Designing a dispute resolution system:
the constraints for educational institutions

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This paper has arisen from my roles as teacher and administrator in education for many years, from my interventions as a mediator, and from teaching post-graduate and Masters courses to teachers in recent years.

Many organisations in Australia are adopting dispute resolution systems; they understand that while conflict may be constructive, *disputes* in the workplace often lead to dysfunctional conflict. Their models frequently take the form advocated by Ury, Brett and Goldberg (1988) of moving from the interest-based processes of negotiation and mediation, to the option of rights-based processes, such as arbitration or rulings by tribunals. Later theorists have endorsed this model as being cost effective (Slaikeu and Hasson, 1998, 36) and emotionally satisfying for participants(19).

The paper questions why educational institutions (particularly schools) find it difficult to design such a dispute resolution system. Of particular concern is the role schools play in modelling to students effective means of resolving disputes.

The Constraints

I propose that the constraints on applying this conflict management model lie in the following factors:

- the nature of the client
- the nature of the service
- the nature of the culture
- the nature of the task.

The Nature of the Client

First, teachers are very conscious of their responsibility to their primary client - the child or young adult. Mandatory reporting of behaviours such as abuse or harassment or bullying has legitimated the teacher's intrinsic desire to care pastorally for the child. Teachers, therefore, seek to `avoid unnecessary power plays', a fact argued strongly in a recent paper by one of my post graduate students (Hickey, 2001, 9). Often, the avoidance of `unnecessary power plays' becomes an avoidance of dealing with the conflict situation.

Ironically, this strategic use of avoidance as an act of pastoral care can work against the student and against the teacher - against the student because the over-use of avoidance as the preferred model prevents the student being presented with other pedagogical models; against the teacher, because power may be subtly shifted from the teacher to the student because the `real' issues are not dealt with. In order to maintain social relationships, `peace at any cost' is sought, and this peace may be found in avoiding confronting the issues.

When this unsatisfactory situation occurs, teachers frequently resort to what they know and do best - they *adjudicate* on the matter. In this way, the participants in the dispute resolution `system' by pass negotiation and mediation, and move directly from avoidance to adjudication.

The Nature of the Task

Like most other professionals, teachers are required to make professional judgements. But teachers

are required to make judgements, not only about worth, but also about rank. Examination systems, tertiary entrance and recognition for students in the fields of academia, sport and cultural life depend on the teacher's making sound judgements not only on the worth of the student's contribution but also that worth in comparison to others. Other professionals such as doctors may be required to rank one's client's need against another; the adviser may have to weigh up priorities of the urgency of intervention, but these professionals are not required on a daily basis to adjudicate not only on performance but on motives (as in the case of the recalcitrant adolescent) and, further, on whether or not punitive responses should be implemented. Amongst other professionals, the police are the only ones required to respond in a similar punitive fashion.

It is no wonder, therefore, that teachers resort frequently to adjudicative measures when trying to resolve conflict. In the state of Victoria in Australia this imperative is being reinforced in the return to the emphasis on the examination system.

The Nature of the Service

Teaching in schools involves `service' to a dual client - the student and the parent, whose interests are often antithetical to those of their offspring. Parents, for example, frequently see the happiness of their child as residing in security - of examination results and tertiary entrance. Students, on the other hand, see their happiness as being grounded in their relationships - being accepted by their peers. Further, cross cultural backgrounds (Raider, 1995, 115) can exacerbate these differences in values between parent and child.

Balancing these interests and negotiating so that both clients achieve their aims is immensely depleting of the teacher's emotional and intellectual resources. The result of this depletion is that little energy is left to negotiate with the other entity with whom there is an inter-dependent relationship, namely the colleague. Indeed, anecdotal evidence indicates that inter-collegial disputes are the cause of the greatest anxiety and stress. Such disputes arise in the resource - depleting context of providing service to two equally demanding, but frequently diametrically opposed, client groups.

When such depletion occurs, negotiating ability is eroded. In the model advocated by Ury, Brett and Goldberg, inability to negotiate encourages the parties to move to the involvement of the third party, either the mediator or arbitrator. Mediating or arbitrating practitioners see an important difference between the two interventions, but, in my experience, teachers equate the two. I believe this equation arises from the third factor, the nature of the culture.

