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Rediscovering Mediation
in the 21st century

**MEDIATING EMPLOYMENT CONFLICTS:
PRESERVING, NURTURING AND HARNESSING
HUMAN CAPITAL IN ORGANISATIONS**

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MEDIATING EMPLOYMENT CONFLICTS: PRESERVING, NURTURING AND HARNESSING HUMAN CAPITAL IN ORGANISATIONS

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In a period of five years Ralph Norris, Chief Executive of the Commonwealth Bank of Australia, has managed a huge improvement in what, according to the New Zealand Sunday Star Times[1], had been 'Australia's least satisfying bank, (by) combining the nuanced art of getting staff engaged with hard-edged rigour around financial performance.'

External measures indicate the extent of the improvement. According to Cornell and Hooper, CBA is now closing the gap on first-placed ANZ in the league tables for most satisfied customers and on the 'closely watched, confidential corporate confidence index, which measures 25 sentiments across governance or performance, CBA, its management and Norris rose from the bottom or near bottom bank to topping or running second. The past three years, its shares have traded at a premium to major rivals. In the latest KPMG performance survey, it was the most profitable bank with the highest marked capitalisation.'

However, for this paper and its theme, the really striking information is contained in the following table:

What CBA Employees said In 2005	What CBA Employees said In 2010
• Hierarchical • Politics • Long Hours • Bureaucratic • Profit • Cost Reduction • Risk-averse • Silos	• Caring • Collaboration • Good place to work • Customer-focused • Teamwork • Clear Goals • Improved culture • Performance • Proud

And this is a company with 11 million customers and 44,000 staff!

So if we needed any justification for attention to the issues raised by the topic of this paper – and of course an audience such as yourselves does not - then this case study would provide evidence enough to convince the most sceptical.

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[1] Cornell, Andrew, Hooper, Narelle, NZ Sunday Star Times, 12 December 2010, 'Banking on power of toughlove'.PgD4

So how did Norris achieve this?

'The revolution at CBA has been a people one: more engaged staff leads to more satisfied customers and wealthier investors. Norris reflected that it is not a complicated formula…. "Most of what we do in the business is not rocket science; the best plan is a simple plan that is executed really well. When you get people actually owning it, the results come; it can't be enforced from above. It's about people" '[2]

A satisfied and engaged workforce might logically seem to be connected to performance; however it is possible for employees to be satisfied with long-established and comfortable routines without being productive. Norris indicated that the key to implementing change is senior management being fully committed to honest and open communication with employees, where feedback on improvements and targets is constantly sought, exchanged and valued. Team-based solutions, and generation of options using a transformative model of mediation or negotiation, empowers employees to become motivated, take ownership of the business success and have pride in their own individual and team achievements. Using collaborative techniques for recognition of potential issues, employees also become self-managing and joint problem solvers who can recognise disharmony developing and work together to transform relationships rather than settle disputes. Norris' approach to management also addresses the perceived power-imbalance of an ineffectual hierarchical system, by valuing the collaborative input of all staff: 'Everyone has equal responsibility solving issues, whether it is the CEO or a teller.'[3]

In modeling this behavior, on a weekly basis Norris congratulates the employees who have received customer compliments and studies the customer complaints with a view to find out why there were problems – rather than to punish. This creates opportunities for all employees to learn. By modeling the behavior that he believes in and expects from the employees, he has earned their trust and respect and that of his competitors. In doing so he provides the 'informal, regular and meaningful feedback' referred to later in this paper.

It is important not to see this example – stunning though it is – as an isolated one. The issue of transformative leadership has been explored over the past decade in an increasingly focused way.

Prevention of Employment Conflict[4]

In the employment area it is better to anticipate and prevent conflict before it arises and the most effective way to prevent a culture of abuse of power and inappropriate professional behaviour is to start at the top. Organisations should ensure positive interest-based alternatives are modeled by the leadership of the business or organisation.

In the field of leadership studies, increasingly, the limitations of transactional leadership are being recognised and the value of transformational leadership is being acknowledged. Transformative concepts can challenge the values of rights-based and hierarchical

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[2]Cornell, Andrew, Hooper, Narelle, Supra
[3] Supra
[4] See also Goldblatt, V.M., 'Mainstreaming Mediation: the role of the consensual process in the employment area.'
Institute of Arbitrators and Mediators Australia, 2006 National Conference, Palm Cove and
Goldblatt, V.M., 'The Role of Mediation in Addressing Allegations of Power Abuse in Workplace Relationships', Arbitrators' and Mediators' Institute of New Zealand, Annual Conference, Wellington, 2009.

organisations and contribute towards a change to a healthier, more constructive (and productive) culture in the workplace.

