# DIFFERENCE MATTERS DEVELOPING CULTURALLY SENSITIVE MEDIATION PRACTICE

## Tony Whatling

### Abstract

This article aims a) to raise awareness of culture and diversity issues in the context of mediation and dispute resolution practice, b) to provide some theoretical 'frames of reference' that enable us to analyse such differences and c) to offer some practical steps towards the development of culturally sensitive mediation practice.

### Keywords

### Introduction

Given the multicultural and diverse population within UK society, very little attention has been given to the implications of culture and diversity for mediation practice.

If we extend our understanding of culture with a capital 'C' to include a small 'c', so as to incorporate a range of sub-cultures, including gender differences, we can recognise the need for greater awareness and cultural sensitivity.

It is beyond the scope of this article to explore gender issues in any detail, yet it does rank as one of the key sub-cultural issues, in most aspects of the topic.

The answer goes to the practitioner's value position that mediation works best when all parties are in a position of relative equality of power and are able to communicate relatively autonomously. In the same way that difference of first language between clients and mediators may, unless acknowledged and catered for, result in significant inequality of opportunity, so too many different styles of thinking and communicating (Whatling, 2012: 60).

The following quote is included because although the author's focus is on gender, if we substituted the word 'culture' for gender, the text effectively supports much of the focus of this article.

> If we can sort out (gender) differences of conversational style, we will be in a better position to confront real conflicts of interest – and to find a shared language in which to negotiate them… We would all do well to distrust our automatic responses to what others say, especially if our automatic responses are negative. Instead we should try to see things from the other person's perspective… If you understand gender differences in what I call conversational style, you may not be able to prevent disagreements from arising, but you stand a better chance of preventing them from spiralling out of control… Understanding the other's ways of talking is a giant leap across the communication gap between women and men, and a giant step towards opening lines of communication (Tannen, 1991:60-61).

A failure to address culture and diversity issues is to risk seriously limiting equality of access to mediation, and possibly to withdrawal from the process, by clients who experience ethnocentric, 'one size fits all' communication. We and they may be speaking a common verbal language, yet conversing from significantly different cultural constructs, may make it akin to speaking in different tongues.

In Scotland, a study looked at reasons for under-utilisation of mediation services by minority ethnic communities, drawing on information from minority ethnic organisations, focus groups, members of different minority ethnic groups and mediators. Some of the very significant findings were:

> Everyone agreed that effective communication required the mediator to be aware of the cultural and religious beliefs of individuals to whom the service was being provided. Since communication is more than language, cultural sensitivity was seen as an important issue by most organisations. It was suggested that cultural awareness training was essential to prevent stereotypical assumptions.
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> Culture is in constant transition and can have a range of attitudes, experiences and values existing within a single community. People from the same community with different upbringing will understand culture differently. Sometimes belonging to a particular community does not imply that the person is knowledgeable about its culture or conforms to all its generally accepted norms. Thus cultural awareness training emphasising that every individual has his/her own identity would be essential for mediators and workers from all communities
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> Training in cultural awareness and equal opportunities for workers at all levels of service provision, starting from the first point of contact, is necessary, to enable them to address the needs of people sensitively. A service where workers are culturally sensitive and deliver services on the basis of needs expressed rather than on preconceived ideas of what is expected by members of a certain community would be welcome. (Pankaj, 2000: ix).

## So how do we speak of such controversial matters?

A very common concern and potential inhibition when attempting to discuss cultural issues, is an apprehension about which words and labels are currently acceptable, in terms of political correctness.

Given the complexity of the subject and the multiplicity of literature and opinions, how do we develop awareness of particular cultural patterns, without attracting accusations of cultural stereotyping or, worse still, of prejudicialattitudes?

When discussing ethnicity, culture and diversity, a potentially safer and less controversial terminology is to speak of 'generalisations'.

> With generalisations, we look at a large number of people and we draw certain conclusions from what we see… There are exceptions to every rule but generalisations that come from research and from insights of informed international experts and professionals allow us to paint a fairly accurate picture of how people in a given country are likely (but never guaranteed) to behave. *(*Peterson, 2004: 27)

Essentially the key difference between generalisations and stereotypes is that the former are open to change, in the light of contradictory evidence and experience, whereas the latter tend to be rigidly adhered to regardless of new learning.

Three more contemporary frames of reference have evolved, that provide useful tools for understanding and guiding the mediator through this complex diversity landscape – 'cultural intelligence', 'cultural competence' and 'cultural fluency'.

