**ADR Bulletin**
**ADR Bulletin**

Volume 12 | Number 6 Article 6

9-1-2011

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Recommended Citation
Brandon, Mieke (2011) "Questioning our questions - expanding facilitative dispute resolution questioning techniques," *ADR Bulletin*: Vol. 12: No. 6, Article 6.
Available at: http://epublications.bond.edu.au/adr/vol12/iss6/6

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ADR Bulletin of Bond University DRC

Revising ADR techniques

# Questioning our questions — expanding facilitative dispute resolution questioning techniques

**Mieke Brandon**

Questioning is what a dispute resolution practitioner does most. The National Practice Standards for mediators require practitioners to demonstrate competence in the use of certain types of questions: How? What? When? Where? What if? What makes this important to you? What would it take to get this resolved?[1] This range of questions opens up communications between the parties so the practitioner can facilitate, where appropriate, direct communication between them.

To recap briefly how questions are generally used in a facilitative model,[2] the practitioner changes the questions and language as they assist the parties to have a 'structured conversation' through the process that ends in 'wise decisions':[3]

- first (in the 'top triangle'), questions about the parties' comfort levels about being in mediation
- second, questions about their concerns and issues
- third, mutual and neutral questions that fulfil a useful list of issues or an agenda on the board and their priorities for the discussion
- fourth (in the 'bottom triangle'), in the discussion or exploration stage, questions about needs and fears, emotional and practical impact together with behavioural consequences
- fifth, questions about interests, suggestions, proposals and options for overcoming the identified issues
- sixth, questions to promote negotiations, dove-tailing the parties' common and individual interests together with questions that reality test[4] the consequences of proposed agreements
- seventh, questions about the wording and details of the agreement or the procedural consequences of not settling most or all issues.

In considering the fourth set of questions, it is important to remember that many parties have a need to 'explore' what happened in the 'past' that created the dispute, incident or misunderstanding, before they can talk about their 'present' situation, prior to being able to move on to the discussion about 'future' possibilities and their relationship. Similarly, the practitioner needs to decide if a private session is appropriate, for example before generation of a range of other options, final negotiations or, in cases of impasse, to check comfort levels. Practitioners may want to ask parties to imagine what it is like for the other side by 'putting themselves into the shoes of the other' to create a compassionate perspective. Subsequently, they may also ask the parties in private to get a bird's eye view to foster a substantive and emotional detachment. The practitioner also uses this opportunity to thoroughly question each party individually about their alternatives, best and worst case scenarios, reservations or motivations to create 'an outcome that all can live with'.

While these basic questions are important and cannot be ignored, there are a range of questioning techniques that appear to be somewhat neglected in the application of questioning in facilitative approaches to dispute resolution.

The focus of this article is on a range of relational questions to explore sameness and differences in the parties' relationship with each other that prevent them from moving forward. The intention is to review, refresh and inspire the use of a range of additional questioning techniques that may be new to some practitioners. Incorporation of some or all of the following questioning techniques may take the novice practitioner to a new level of competence and confidence in their approach to facilitative practice.

## Approaches

Different belief systems motivate practitioners in their particular approach and style. For example, some practitioners believe that parties need to address the reasons for the disputes, their impact and the consequences of the emotional effects on each party, before the parties can move on. Others believe that mediation is future focused and parties need to learn to communicate more effectively and efficiently to resolve their dispute. Yet others hold the belief that if parties can acknowledge their own roles in the conflict and recognise how each contributed to the problems between them, they can rebuild a relationship in which they can most likely make decisions for the future by themselves.

The perspective or framework of the practitioner will influence their approach to mediation. Practitioners who use exclusively transformative, narrative or solution-focused approaches to dispute resolution will conduct mediation differently from those who use facilitative or settlement-focused approaches. Depending on the practitioner's background, their particular dispute resolution training and the philosophical underpinning of their theoretical framework, they will use



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the process and skilled interventions (such as active listening, empathy, reframing, summarising, clarifying questions and reality testing) accordingly.[5]

### *Eclectic approach*

Many practitioners remain loyal to and become experts in one approach. Others have a more eclectic approach in which they use techniques from a range of models. The latter use certain interventions for certain parties and situations when they think these may work best. All practitioners use questioning at some time or another. Whether one uses certain questions in the pre-mediation stage or in private sessions when talking with one party, is a matter of purpose. In joint sessions, it is up to the practitioner's competence and confidence in their ability to manage parties' exchanges productively as required by the national mediator standards.[6]