The problem, Lester Levy of the Excelerator Institute for Leadership at Auckland University says, 'is not with the workers, but the leadership style of their bosses. In the text-book jargon, it's known as transactional leadership – the common model in which the boss sets the goals and objectives and tells the workers when they do well or badly'.[5] In itself it's not ineffective – you can still be successful – but this style is causing increasing disconnection between the workforce and management for a number of reasons, Levy says. It doesn't create enough meaning for the workers to make them want to engage and they feel they're not listened to or respected, it dehumanises the environment. Workers disengage and they don't share their resources, their talent and their ideas.

There is good evidence that people, whether they are skilled knowledge workers or unskilled, can reduce their productivity by 25% without their close contact supervisor even noticing anything different. So it could be that for every four people you see, you are paying the equivalent of one to do nothing. Levy and others believe that answer is transformational leadership in which bosses treat people 'like hearts and souls rather than heads and hands. Our organisations are severely over-managed and under led. We don't want the pendulum to go too far the other way, but we want management and leadership to be balanced so we have targets and standards which are important for quality, but the whole process is humanised so people get meaning and accomplishment from work and feel they want to contribute.'

Levy says a study of 131 companies in the United States showed 67% of the capacity that managers needed to run an excellent organisation was emotional and 33% rational, procedural or technical.

'What is the currency of excellence? Relationships. What happens in transactional leadership? Relationships are secondary or tertiary; it's all about getting a measure met. I'm not saying measures aren't important but there's more to life'.

Levy also says there's bad news for companies that rely on annual performance reviews to assess an employee's development. A recent international study of 90,000 workers in 235 companies showed regular, informal, meaningful feedback was the best way of improving productivity. It was associated with a nearly 40% increase in performance and 20% rise in 'discretionary effort'. But there was a negative impact of almost 30% in people who'd had their weaknesses highlighted in an annual performance review.

In the past decade research has been done into what an organisation needs to do to create a positive culture where problems are dealt with constructively and thoroughly and the integration of consensual processes into the business environment is crucial to the creation of the right culture. Processor Kenneth Cloke's work in this area aligns with parallel developments in mediation research, such as that done by Bush and Folger,[6] and focuses frequently on the employment relationship. He argues for a paradigmatic shift to transformative rather than problem-solving processes and, in doing so, he challenges the conventional techniques of mediation and identifies the inadequacy of 'settlement' as opposed to 'resolution' of conflict.

[5] Levy, Lester., Sunday Star Times 16 July 2006
[6] Baruch Bush, R and Folger, J. The Promise of Mediation Jossey-Bass 2005.

'Conflict resolution', Cloke says, 'differs from conflict suppression and its less objectionable cousin, conflict settlement, in its use of honesty as a means of focusing, even intensifying, the conflict – not as judgement but as meaning'.[7]

Cloke argues at the deepest and most philosophical level that mediation needs both honesty and empathy. 'Transformation and learning require awareness and listening, just as empathy and honesty require each other... Honesty without empathy becomes brutal and judgmental, while empathy without honesty turns sentimental and ineffectual. To reach deeper levels of honesty, greater empathy is required to disarm defensiveness and judgment. To build great empathy, deeper honesty is needed, to keep it from feeling false and make it practical.' [8]

In *Resolving Conflicts at Work*, Cloke and Goldsmith say 'we pay a heavy price for these conflicts, in litigation, strikes, reduced productivity, poor morale, wasted time and resources, loss of important relationships, divided organisations, and reduced opportunities for learning and change. Yet many of these conflicts are either avoidable or completely unnecessary. Most arise from simple miscommunications, misunderstandings, seemingly irrelevant differences, poor choices of language, ineffective management styles, unclear roles and responsibilities, and false expectations. The causes of our conflicts often have nothing at all to do with the issues we are fighting over, and can be corrected through learning and dialogue'.[9]

Transformation they define as: '... dramatic, all-encompassing, lasting change. Transformation is not minor, incremental, small scale, linear, or transitory. It leaves us different from the way we were before, and alters our sense of reality. Transformation means allowing what is stuck in the past to die so our present and future can live.'[10]

Again, it is at the level of system and structure that these organisational values are embodied – either negatively or positively[11].