### *Cultural intelligence*

Cultural intelligence is the ability to engage in a set of behaviours that uses skills (i.e., language or interpersonal skills) and qualities (e.g., tolerance for ambiguity, flexibility) that are tuned appropriately to the culture-based values and attitudes of the people with whom one interacts (Peterson, 2004: 89).

### *Cultural competence*

Cultural competence comprises four components:

(a)Awareness of one's own cultural worldview, (b) Attitude towards cultural differences, (c) Knowledge of different cultural practices and worldviews, and (d) Cross-cultural skills. Developing cultural competence results in an ability to understand, communicate with, and effectively interact with people across cultures. Cultural competence is a developmental process that evolves over an extended period. (Martin and Vaughn, 2007:31.)

### *Cultural fluency*

Cultural fluency arises from knowing something about the lenses that we look through and then learning from the surprises we encounter as we come to glimpse the world through others' lenses. In this way we begin to anticipate, internalise, express and navigate in unfamiliar systems.
(LeBaron & Pillay, 2006:187.)

In other words, as mediators we need to develop an ability to *watch, listen and think* outside of our own familiar cultural boxes, and begin to challenge our cultural assumptions. To quote Alan Alda - "Your assumptions are your windows on the world. Scrub them off every once in a while, or the light won't come in."

What is particularly relevant and helpful about the above frames of reference are the three key elements of *attitudes, knowledge, and skills*. These could be said to represent something of a 'holy trinity' integral to the essence of this article, and indeed to the whole business of effective and sensitive mediation practice.

## Defining culture

There is no shortage of definitions of culture. The following helpfully speaks more to its 'meaning-in-action' and daily life:

> For our purposes, culture is the shared, often unspoken, understandings in a group. It is the underground rivers of meaning-making, the places where we make choices about what matters and how, that connect us to others in the groupings to which we belong. It is a series of lenses that shape what we see and don't see, how we perceive and interpret, and where we draw boundaries…. Operating largely below the surface, cultures are a shifting, dynamic set of starting points that orient us in particular ways, pointing towards some things and away from others. Each of us belongs to multiple cultures, and so we are experienced in transitioning cultural boundaries within and between us from an early age.
> (Lebaron and Pillay, 2006: 14.)

So how do newcomers to this complex subject find a frame of reference, from the maze of historical, social anthropological, sociological and psychological literature, that makes sense, or 'speaks to them'?

Two such 'frames' that 'spoke' to me more readily than others were, a) 'high context' versus 'low context' cultural communication styles and b) 'individualist versus collectivist', (sometimes referred to as 'communitarian'), cultures.

Put simply, low context Western cultures tend to have less regard for formality, titles, status or deference to community elders and leaders. For example, in Western cultures, even at the highest international levels, commercial business is commonly carried out informally and on a first names basis.

Conversely, in non-Western cultures, 'status marker' titles are often of overriding importance. The order of entry into a room, introductions, seating arrangements, respect for seniority and titles are matters of very great significance.

Augsburger succinctly describes such cultural differences as:

> Individualistic (low context) cultures prefer directness, specificity, frankness in stating demands, confrontation and open self-disclosure. Conversely, collectivist (high context) cultures tend

towards indirect, ambiguous, cautious, non-confrontational, and subtle ways of working through communication and relational tangles. (Augsburger, 1992:28.)

As a generalisation, Western individualist 'cultural ideologies' tend to favour conflict as a way of 'bringing things out in the open' and with emotions expressed. Conflict, whilst it may be uncomfortable, is generally regarded as a positive force for change and improvement.

Conversely, non-Western cultural ideologies tend to be 'conflict avoidant' and to regard conflict as an aberration that reflects adversely, not just on the individuals involved, but also on family members and the wider community as a whole.

Writing under a heading of 'Variant concepts of conflict', Folger and Jones usefully describe aspects of such differences in terms of how different cultures deal with conflict:

> For example, a major distinction between East and West has emerged in the cultural conflict theory literature (e.g., Ting-Toomey, 1985, 1988). In Western-style cultures, individuals tend to view conflict as healthy catharsis for anxiety as well as a positive mechanism for invigorating moribund relationships. … It is more honest to be open about resentment and to attempt to resolve disputes. … In Eastern-style cultures, conflict avoidance is the norm… Whenever parties approach a situation of potential conflict either the disagreement is ignored or an intermediary is called in to resolve the conflict before it intensifies.
> (Folger and Jones, 1994: 141–142.)

The writers go on to say:

> In view of these cultural differences, mediators need to be ready to make certain adjustments to their concepts about mediation. Depending on the cultural needs of the disputants, mediators can sensitize themselves to recognise that their preferred procedures for interventions might need some fine tuning or even major alterations. The clients' cultural and ethnic dentity must be considered. (Folger and Jones, 1994: 143.)

