not leading to the kind of exchange which you thought that conversation implied.

This is not, by any means, a definitive account of those whom we meet in this mode, but a reasonable sampling is this (bearing in mind, too, Robbie Burns' refrain "O, wad some Power the giftie gie us, To see oursels as others see us"):

• the person who appears to ask questions of interest (how are you?) but quickly passes from that socially obligatory reflex into the standard mode of one-directional information;
• the adversarial inquirer, all too often seen in contemporary television journalism is which dogged demands are the substitute for open questions, and in which the kind of question is posed that already contains the answer the journalist or inquirer has in mind (don't you think it was a politically foolish thing to . . .). And of course the target of such questions is hardly likely to answer in the affirmative by agreeing they've been a complete idiot;
• the rhetorical inquirer – a variant on the adversarial style, in which a point is disguised as a question;
• the 'expert' who glazes over when being given information, even by someone who actually knows more. In this case, there's an absence of inquiry as your conversational counterpart is either not interested or unwilling to concede that there might be information or insights he or she hasn't already thought about; and
• the person who simply seems to lack any inquiry mode. These stalwarts of informational

independence seem not to know when – or not to be willing to – switch into the ideally reciprocal conversational mode.

There will be more – indeed, I'm confident that fellow mediators and communication enthusiasts will willingly add to the list.

When I was reflecting on a series of recent encounters with some or all of the preceding characters, I recalled a comment by John Heron, over 30 years ago, at a session on giving and receiving feedback, which was part of a larger workshop on self and peer evaluation in education and professional development. At the end of a structured and reciprocal process of feedback, in which the person receiving feedback ensures that such feedback is requested, specific and constructive, John said the feedback sessions could conclude with questions – but only questions that were "of genuine curiosity". This stuck with me because that simple injunction marked the difference we so often see and feel between questions that are genuine and those that are rhetorical, adversarial, defensive, passive-aggressive or mere social fillers. The odd thing is that this needs to be specified – to shift us out of the conventional modes of asking questions into a style that is more likely to be constructive and inviting of engagement.

This insistence on questions of genuine curiosity reflects John's pioneering work in appreciative inquiry, which is at the same a mode of participant based social research, the basis for reciprocal peer counselling (which relies heavily on tools of focused and structured inquiry), and a tool for effective communication. That disarmingly simple injunction about the quality of one's questions actually points to what is so often missing, even in the most congenial of social contexts.

If we switch from the more conversational context to mediation, there are three or four points I want to draw from this. First, it is most commonly the mediator's role to ask the questions – at the core of our training and practice are the tools of shifting from open to closed questions, of eliciting information, seeking clarification through further questions and so on. This is not only part of the job; it might also – in the best of all possible worlds – be seen as a form of behavioural and normative modelling for the parties on what is likely to help move towards closure. Here's the question: in what ways can we make this a more explicit coaching element in mediation if, as seems plausible, it's the lack of genuine interest in and inquiry about the other party that gets in the way? I don't have in mind the kind of express instruction that one might have to give to kids about the little yet important social graces and courtesies; but I suspect that we do have an array non-intrusive ways of doing this, perhaps in private session, in coaching parties in the kinds of questions they might ask.

Second, mediators will be familiar with the immensely useful conceptual and practical tool, the ladder of inference. At the heart of this is the recognition that our conclusions – the preferred outcomes that we present to others – disguise, or at least don't reveal, the array of perceptions, assumptions, deletions, and theories that shape those conclusion. The two legs of the ladder, as it were, are advocacy and inquiry, but there's typically a risk of advocacy being seen as main resource in disputes. Of course, part of the problem here – which I've touched on in an earlier blog – is that inquiry, genuine inquiry, might be seen to be a weak position to take, to risk revealing gaps in one's knowledge or "case". But the point behind the inquiry side of the ladder is not so much to confess one's own ignorance – though it may be this – but to ask what it is that shapes the other's thinking.