In a facilitative-mediation approach, the practitioner is encouraged to keep parties talking with each other as long as is possible and productive so that they gain 'relational' understanding and competence to sort things out between themselves. This means that they have gained the ability to see new options and alternatives that they did not see before and are hence empowered through the process.[7] Relational questioning is useful in dispute resolution for assisting parties in conflict in the workplace, in family disputes and in neighbourhood disputes. Small and larger groups in conflict can also be assisted through relational dialogue encouraged through questioning techniques. In fact, any dispute in which parties will have some level of ongoing relationship with each other post-mediation can benefit from relational interaction to resolve differences. Even if parties decide never to speak to each other again, they have a 'relationship' of distance and boundaries.

## Questioning techniques

### *Relational*

Most practitioners are familiar with questions relating to the past that explore how a conflict arose. Questions about the present address the current situation. Questions about the future sound parties out about their relationships with themselves and the other side, once their dispute is resolved. Past, present and future questions can address parties' communication patterns and the state of their relationship within the context of their situation. Progressive questioning on the history of their prior relationship, current relationship and what is hoped for a future relationship (post the dispute) helps parties to glimpse differences and similarities in perceptions.

When parties exchange this type of information and each in turn comments in response to the questions, it becomes an interaction with a circular dynamic through what is called 'circular questioning'.[8]Circular questions include more-less, before-after and hypothetical what-if questions; they address differences in attitudes and perspectives and ways of behaving and experiencing --relationships. For example, a party could be asked to rank the person who has been most affected by a problem, dispute or conflict to the person least troubled by it, or how the interaction worked before the dispute and after.[9]

Through questions, practitioners can build the 'scaffolding' that parties may use to regain a relational perspective, for example a post-separation relationship of parental cooperation.[10]

### *Externalising*

Many disputants are stuck in a blame game and therefore adopt a positional stance. This makes it difficult for them to articulate the needs, fears and concerns that would explain why they demand something. From a narrative perspective, the following are useful exploration questions: What is the dispute about? What has kept you in 'the dispute'? How has the dispute got you to feel and think? Follow-up questions are: If it kept on, where would it lead? Would you be interested in a different/better relationship with …? Why or why not? By using these types of questions the conflict is externalised. The dispute becomes 'it' and can be discussed in terms of overcoming 'it' rather than the parties continuing to blame or demonise each other. Such an approach assists in 'separating the people from the problem'.

### *Hope*

It is important that, through relevant questioning, hope is created that the parties can do what they need to do in mediation to overcome differences, make decisions and agree to get on with their lives. From a solution-focused perspective, this hope is created by the disputants' own visions drawn from their frames of reference.[11]

Solution-focused questions include: 'What needs to come out of this mediation?' 'What are your best hopes?' 'What would be different once the conflict is resolved?'[12] Such goal-oriented questions, Bannink suggests, assist parties to create a 'best or better case scenario, or a good enough

Most powerful are scaling questions which ask parties to scale or rate something from one to ten. They are used to establish, compare and contrast the significance or importance of an issue for a party. Scaling questions may be useful to ask in a preliminary interview or private sessions to establish how different issues may have different priorities.

scenario'. Joint goals can restore co-operation and provide a glimpse into a preferred future.[13] These questions may be followed by building on what worked for the parties in the past to encourage them to look into the future. The practitioner asks them to consider, looking back in 12 years or so and assuming that things have improved: What might have helped things to have gone better?[14] These types of questions are similar to the questions that Cloke suggests for instilling hope, such as: What do you hope will happen as a result of this conversation? Why is this important to you? What kind of relationship would you like to have with each other? Bannink also advocates questions that create hope, such as: What are you hoping for that is best? What difference would that make to your goal? What is already working in that direction and what would be the next step towards progress or signal change?

Narrative questions that are future focused and hope creating include: What are you hoping this mediation/ conciliation will achieve? How would you hope to make decisions in mediation and manage the current emotional climate between you both?

