

EQ v IQ

Do lawyers and mediators need emotional intelligence? **David Bogan** investigates

The story made headlines around the world last year. Crisis deepens as apology plea rebuffed. Relations between China and Japan were at their lowest point in decades, with reports the neighbours were just about on a war footing. These reports saw US\$178 (\$242) billion wiped off the stock market. Both sides were said to be “talking past each other”.

Why? you ask. What had brought these two superpowers to the brink of war? Were major untapped oil reserves at stake? Was a strategic land grab involved? A spy scandal perhaps? Nothing so simple. The world was on the edge of its seat because of the emotions triggered by a controversial visit to a cemetery.

Japan’s Prime Minister, Junichiro Koizumi, had paid due respect at the Yasukuni Shrine where his country’s war dead are buried, and in the process created the major diplomatic incident with China.

In this part of the world, bitter memories linger of World War II. From the Chinese perspective, Japanese aggression caused tens of millions of deaths and over \$1 trillion of financial losses in the Asia-Pacific region.

While the Germans built a monument in memory of massacred Jews, the Japanese first hung their war criminals and then buried them in sacred ground,

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along with 2.5 million military war dead, at the shrine visited by the Prime Minister.

Two major countries seriously at odds over what the Chinese ambassador described as 'hurt feelings'. All because no one paid any attention to what the Chinese were saying about the problem. Their problem: no one took them seriously. No one bothered with the emotional component.

From the Chinese perspective, the Prime Minister's visit signalled an unacceptable recognition, an honouring even, of Japanese war criminals responsible for the deaths of countless Chinese in what to them were terrible and unforgivable crimes.

The Chinese were justifiably outraged because of what the right hand side of the brain was telling them. The side that deals not with what might be technically and legally correct but with the emotions of fairness and justice. In this light, the visit was deemed grossly unjust. How could he be so insensitive? How could he so publicly honour murderers?

Public honour and murderers make for strange bedfellows when viewed from a victim's perspective.

In more than 20 years in banking and finance, I never ceased to be mesmerised by what drove people's decisions. One incident looms large: I was negotiating a contract in which a client was selling his entire assets for \$5 million. Just before signing the agreement, the client mentioned he would have nothing left, nothing to celebrate with. Remember, this was a man to whom I was about to hand a \$5 million cheque. That was irrelevant; what mattered was his emotional attachment to the asset he was selling – lifetime's work and effort. So I added an extra clause to the contract: "plus a case of French wine". He signed.

This got me thinking even more. I knew about the what, where, when and how; what I couldn't understand was the why. So I trained

There is now clear scientific evidence of a shortcut to the 'emotional centre' or 'lizard level' of the brain

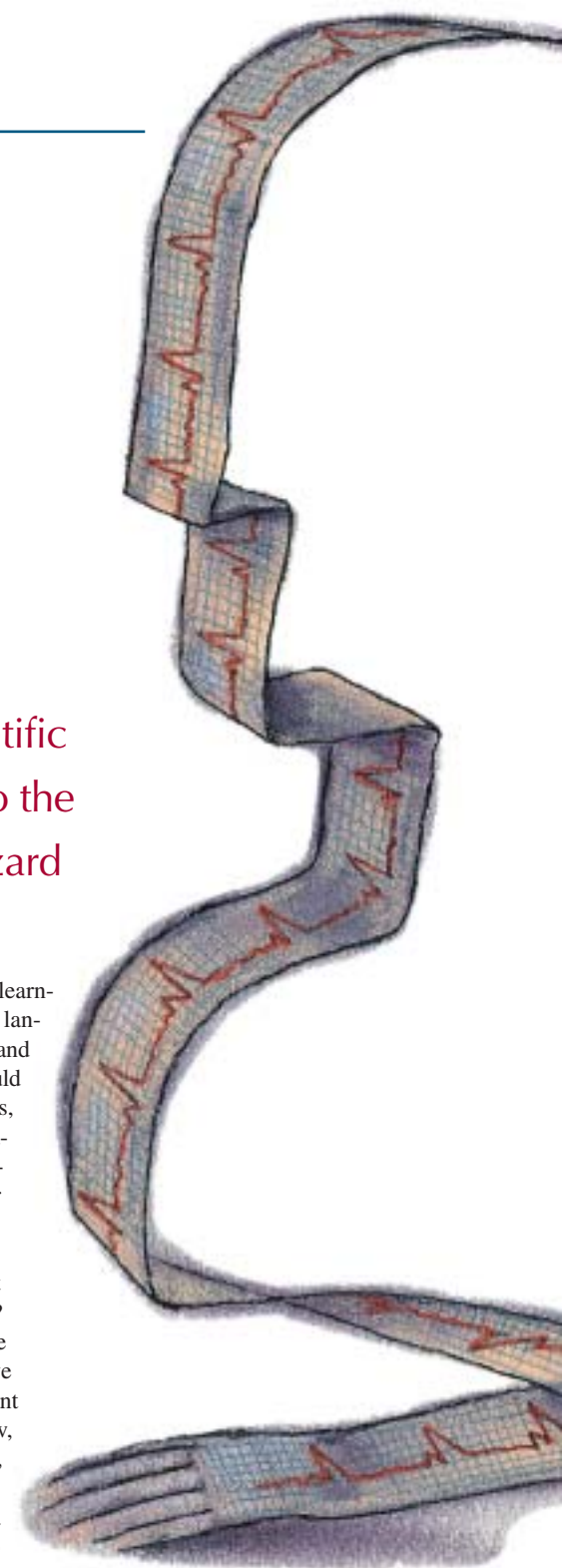
as a telephone counsellor and spent ten years learning to understand and recognise a whole new language as people discussed their greatest fears and sorrows. I learnt that major shifts in attitude could occur during even the briefest of conversations, bringing about major transformations. Fundamental changes in attitude based on inner feelings and often without even knowing, or discussing, the content.