Walter Wright usefully identifies some typical generalisations for differences between individualist and collectivist cultural expectations of mediation and mediators, which include some of the following.

Implications for mediation - for Individualists:
Conflict is regarded as a natural part of human interaction and that disputes are an inevitable consequence of differing interests, so conflict can be positive, exciting & inspiring.

Implications for mediation – collectivists:
Conflict is regarded as an aberration where in-group relationships are concerned and therefore represents a shameful inability to maintain harmonious relationships with others. Consequently, avoidance is common preferred approach to conflict.

Preferences & Expectations of Mediators - Individualists:
They would be professional, have had specialised training in mediation procedures, be Impartial and not

known to, or related to disputants. They will usually work directly with involved parties to dispute only, tend to work informally, [first names], in semi- formal office settings and usually work in joint session with all parties. They encourage direct communication between disputants as facilitators of communication, negotiation & decision making

Collectivists:

They tend to be less concerned for professional credentials and impartiality and have a preference for an 'insider' who knows the disputants at least in context of dispute. They tend to prefer respected members of their 'in-group' to be involved in mediation even though not directly involved in dispute. They may prefer shuttle for most negotiations; typically prefer evaluative mediators who are familiar with context of disputants and who would suggest resolutions that restore harmony for disputants and other relevant in-groups.

Individualists & collectivists hold dramatically different views of themselves & their proper relationships to others. As a consequence, their approaches to conflict resolution tend to diverge in equally dramatic ways…Effective mediators are aware of the cultural assumptions upon which their mediation models are based and endeavour to adjust the models in order to prevent contrasting individualist and collectivist paradigms from becoming obstacles to agreement (Wright, 2000).

> The conflict avoidant disputant will be likely to clam up and secretly decide not to comply with the settlement. Mediators should be wary that silence is not agreement. If parties refuse to participate, the mediator should slow the process down and caucus separately with both parties to learn their positions. Another possibility that might be encountered is that, pushed to the limits of endurance with an uncomfortable mediation, that precludes compromise because all hope of face-saving is lost. The mediator should be aware that aggression and defensiveness can be early warning indicators that this extreme face loss is underway. Once again an aware and sensitive mediator can intervene and stop this face loss before the mediation moves into deadlock. In all cases, the mediator must remain especially observant and attentive to individual needs when dealing with disputants from different subcultures. (Folger & Jones, 1994: 158)

Whilst it is reasonable to assume that most human beings would prefer to avoid losing face, being dishonoured, shamed, or made to feel guilty, there are very significant cultural differences that will impinge on mediation practice.

> Shame is an intensely painful social experience. "Nothing is so costly as that which costs shame," the Portuguese proverb observes…" Shame has watchmen," the Bantu say. The awareness of disapproval or rejection by the social context of significant peers can shape behaviour, control choices, silence differences, and conceal conflict. (Augsburger, 1992: 81/82)

The last sentence of that quotation is of substantial significance to culturally sensitive and culturally accessible practice.

In a lifetime journey towards culturally sensitive mediation practice, we are unlikely to be able to avoid mistakes - what matters is what learning we take from them. "Our best teacher is often our last mistake." Ralph Nader American political activist. "Our successes make us skilful, our mistakes make us wise." Rabbi Lionel Blue.

Some 20 years ago I joined a colleague who had seen each of the couple separately for the initial intake meeting. Given the high level of conflict and anger expressed by the female partner the mediator asked me to co-work with her.

The husband, a Japanese senior manager of a multi-national company in UK, was non- verbally expressionless and implacable. In conversation it was impossible to deduce anything whatsoever as to his emotions. Verbally he was polite, deferential in manner yet largely monosyllabic, mostly answering questions with a 'yes' or 'no'.

His wife, from Africa, was very extroverted, verbally and non-verbally expressive, frequently using raised voice and expansive hand gestures.

They had met in Africa, been married some ten years and had two children. As mediators we struggled, on the one to draw out thoughts, feelings and issues from him, yet at the same time calm her down, and manage her high emotion and constant interruptions. Finally, after some 40 minutes she let forth a very loud diatribe of expletives against him and moved as if to attack him physically. We duly separated them and, after meeting with each, terminated the session with a recommendation that they take legal advice regarding the contact, residence and property issues.

Many years passed before I came to understand the cultural issues presented by this case. As mediators, in deciding whether to try mediation, we had tended to focus on their behaviour and conflict styles, in a traditional Western individualist mediation model analysis, responding to the overt conflict rather than any cultural implications. How could this man possibly attend mediation and expose himself to very intimate family and personal conversations, including her very personal accusations, e.g. that he was having an affair and was attempting to evict her from the marital home, and yet maintain 'face'?