Current Issues Affecting Dispute Resolution Policy and Practice

The buzz phrase for the 21st century is 'Engaging Global Mindset', with many workplaces becoming increasingly multi-cultural and diverse. After a global recession new policies for the creation of growth, new industries, privatisation of state-owned businesses and major restructuring of many businesses creates a flexible labour market that demands new styles of management and organisation. Management styles must mirror these shifts to ensure growth and survival. Autocratic employers who command from the top will not be as successful as consensus-building managers in retaining a multi-dimensional workforce that is ethnically diverse and multi-generational. The leaders of successful businesses will embrace the changing demographics of their employees and become agile in obtaining a spectrum of viewpoints from within their business to fully appreciate the demographically and geographically changing global market.

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[7] Cloke, K., Mediating Dangerously: The Frontiers of Conflict Revolution, Jossey-Bass, 2001.p27
[8] supra
[9] Cloke, K and Goldsmith, J., Resolving Conflicts at Work, Jossey-Bass, 2000 pxx
[10] supra p5
[11] See also Cloke, K., Goldsmith, J., The End of Management and the Rise of Organizational Democracy, Jossey-Bass 2002.

Influence of Generation Y

Another catalyst for change in organisational leadership and culture is the presence now in the workforce of the cohort we know as "Generation Y". We can identify both the importance of the right environment to get the best out of Generation Y and also an imperative to create new ways of addressing conflict in the workplace.

The members of Generation Y who are just now entering the workforce were born between 1978 and 1994. Peter Sheahan has examined the influence, characteristics and consequences of dealing with employees in this group. He says 'in reality my clients know they have a problem. They do not need to do a survey to find out. They have high attrition, or a small talent pool, or poor performance or some other challenge that is affecting their company's bottom line. This is enough to signal to them that they have a problem and it needs to be fixed.'[12]

What is clear already is that the old ways of people management are not achieving the desired outcomes in the workplace. Demographics suggest that they will increasingly fail to do so.

We can't expect Generation Y members who are bright, able, and equipped with a university degree to be grateful when they get a job. We can't, as employers or managers, expect blind obedience. We can't expect respect for self-proclaimed authority. We won't get it. Respect will be earned or Generation Y won't accord it. They aren't impressed by status or rank and hierarchies just seem silly.

One of the most telling of Sheahan's statistics is his identification of the motivators for this group of employees. In order these are:

- culture
- team
- management style
- flexibility
- conditions
- salary

The most startling thing about this list is the low place salary occupies on it. It is culture, team values, management style and the flexibility of the environment that will attract and retain these employees and these all require interest-based approaches to problems, not rights-based ones. (It also bears a significant correlation to the list provided at the beginning of this paper for CBA employees.)

Gen Y employees will not be told to do things: they will leave if they don't feel involved and consulted and respected – no matter how young and inexperienced they are. They will simply go elsewhere for a job. They aren't afraid of change. As Sheahan says 'Generation Ys love a change and their ability to adapt to a constant state of flux makes them extremely valuable in the process of innovation and achieving improved productivity. They will not resist the introduction of a new technology that can increase work efficiency.

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[12] Sheahan, Peter, Generation Y: Thriving and Surviving with Generation Y at Work, Hardie Grant Books, 2005, pp5 – 6

They will demand it . . . Here is a generation that doesn't need help managing [change] because they own it. It is a part of their work ethic and the culture they thrive in.'[13]

This, of course, is one of their strengths and why it is worthwhile for business to adapt the working environment in ways that help Generation Y to flourish.

The Role of Consensual Processes in the Workplace

One of the key ways for developing the kind of business environment identified above is the provision of appropriate dispute resolution processes. Employers, managers and HR professionals need to listen to dispute resolution professionals. They need to understand what we are saying about decency and dignity in the workplace. It is mediation and mediators who hold the key to productive, stable and harmonious culture. Generation Y won't be bullied the way their parents were bullied. They won't stay in jobs that make them unhappy or where they don't feel valued. They will vote with their feet. Add to this the concurrent need to retain an aging workforce beyond its expected retirement date and you increase the pressure for a change in values in the workplace.

