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Theory and practice in ADR

Power in theory and practice – the example of the Australian Defence Organisation

Hilary Astor and **Helen Marks**

Editor's note: This paper was first presented at the 6th National Mediation Conference, Canberra, September 2002. It is presented here with amendments in the form of a dialogue between the two authors.

Introduction

Hilary: This paper examines the vexed question of power and its manifestation in mediation in the context of the Australian Defence Organisation (The ADO includes the Australian Defence Force (ADF) and the civilian element of the Department of Defence).

Power is a theoretical and practical issue for mediators, and an issue that many of us find difficult and contested. As an academic working in mediation I am conscious that much of the theoretical writing about power is frequently unsatisfactory to mediators. Some does not explain satisfactorily the complexity of power relations that mediators find in practice. Some is written at a high level of abstraction and employs such technical vocabulary as to make it inaccessible, except to those few who share the same theoretical preoccupations. I am also concerned that some of the ways both practitioners and scholars frequently talk about power are both oversimplified and distorting. I would like to be able to get beyond these problems so that we can develop a productive dialogue between practitioners and scholars about power in mediation.

This, then, is an attempt at such a dialogue between the two authors — one an academic at Sydney University and the other a practitioner of mediation and dispute systems design in the ADO. We both believe that dialogue between academics and practitioners is important to the healthy development of ADR.

Preparing this paper has taken me (so far in a brief and limited way) into a culture which is new to me. It feels like an odd place for an old style 1970s radical to be. It is not my culture and I would not presume to comment on it without the analysis proceeding from collaboration with and the stories from those who live in it. In experiencing the culture of the ADO I confess that I have had to confront a rather regrettable number of prejudices and stereotypes.

However let me first, and very briefly, outline some of the difficulties I see with our conceptions of power in mediation.

There was, and indeed still is, much talk about 'the problem' of 'power imbalances' or 'inequalities of power' between the parties in mediation. The challenges of using mediation where there is a significant 'imbalance of power' between the parties and ways to 'balance power' are considered and discussed. No doubt all of those in the field of mediation have adopted this terminology at some time or even use it habitually.

To some extent this usage is simply a convenient shorthand for more complex understandings of power. The difficulty arises when the shorthand implies a particular way of thinking about power because it may have a distorting potential. Thinking about power as a 'thing' that can be balanced implies that power is a commodity that some people possess in greater quantities than others. It also implies that people embody their power, as if they carry whatever 'amount' of power they have with them, whatever the context, and can deploy it in relation to anyone. Further, if we see power as a 'problem' we risk seeing it only as a negative force – something used against another to induce them to do something they do not want to do. Power is always conceived of as 'power over' another. These ways of thinking about power are limited and probably not useful to explain or inform practice. They have frustrated some mediators who have criticised them for over-simplifying what they experience as a

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complex phenomenon.

What we intend to do in this paper is to look at the use of ADR in the ADO and to demonstrate the inadequacy of these ways of thinking about power with some information and a case study.

The first issue I wish to raise is how ADR, particularly facilitative processes, is even possible in the ADO. In an organisation with such a strong hierarchy and commitment to discipline surely facilitative methods of resolving disputes are impossible?

Helen: On the contrary! In fact those methods are consistent with military ethos. The strength of a military force is in the quality of its people. Many of them are idealistic and are committed to their role as protectors and defenders of the Australian people. They have high expectations of themselves and others, and of the organisation. They are highly trained and skilled people who are expected to work in close knit teams doing work which often puts them in harm's way. They must be able to depend on one other. Each individual represents a considerable investment and is highly valued. Basically, therefore, it is essential for the organisation not only to recruit but also to retain the right people.

Consequently we have used ADR successfully in the ADO since 1999, primarily for what you might call employment disputes. We have achieved a very high success rate in both mediation and workplace conferencing – well above that of most other organisations. This has been possible because we conduct a thorough intake process, only using ADR when it is appropriate for the organisation, the individual and the dispute. We are following the lead of the Canadian Department of National Defence and the Canadian Forces Conflict Management Program, which is even more advanced and successful than our own.

The ADO, and in particular the military element the ADF, requires and relies on good leadership and management and strong interpersonal skills and facilitative methods of dealing with conflict are an important part of this. Further, as General Cosgrove (Chief of the ADF) has said 'Communication and negotiation skills have wide utility for peacekeepers in their daily tasks of reducing tensions, solving problems, building relationships, and achieving coherence of action towards the aims of the operation.'