In using these types of questions, the mediator's role is that of the 'teacher of hope'.[15]

### *Use of metaphor*

Questions to assist in externalising a dispute can lead into use of metaphors, which describe things figuratively or symbolically.[16] A question leading to the use of metaphor could be: 'Try to give it [the dispute] a name'. The name describing how a party perceives it could be: 'the snake in the grass', 'a prickly pear' or 'a volcano ready to explode'. The description can indicate the depth of feelings about a dispute. The practitioner can subsequently ask: 'If it is now a volcano ready to explode, how would you describe the situation once it is resolved?' A typical response could be 'a peaceful landscape'. Parties can use a range of metaphors that often fall into categories of describing, for instance, a journey, things from nature such as gardening, a known object, bodily movements or a game metaphor.

Practitioners may ask both parties to describe their experience of a dispute by using a metaphor. Metaphors can sometimes simply describe a meaning as the concept embedded in the metaphor is usually familiar to others.

Conversely practitioners select and use a metaphor to help both parties understand the situation more creatively. The use of metaphor can grab parties' attention, may overcome resistance to problem-solving and stimulates creative solutions.[17] As metaphors can also create emotions, Alder and Heather warn that a metaphor needs to be carefully chosen to bring about intended effects, it should not be too obvious, realistic or difficult to associate with. A practitioner could say: 'It seems you need to build a bridge between what has happened between you and how you can relate differently in the future?' The metaphor question can be followed up by a solution-focused question such as: 'What can you do yourself and what do you need from the other or others?'[18] A metaphor identifies and provides insight while depersonalising the issue or dispute. Appropriate use of metaphor can create a shift in context and reframe content.[19]

### *Scaling*

Most powerful are scaling questions which ask parties to scale or rate something from one to ten. They are used to establish, compare and contrast the significance or importance of an issue for a party. Scaling questions may be useful to ask in a preliminary interview or private sessions to establish how different issues may have different priorities.

A party can also be encouraged to use scaling questions to establish the degree of hold the conflict has over them. Again, the practitioner can assist a party to externalise the conflict by designing a symbol for the conflict such as X or Y. The person rates the control that X or Y has over their life from 1 to 10, 10 being no control and 1 being totally absorbed by it. The follow-up questions are: 'And if X or Y had less control over your life what would the rating be?' 'What would others notice about how they perceive


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the difference in you?' These questions may assist the person gain more control so the rating becomes higher as they concentrate on their strengths to make a difference in their situation.

Other scaling questions that focus on parties' communication[20] and can be used in joint session include: 'If you were both to give a mark on a scale of one to ten, one being problematic and ten being efficient where would you see it?' 'How did you succeed to be at this mark?' 'Why is it not less?' The focus is here on achievement rather than a 'failure', like how did the parties get to that mark and what do each need to do differently to better communicate in the future.

Scaling questions during the negotiation phases can establish what each party is fighting for. For example, practitioners can ask each: 'On a scale of one to ten, how important is this issue to you?' If an issue is a three for one and an eight for the other party, it may assist a party to give up something as something else may be much more important.

### *Miracle*

Another type of question stemming from solution-focused therapy is known as the 'miracle' question; that is, hypothetical questions designed to change the atmosphere of the conversation as the question helps change parties in their thinking.[21] Miracle questions are totally appropriate for mediation as they help parties focus on the future.[22] The practitioner may ask: 'If a miracle was to occur and your concerns, issues, or problems were resolved, how would you know this?' 'What would be different for you or both or all of you?' 'How could you tell a miracle had occurred?' and 'How would others notice that there had been a miracle?'

### *Vision*

Similar to a miracle question is the visioning question. Tillett and French describe a hypothetical question as seeking to elicit a party's feelings about or responses to an option or possibility.[23] The practitioner asks two questions to help parties get a vision: 'What would you see, hear and feel when you walked away with this dispute being settled?' And: 'What would you be telling someone else about having achieved a resolution?' The purpose of a question of vision is to gently force parties to imagine the dispute being in the past.

### *Reflective*

Reflective questions help parties stop and think.[24]The answer to reflective questions is not immediately known, particularly when they relate to the future. When a question is asked to recall something a nuanced perspective may open discussions further.

### *Self-reflective questions for practitioners*

In reflection on our own practice the following questions may be helpful: 'What is our own vision of mediation and what would we be saying about it?' 'What would others say about what and how we do this?' When talking about recent mediations and reflecting on interventions and techniques used, ask yourself: 'What was the miracle moment in the session and how did it come about?' This will assist in examining whether it was a process intervention or a practitioner asked a question that turned discussions around.