The integration of negotiation and mediation into the workplace is critical to business survival, employee retention and a healthy financial return for the company or organisation. Negotiation and mediation should be core competencies for executives. Danny Ertel writes of the need to create a negotiation infrastructure within the modern corporation 'as partnerships, alliances, and other agreements become more important in business, the pressure to treat negotiation as an institutional capability, rather than as a series of discrete events, grows stronger. In response, a number of companies have begun to take a fresh look at the way they negotiate. They have found that building a strong negotiation capability is not a matter of creating a set of hard-and-fast rules for all negotiations – putting negotiators in bureaucratic straitjackets won't work. Rather, it requires a different, more coordinated approach to organising and managing negotiations.'[14] Rapid turnover of staff, frequent exit packages and mounting incidence of employment relationship problems should be key indicators of the need to upskill at the senior levels of the organisation.

'Whether conflicts arise from cultural variations, personality differences, divergent belief systems, competing self-interests, or antagonistic demands for attention, wealth, and resources, we always have a choice about how to respond when it does arise. We can play it safe, retreat from dialogue, and move against our opponents based on fear of differences, a desire to suppress them, and a need to satisfy our own selfish interests. Or we can take a risk, engage in dialogue, and move toward our opponents based on a celebration of differences, a desire to learn from them, and a desire to collaboratively satisfy everyone's underlying interests.

Every conflict, without exception, creates an unparalleled opportunity to wake up. It increases our awareness of what is actually happening around us and teaches us how to become more skilful and successful in our communications and relationships. It allows us to understand, discuss, and learn from our differences, and to recognise that each of our conflicts offers us a unique opportunity to turn our lives around. Taking a risky approach to conflict resolution allows both sides to discover newer and deeper levels of understanding,

[13] Sheahan, Peter, supra
[14] Ertel, Danny., 'Turning Negotiation into a Corporate Capacity', Harvard Business Review, May – June 1999, p4

improve their skills and relationships, and find better solutions than either side thought possible. For these reasons, conflict is a valuable personal and organisational resource and a powerful source of learning, development, and growth.'[15]

A failure to resolve issues early encourages employers to terminate employment agreements with disaffected workers rather than to address the problems and continue the relationship. If collateral damage and difficulty are to be avoided, then the Human Resources professional should be focusing on improving the relationship within the workplace, especially if they belong to a large organisation where workplace culture can be adversely affected by differences between individuals, individuals and their managers, or conflict within sections of the organisation. And they should be making better use of mediation and mediators to do so.

It may be that a small owner-operated business or one without a dedicated Human Resources professional needs to contemplate the use of either a private mediator or the state provided Mediation Services as a first measure but, in other cases, staff trained in Human Resources should have an understanding of the fundamentals of consensual dispute resolution and be committed to applying those for the benefit of all employees.
We need them to have an ethical commitment to fairness and equity, to the fundamental value of treating employees with decency and dignity. This also makes the best business sense. As the CBA case demonstrated, if you want people to be productive, committed to their employer, self-motivated and responsible, then you treat them with respect. You encourage good behaviour and develop mutual problem-solving approaches for when difficulties arise. Employers, big or small, won't just have a happier workforce, they will have a workforce which contributes better to the bottom line.

So the challenge for mediation as a process is to become mainstream, not a side road to nowhere, and the challenge to Dispute Resolution and Human Resource professionals is to integrate these principles into often hierarchical organisations frequently paralyzed by entrenched power and traditional views of management, some of which are uninformed as well as unsupportive.

The HR professional will need to leave behind outdated and limiting notions of being there 'to support managers' and replace those with the recognition that every member of staff is a client. The HR advisor or team is there to support the employment <u>relationship</u>. They can do this by using mediation skills and strategies to assist both manager and employee to resolve their difficulties by agreement; they can provide training in dispute resolution options and mediation /negotiation skills for managers; and they can commit to these as a core capacity in business. This means including them as a required competence in job recruitment and making training in them compulsory for existing managers.

Finally, they can use either private or public mediation services for their primary purpose, which is the resolution of differences in the workplace, rather than as a way of negotiating exit packages for terminated employment relationships.

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[15] Cloke, K. and Goldsmith, J. <u>The Art of Waking People Up</u>, Jossey-Bass, 2003.p212

The Role of Codes of Conduct and Dispute Resolution Procedures

Codes of conduct should be aspirational. They should describe the culture of respect, dignity, and responsibility that the organisation is committed to fostering. This code should be positively phrased (what conduct is encouraged) not negatively (what conduct will be punished) and should be endorsed and modeled by the entire Management Team.

A sound dispute resolution system should be introduced throughout the organisation along the lines discussed later in this paper. It should be developed through consultation and engagement with the workplace environment and, again, it needs to have top-level sign-on.