The Nature of the Culture

Conventional wisdom states that teachers find autonomy in the classroom, and that they work often as isolationists (Hargreaves et al, 2001). These barriers are breaking down under the new wisdom of `teacher as facilitator' (Heron, 1993) rather than the fount of knowledge, and teacher as team member rather than isolationist. But even though the required behaviours are changing, the same values may be present particularly when we consider that the average age of Australian teachers is early forties. So the values of autonomy, independence and self efficacy, frequently impede the willingness to employ a process which is controlled by a third party. Such a process is seen as a defeat, an admission of incapability, when all of one's professional life is devoted to appearing capable to young people who are perceived as needing that security and reassurance. As the `expert' in so many situations, teachers are reluctant to defer to another `expert'.

Indeed, I believe that this reliance on one's own expertise is shared by all professionals, and possibly explains why we see reluctance among professional groups to use mediation. This is borne out by Bendersky's research on a human resources department in an enterprising company in which `the very fact that an employee would seek help to confront a problem reflected poorly on him or her....Needing a third party to help resolve conflicts implied an inability to perform an essential job function.' (1998, 308)

Implications

The failure to take up interest-based dispute resolution processes is too often attributed to a lack of expertise among teachers, or to the lack of will of the School Principal. While both of these issues may need addressing, the structural conditions I have identified create greater impediments.

Costantino and Sickles Merchant (1996) support this contention: they acknowledge that `those ADR methods that are congruent with the organisation's characteristics are more likely to be identifiable to disputants and used by them recurrently' (122).

Understanding these constraints will have an impact on:

- **training.** While conflict resolution may involve the use of generic skills, training itself should not be generic. Instead, stakeholders should be identified and training targeted at the specific situations requiring negotiation with those with whom one has an inter-dependent relationship. In the case of the teacher, this relationship exists with the student, the parent, the colleague and the school administrator.
- **resource allocation.** Establishing the costs of conflict in terms of stress, absenteeism, resignations provides vital data against which resources can be allocated. In this way, the points of greatest stress can be identified and resources targeted at those points. Schools, for example, make too infrequent use of Employee Assistance Programs, or Human Resource supports, concentrating more on capital works and technological support.
- **challenging cultures of independence.** In schools, we are frequently caught up with the model of the independent learner, and the model certainly has its place. But we forget that in a complex world more can be achieved when we accept inter-dependence, and realise that inter-dependence does not threaten, but -indeed - enhances personal efficacy. Workplace realities also highlight how anachronistic is the focus on the individual learner who is assessed, then ranked competitively against his / her peers.
- **recognition of the limitations of interest-based processes.** It may be that rights-based processes may be more suitable to certain organisations and professional groups. Rowe (1997) is helpful in stipulating the elements of a `fair internal process' which include: `reasonable timeliness, impartiality of investigation and decision making and freedom from arbitrariness and capriciousness' (94). I would add that a fair process is one that is agreed on by stakeholders, is transparent and seen to be based on objective criteria.

I propose that the four variables I have identified be addressed when we are assessing the suitability of dispute resolution processes in any work environment.

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Employment History

Educator and Educational Administrator in secondary schools, TAFE, industry, business colleges and universities.

Currently Director of Marshall Enterprise Learning. Consultant to organisations in education and training, conflict resolution strategies and process, issues of organisational behaviour.

Consultant in mediation of disputes and facilitation of group processes.

Contracted lecturer in Dept of Learning and Educational Development, University of Melbourne in post-grad and Masters courses.

Coordinator of Mediation Short Course (40 hours), and Mediation in Education (30 hours), School of Behavioural Science, University of Melbourne.

Accredited MBTI practitioner.

Gazetted mediator, Dept of Justice, Victoria

Services Offered

In-house training of business organisations and educational institutions in mediation skills, principles and practice, and in generic conflict resolution `best practice'.

Facilitation in organisations of conflict resolution and other organisational behaviour issues, particularly the identification of structural conditions which may pertain to the escalation of conflict, and, conversely, to its resolution. Facilitation in change management issues.

Mediation in disputes involving workplace, neighbourhood, relationship issues.

Personal Attributes

Sensitivity to organisational needs and ability to distinguish the most appropriate form of intervention.

Demonstrable ability to train to a high level of proficiency in the skill.

Understanding of the challenges posed by conflict and change, and of the necessity for both respect and safety in the process of resolving conflict and implementing change.

Demonstrable ability to analyse issues, listen to perspectives of parties, and appropriately control processes of resolution and problem solving.