With the benefit of hindsight and reflective learning, much more time needed to be spent at the solo intake meeting, exploring with each of them what if any cultural implications might influence their ability to use mediation. It is very clear now that shuttle mediation might well have improved the chances he could engage in exploring such a desperately personal and 'face' challenging discourse.

OK – so what?

'So what' - as most mediation practitioners inevitably want to know - are the potential implications of such theories to our practice, how can this knowledge be applied?

For more specific advice on culturally sensitive mediation practice, Burnham and Harris offer nine useful practitioner guidelines – whilst not directly related to mediation, they are eminently applicable:

1. Culture and ethnicity are always important but not always obvious: explore issues of culture and ethnicity even when professional and client 'look' the same.

2. People who are different (from you) are not necessarily the same (as each other): don't assume that

people from the 'same' country, family, or local culture follow the same rules of behaviour, preferences and so on.

3.  Ethnicity and culture are socially constructed: as well as asking 'what is?' ask 'how do you…' sadness, joy, saying hello, leaving home?

4.  Hypothesising: through the process of hypothesising make your ideas, assumptions, values and prejudices open to colleagues and clients so they can be examined as to their usefulness and relevance.

5.  Suspend your belief: step outside of your own cultural rules that are often 'taken for granted'.

6.  Suspend your disbelief: step into other people's ideas, customs and patterns.

7.  Be 'clumsy' rather than 'clever': the value of 'not knowing' and the potential of curiosity.

8.  Not an educational lesson for the professional: curiosity of the professional is most useful to the family when it is related to the reason the client is consulting you.

9.  Be sensitive not superficial: You have a job to do.

(Burnham and Harris, in Dwivedi,1995: 196)

Finally, on this topic of culturally sensitive practice, what follows is an attempt to take such ideas forward, and to think about what sort of questions we might ask in our first encounters with people considering mediation. Particular words, emphasis or number of questions will vary according to the individual mediator's style and language, the particular clients and their responses:

'If mediation is to be helpful in your situation it's really important that I understand how it might work best for you and your family – so can you give me some ideas – for example, about……. help me understand more about…….'?

'Within your family and community how have conflicts and disputes tended to be sorted out in the past? Who in particular tends to be involved in that process, from within or outside the family'?

'Who tends to have the most influence or authority and respect in that process'? 'Where does that help usually happen – in the family home or elsewhere'?

'Is there any difference for either you or your family in how that happens now compared with past traditional ways'?

'Who else in your family, community or faith group is likely to have a strong interest and opinion as to what will happen if you come for mediation and about the decisions that you make here'?

'Apart from you as the birth parents, who else, if anyone, is significantly and actively involved in the regular day-to-day upbringing and care of the children?

'If nothing from the above feels like an issue for you now, at any point when we are working together if

something crops up I do hope that you will let me know straight away'.

'I addition to what I have said about not taking sides and being even handed, I will also be trying hard to be culturally sensitive and if at any time it does not feel like I am being, I do hope that you will let me know straight away'.

## Conclusion

In conclusion - It is interesting to reflect that attempts to define good quality *'culturally sensitive mediation practice'* can result in discovering that it is nothing more or less than *'good quality sensitive mediation practice'* generally.

That is not meant in any way to diminish the importance of raising awareness of culture and difference, but to ground it in the notion that *all* mediation practice should be sensitively designed around the particular needs of each and every individual party in dispute, regardless of the dispute context.

The hallmark of sensitive mediation practice must be to remember, that however familiar the story might be to the mediator, for the individuals involved it is probably    a unique, idiosyncratic, stressful and seemingly impossible dispute to manage or resolve. As such, our customers have a right to be provided with a bespoke service that reflects their individual conflict experience. One size does not fit all.

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**Tony Whatling**, M.Sc. CQSW MCOM**,** has over 35 years' experience as a family mediator, consultant and trainer. Prior to self-employment 25 years ago he was for 10 years' head of the department of social work education at Anglia Ruskin University Cambridge.

He has trained hundreds of mediators throughout UK in Family, Community, Health Care Complaints, Victim Offender and Workplace mediation contexts, and over 1200 Muslim family mediators in 15 countries worldwide – mostly in South East Asia, Middle East, (including Syria and Afghanistan), East Africa, UK, USA and Canada, He has presented several papers and workshops at international conferences, published over 25 articles, is a founder member of the Practice Standards sub-committee and a former governor of the College of Mediators. His book, 'Mediation Skills and Strategies - A Practical Guide' (April 2012), is also now published in Spanish.