The focus of the dispute resolution system should be on consensual outcomes. Mediation (prompt, informal, and low level) should be the option of first choice. Investigative processes should not be used for interpersonal difficulties unless mediation has first been attempted.

Only if mediation is inappropriate for reasons of safety, should any rights-based process be used before interest-ones have been exhausted. It is for this reason it is strongly recommended that personal harassment (the current buzz label for which is "bullying") be excluded from formal policy and procedures. There are more effective ways of discouraging or responding to this behavior.

However, should conflicts arise despite best preventative frameworks, there is a need to design and implement sound dispute resolution systems to deal with those difficulties.

In a paper presented in 1996, Jennifer David identified inbuilt features in an organisation that work against effectively implementing systems to manage disputes: [16]

- A hierarchical structure with decision making reserved for senior managers who retain much authority;
- An emphasis on punishment and discipline rather than on consensual decision making where possible and appropriate;
- An entrenched culture of winning being more important than solving the problem;
- A culture of not admitting mistakes;
- A traditional adversarial culture in which there is a perception that disputes must be investigated (to establish the facts on which a decision will be made) rather than on exploring the differing perspectives of the parties (to enable them to be assisted mutually to agree on a solution);
- Repetition dulling the initial enthusiastic commitment to the newer approaches and philosophy.
- A desire to implement a system which has consensual processes and approach as an ad hoc add-on rather than integrating the new system with all the existing managerial systems. These ties in with the organisation's commitment to the newer approaches and philosophy.

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[16] David, J., 'Designing Dispute Resolution Systems', Second International Mediation Conference, Adelaide, South Australia, 18-20 January 1996, p3

David then goes on to identify the key elements of a robust dispute resolution system:

- The demonstrated commitment of the CEO and all senior managers.
- Training of all managers (and preferably all staff) in the techniques to handle disputes effectively (sometimes referred to as conflict resolution).
- The provision of adequate resources to implement and operate the system. This includes adequate staffing, facilities, equipment and training for the specialist grievance management staff and for all staff.
- The keeping of records to ensure the system can be evaluated and to enable strategies to be identified to prevent disputes.
- Clear objectives and policy documentation to be well publicised to make the system easily accessible to all.

In addition she believes any system needs to include the following fundamentals:

- Encourage early resolution close to the origin of the dispute;
- Encourage accurate, face-to-face communications as early as possible;
- Use a least intervention dispute resolution process first, then go to the next interventionist process and so on till a process which imposes a decision is reached;
- Provide time limits within which each process must be utilised;
- Ensure flexibility within the system together with procedures to revert back to less interventionist processes;
- Ensure easy access to the system including how, where and to whom to make a complaint;
- Be user centred, including ensuring it accommodates the needs of a multi-cultured population, and
- Enhance the relationship (business or otherwise) between the disputants[17]

Conclusion

So the arguments for mediating employment conflicts and preserving, nurturing and harnessing human capital in organisations are business and individual, organisational and ethical, about both management and employees. We need to prioritise decency and dignity in the workplace, although in doing so, commercial bottom lines do not need to be compromised. An investment in human capital will be matched by an increase in business performance. One employee of CBA, Cobley, who had earlier tired of the bureaucracy, said of Ralph Norris, discussed at the beginning of this paper, 'He had some tough decisions to make but he manages to be a decent person.'

The best approach to developing an environment of respect and reciprocity is to model these values at the highest levels of the organisation or business. A constructive culture is one where consensual processes are integrated into the structures of the workplace; mediation is provided where necessary; and employees are encouraged to resolve disputes promptly and informally.

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[17] See also Goldblatt, V. 'Principles and Practice in the Development of Harassment and Professional Conduct Policies and Procedures'. Paper presented to the ANZELA Conference, Christchurch, 2008.

Far from mediation being inappropriate in cases of interpersonal difficulty or allegations of abuse of power, for instance, it should be the process of choice. It provides a powerful mechanism for parties to differences to take responsibility – both for the differences and for their resolution.

'When we merely suppress conflicts or try to make them go away, we miss their underlying meaning. As a result we cheat ourselves, others, and the organisation as a whole, out of learning from them, correcting what led to them in the first place, preventing future conflicts and discovering how to improve our ability to resolve and transcend them.' [18]

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[18] Cloke K and Goldsmith J, Resolving Conflicts at Work supra Page xiv