Practitioners using a facilitative approach to dispute resolution may want to experiment cautiously with the questioning techniques described above. By adding to the familiar techniques and interventions, including the usual questions as well as the additional questioning techniques, practitioners are provided with a range of powerful tools in their repertoire. Varying the questioning in the different stages of the process will significantly influence conversations between practitioners and parties. As such the practitioner must remain vigilant and observant and not manipulate the content of discussions such that parties feel alienated from the conversation or perceive bias.

Relational questions can positively be influential when used appropriately as they help build discussions about differences and commonalities between the parties, highlighting shared and individual goals, co-operative needs and private fears, while working towards decisions that fulfill most or all of their interests. A varied repertoire of questioning techniques assists practitioners to ask the right question at the right time thus facilitating the exploration, discussion phases of the process towards hope in a future in which disputants can generate options for mutual gain. By fostering interest based negotiations the parties and the practitioner can also reality test how the suggestions, proposals and decisions they make will work, in the reality and practicality of day-to-day life, for all concerned. Having a varied range of questioning techniques encourages nuanced discussions that can influence progress subtly.

Through questioning our use of questions practitioners can focus on their interventions that assist parties become hopeful in reaching agreements that are balanced between their content, procedural, psychological and relational needs.[25] Every question and language choice will make an impact.

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*Mieke would like to thank Tom Stodulka for his comments and support.*

## Endnotes

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2. Fisher, L and Brandon, M, *Mediating with Families* (2nd edn, Thomson Reuters: Sydney, 2009) p. 19.
3. Mediation CRMD 7000 Mediation by Serge Loode, private conversation.
4. See Boulle and Nesic (2010) pp. 182–186.
5. See Boulle and Nesic (2010) pp. 151–154.
6. Australian National Mediator Standards, see Approval Standards, September 2007 http://www.nswbar.asn.au/docs/professional/adr/documents/ApprovalStandardsSept07.pdf, Practice Standards, September 2007<http://www.leadr.com.au/documents/Practice%20standards.pdf and Commentary on Practice Standards by Sourdin, T (September 2007) <http://www.bond.edu.au/prod_ext/groups/public/@pub-law-gen/documents/genericwebdocument/bd3_006505.pdf>, accessed 15 June 2011.
7. O'Reardon, D, 'What does

"empowerment" look like and how can mediators facilitate it?' January 2011 at <http://www.mediate.com/articles/oRearDonD3.cfm#> accessed 24 January 2011.

8. Originally mostly used in the Milan family therapy and has proved very useful in mediation with more than two people.

9. Palazzoli, S et al. 'Hypothesizing-Circularity-Neutrality: The Three Guidelines for Conductor of the Session' in *Family Process* vol. 19 1980 pp 3-12.

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12. Bannink above note 11 p 43.

13. Bannink above note 11 p 3 and p 44.

14. Cloke, K 2005 in Bannink above note 11 p 38.

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16. Brandon M & Robertson L *Conflict and Dispute Resolution* Oxford University Press, Melbourne 2007, pp 173-174.

17. Alder, H & Heather, B *NLP in 21 Days* Piatkus Books UK 2005, pp 164-77.

18. Bannink above note 11 p 42.

19. Fisher & Brandon above note 2 pp 287-289.

20. Bannink above note 11 p 118.

21. Bannink above note 11 p 37.

22. Thompson J 'Reframing and beyond: lessons for Mediators from the School of Brief Therapies', *Australasian Dispute Resolution Journal* vol. 17, no. 2 May 2006, pp 93-4.

23. Tillett, G & French, B *Resolving Conflict A Practical Guide* Oxford University Press Melbourne 2006, p 62.

24. Brandon & Robertson above note 16 p 160.

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# Contributions

## Contributions to the ADR Bulletin 2.0

The ADR Bulletin will in future be published electronically as part of the Bond University Dispute Resolution Centre ADR News.

The DRC was established in 1990. During the past 21 years it has undertaken research, teaching, training workshops and dispute resolution consultancy work throughout Australia and New Zealand and in many other countries. The current Director of the DRC is John Wade and the Assistant Directors are Libby Taylor and Linda Kochanski. The Centre Administrators are Cheryl Hensel and Jane Hobler.

The following contributions are invited for issues of ADR Bulletin 2.0:

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- Case notes on recent court decisions
- Book reviews
- Shorter articles on topical and practical ADR subjects
- Case studies
- Survey studies
- Information on dispute resolution developments in various environments

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