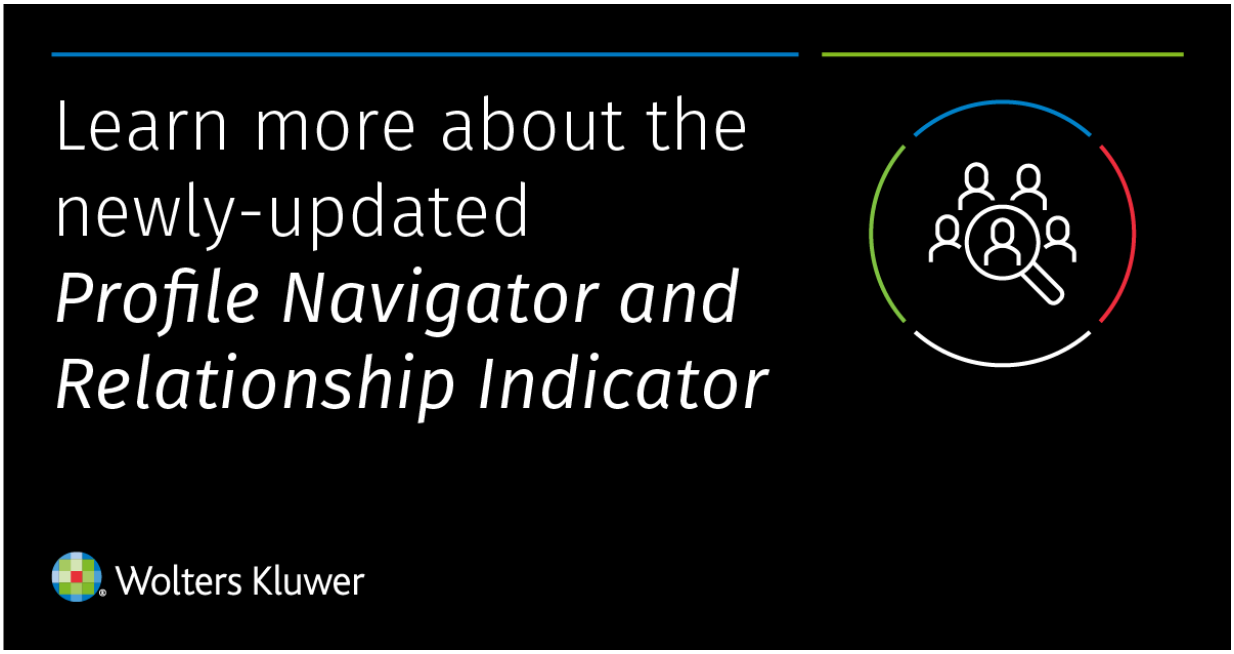
It follows, thirdly, that there are at least three purposes to this inquiry: information gathering;

genuine inquiry about the other's thinking; and social connection. To go back to the varieties of "non-inquirers" mentioned earlier, we all know at some visceral level that those transactions that have involved some level of engagement are the ones that leave us feeling just that bit more connected, even if it's a fleeting transaction.

Fourth, while there may be general social and informational advantages in asking those questions of genuine curiosity, it needs to be remembered that there are also cultural norms about inquiry, not all of which we'll know or recognise in advance. We'll also have met those kinds of responses to our question of interest (or so we thought) that are met with what seems like evasion but in fact might equally be implicit ways marking out no-go zones. As part of these cultural or social norms, there will also be hierarchical norms which mean that it's difficult or inappropriate for the other person to ask those questions of 'genuine interest' to someone perceived to be further up the social pecking order. This, too, may be organisational – which I encountered, to my surprise, when a colleague commented recently that it was "beyond his salary level" to be asking those kinds of questions. And what appeared to be a flippant evasion was a genuine sense of discomfort at what would be perceived as hierarchically inappropriate.

Finally, a suggestion: one simple question seems to have worked in conversational and professional settings, and that is to say "talk me through your thinking". Without actually being a question – as questions can so ready be seen as challenges, especially to those who aren't too strong in their own inquiry mode – this achieves the effect of questions. It also seems me to not only to express genuine interest, it also defuses focus on outcome and defence, and expresses a respect for the other.

Now . . . all we need is to get others to offer that same invitation!



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