

Kluwer Mediation Blog

The rise of Fake News – Challenging the tools of ‘Getting to Yes’

Rosemary Howell (University of New South Wales) · Wednesday, March 22nd, 2023



Repetition works.

It is a passive, effective tool of persuasion. It features heavily in the online marketing of programs for business leaders and, (as I am reminded as I endure another round of parliamentary elections in my country) in the fear-inducing speeches of politicians desperate to avoid an election loss.

A Google search of ‘The Power of Repetition’ produced 116million results in 0.27 seconds. This included research evidence that a simple message, heard repeatedly, is more likely to stay in your mind and be accepted as truthful.

I don’t need to be persuaded. ‘**Fake News**’ is the example that springs to mind the fastest and has the most relevance to the conflict resolution field in which I practise.

Working as a mediator, facilitator and conflict coach, I have become increasingly aware of the enduring power of ‘Fake News’ to insert itself into and to hijack difficult conversations. My Google search of this phrase reported nearly 2 billion results in 0.37 seconds in response to this phrase.

So What?

I confess I am writing without the benefit of any empirical research – I am reporting my anecdotal experiences from my professional work and from the conversations I am having with my colleagues. However, as I reflect on my own experiences and share my observations with my

colleagues, it seems clear that there is an important conversation to be had.

Many of us have conflict resolution skills which utilise a facilitative approach and draw directly or indirectly on the tools offered by 'Getting to Yes' and the texts which followed it. My current experience is that there is an increasing number of disputants who are not open to persuasion in the face of well-presented evidence of external, objective criteria which might be expected to be compelling.

I have numerous examples. Mediating a dispute between government and residents in an infrastructure project, it was asserted that the relief sought by residents was not available because of the operation of a certain Local Government regulation. The residents pushed back with a 'Fake News' approach – asserting that the relevant Local Government Authority had recently been accused of corruption in Parliament and, accordingly, its recent decisions, including the regulation, must be treated with suspicion.

There are many other examples. They suggest to me that the constant repetition of the 'Fake News' mantra has added significantly to parties' unwillingness to trust each other even in the face of compelling evidence to the contrary.

What is the impact on the tools of 'Getting to Yes' ?

First published in 1981, 'Getting to Yes' gave us 'four points [which] define a straightforward method of negotiation that can be used under almost any circumstances.'

'People: Separate the people from the problem.

Interests: Focus on interests, not positions.

Options: Generate a variety of possibilities before deciding what to do.

Criteria: Insist that the result be based in some objective standard.'

The last section of the text adds BATNA to the mix, a tool whose significance achieved more recognition in later editions and adjunct publications.

My observation is that the 'Fake News' pushback is operating most strongly to defeat the persuasive impact of the 'Criteria' tool (often referred to now as 'Legitimacy' or 'Standards'). The argument for the value of 'Criteria' is that it promotes amicable and efficient agreements by exploiting the value of persuasion on the merits rather than on the strength of the pressure being applied to the parties.

Negotiating with my builder about the height of benches I wanted installed around my living room, I was persuaded that the height I proposed was not permitted by our Local Government's building regulations. Evidence of this criterion, provided by my builder, changed my mind about what was possible.

The tool is also strongly promoted for its value in disputes where parties represent a significant constituency with a keen interest in being persuaded that the agreement reached was fair. Historically we have seen reliance on 'Criteria' achieve the durable resolution of many public disputes.

But there are many conflicts being litigated and mediated around us where attacks of the ‘Fake News’ variety have seen ‘Criteria’ lose much of its persuasive power.

I have already shared my example of a recent mediation. There are many others including an increasing number which can be observed in the international arena. The global movement to embed ESG (Environmental, Social and Governance) requirements into corporate governance and reporting is a good example – contained in a growing number of national and international regulations, such as **The Sustainable Finance Disclosure Regulation (SFDR)** of the European Parliament, which became mandatory on January 1st this year. Some challenges to these kinds of regulations are now emerging based on the assertion that Climate Change is Fake News.

Similar experiences emerged as the Covid pandemic erupted. Many attempts to mandate inoculations and mask-wearing were challenged with arguments that the assertions of vaccine safety and mask protection were false. ‘Criteria’ based on long-accepted health advice were suddenly dismissed (and challenged consistently in court) as ‘Fake News’.

Where does this leave facilitative conflict resolution?

This is a challenging question. My assessment is that the facilitative tools, drawn from ‘Getting to Yes’, are still robust, productive tools for those of us working in the conflict resolution space. However we do need to confront the challenges being directed at the traditional role of ‘Criteria’.

I have three suggestions:

1. Name it. The problem needs to be moved from the ‘Elephant in the Room’ to an issue that we name and explore. We know from our other training that ‘naming it’ is a great way to get started when faced with a big challenge.
2. Use our collaborative relationships to brainstorm possible strategies. We have a great community of professionals who share views internationally. Let’s put this on the agenda and see what we can achieve.
3. Use the advice from ‘Getting to Yes’ to encourage the use of a trusted umpire to adjudicate ‘the fairest or most appropriate [criteria] for your situation’.

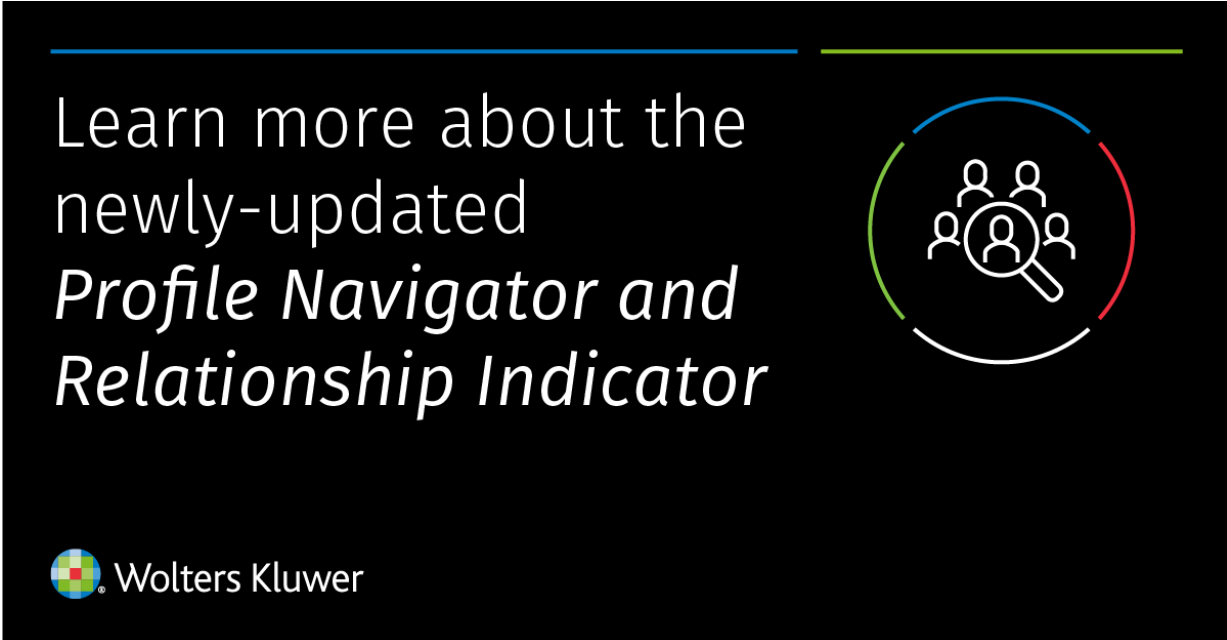
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