So, do lawyers and mediators need 'emotional intelligence'? The answer is Jewish. It lies in another question: Is the Pope a Catholic?

If the Pope were not a Catholic, he would be able to present a perfectly rational and objective view of the Catholic Church. Do Catholics want this? Heavens no, they want a Catholic view, with all its intrinsic values and idiosyncrasies, foibles and right brain emotional messages.

There is now clear scientific evidence of a

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Alternative dispute resolution

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shortcut to the 'emotional centre' or 'lizard level' of the brain. This is the Amygdala that will trigger an emotional response before the cortical centres have fully understood, or even processed, what is happening. It responds to pictures, not words. It is also worth noting that intuition, or our emotional centre – that is the Amygdala – is in the head, not the heart.

This is where confusion arises, through a common misnomer. What most people call 'emotional intelligence' is actually and more correctly 'intuitive intelligence', which is a combination of both your emotions and your reasoning.

Albert Einstein, who developed the theory of relativity 100 years ago, wrote, 'The intuitive mind is a sacred gift, and the rational mind a faithful servant, but we live in an age that has forgotten the gift and worships the servant.'

Even in 1905, as a brilliant, though un-recognised scientist, he was able to define the clear difference between an instinctive – or intuitive approach – and a rational one, and then give his view of their respective uses and values.

We now need to grasp that the brain first instantaneously makes an overall analysis, then makes a decision based on emotion/intuition, and finally rationalises/justifies that decision, a process that allows us to conclude that emotion drives all good decision making.

Intuition is both genetic and experience-based, instantly evaluating all the input from sight, sound, touch, smell and taste – this is why the right brain processes in pictures, and the left brain processes in words. We wouldn't survive without our intuition because the left brain could never think, and act and get us to respond fast enough in words. The total mass brain input is something like 40 billion hits a second, of which 2,000 are immediately identifiable.

To put this into English for mere mortal lawyers, consider the 'e factor'.

Ameritech had 30 top lawyers reviewing all of the due diligence process for the company's proposed takeover of a major telco. Their instructions were to review every document and to red flag the critical ones – those that had the 'e factor'. None of the lawyers knew what the 'e factor' was, so the CEO of Ameritech flew from New York to enlighten them.

The 'e factor' is the number of times the letter 'e' appears in the word 'Jesus' that you say to yourself when you look at a document.

They all knew and understood immediately what he meant. What they didn't understand was that he was not buying their legal knowledge for a month, he was buying 30 years experience and intuition from each of them.

Again, for the lawyers out there, nothing demonstrates this better than the jury system on which we and our legal system so rely – twelve people selected not for their ability to absorb and analyse facts but for their intuition. Their ability to relate to that part of the brain where 'mens rea' or guilt sits, and by their own experiences second guess the accused person's 'intent' – intent making the difference, for example, between, acquittal, manslaughter or murder. Given the same set of facts, it is the 'intent' of the person that defines the outcome.

So how and why does this happen? After 20 years in finance, and ten years in crisis counselling, I had a

good idea of the two separate processes, and knew how they worked in practice. What I didn't have was a scientific connection. Then one day, while driving to the airport, I heard a world famous paediatrician being interviewed on the radio. He had noted a worldwide phenomenon: the ability of infants and young children to relate to adults regardless of race, language or culture. They were communicating on a right brain, non-verbal level, which was universal. The penny dropped.

Their communication was based on 'safety'. From conception, our right or intuitive brain operates to keep us safe – it does this through the whole of our lives, running our body until its final breath.

The left or rational brain grows and develops, reaching a peak in adulthood, and then declines again in old age. We have all noticed how old people often act like children. Now you know why.

Because all of our initial 'intuitive' decisions are about safety, the left brain defaults to the right brain to ensure that any decision we make is going to be a safe one. This

also applies to organisations and institutions, where of course the prime safety involved is that of the institution. They develop 'rules' which replace the right brain function. Hence you will find that institutions and organisations are often driven by fear. It is a fear, and almost always an irrational one, for their own safety.

Why is this important for lawyers and mediators? Lawyers and mediators often deal with people at the point where the crisis deepens as the apology plea is rebuffed. If such failure to grasp the other person's emotional response over a graveyard visit is sufficient to put two major powers almost on a war footing, then so is its ability to impact on the mundane everyday problems that our clients generate and we litigate, mediate and facilitate.

So, to answer the initial question: Yes, the Pope is a Catholic, and yes, lawyers and mediators do need emotional intelligence. It will add a vital and interesting lifetime dimension to your work that will continue to make it highly satisfying, and challenging.

David Bogan is an international mediator who works in several countries and across several jurisdictions. See: www.davidbogan.com

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