Hilary: But a simple view of power would suggest that a person with the greatest rank will always use that power to get what she or he wants. If your mediations are so successful, clearly there are other forms of power at work besides those bestowed by formal authority?

Helen: Yes – perhaps a concrete example will best illustrate this.

Let me tell you the story of Jack. This story is based on experience in the Directorate of Alternative Dispute Resolution and Conflict Management (DADRCM) and is closely linked with scenarios that have arisen recently.

'Jack' had served in the organisation for more than 15 years. He was a highly skilled and trained military specialist officer. As a result of the physical demands of his job he had suffered injuries and was no longer fit to continue in operational activities. Consequently he was medically required to transfer to a different job category. Jack needed to serve for another five years to qualify for a military pension. He successfully applied to transfer to a different category where there were manpower shortages. However he withdrew from a retraining course for that job category for personal reasons. At the time his reasons were not understood or accepted by the Career Management section which was responsible for managing his change of job category. After he withdrew from the course Jack demanded transfer to other job categories, all of which required a high level of interpersonal skills. However by this time Jack had become angry and frustrated about the issue of his transfer, and he was expressing his anger in ways that were regarded as inappropriate — even insubordinate. This attitude added to the judgment of the Career Management section that Jack was unsuitable to transfer to other categories — or even unsuitable to remain in the military.

Jack faced imminent discharge, with considerable consequences for his sense of identity, his quality of life and his future financial security.

Hilary: In some senses this is an

employment dispute – but there are issues here that are different to those that arise for most employees. In order to understand how power is operating in Jack's case it seems we need to understand the cultural context in which these events take place.

Helen: Any military organisation has a unique and complex culture of its own. Some important factors to note here are that the ADF is a hierarchical military organisation structured for war. Consequently those who might be termed 'warriors' - those whose training and employment is principally directed to the application of force or violence such as infantry, artillery, navy warfare specialists and fighter pilots – are essentially the cutting edge of the ADF. Jack was a warrior in his previous job category, for which he was no longer physically fit.

Members of the ADF are there to meet the needs of the organisation in defence of the country. Therefore their needs are subordinate to those of the ADF. While the Career Management section tries to balance the aspirations of the individual with needs of the organisation, at the end of the day the latter must predominate.

The ADF is a disciplined force that requires its members to follow orders and instructions from superiors. Failure can result in disciplinary action being taken. Jack was not displaying due deference to persons in authority – and his attitude and behaviour bordered on breaches of discipline.

Hilary: I am most interested in the significance of Jack being a warrior. What is the character of a warrior? Do warriors have special power in the culture of the defence force?

Helen: In the military, warriors are essentially the raison d'être. They are the central defining focus of the ADF. They are highly trained, highly skilled, frontline troops, ready to deploy. All other elements of the ADF and civilian components of the ADO are there to support the warrior role. So a high degree of respect and credibility attaches to those who belong to the warrior class.

Hilary: So Jack was a warrior – an injured warrior. Does the power that goes with this role explain why, to a certain extent, Jack was challenging formal authority by engaging in conduct that did not defer to rank or the system?

Helen: Partly yes - being a warrior can, in some circumstances, outrank rank. Perhaps I should explain. Most people in positions of high authority within the organisation are part of the warrior class. They respect and support others in the same role and are often more considerate in their dealings with them. They understand their sacrifice and commitment, and believe they are 'the elite'. The organisational culture supports that and in turn warriors have an experience and expectation that the organisation will support them.

But this expectation was not being realised for Jack as he tried to move into a different role. Not only was he losing his identity as a warrior but also he was threatened with being discharged from an organisation to which he had dedicated himself for 15 years. He felt betrayed and had very strong grief and anger around loss of identity and security. Not only that, but the organisation had taught him – actually required him – to be strong and relentless in conflict and in pursuit of his goals. but when he applied those approaches to his own career he was regarded as being inappropriate and insubordinate.

Hilary: Being a warrior is clearly one very significant source of power in the ADO. Tell me about other forms of power that Jack had or could marshal.

Helen: Jack had several sources of personal power. He was male, confident, and intelligent. He was forceful and he was resilient. Jack did not accept defeat. He had all the characteristics encouraged in a successful warrior – but when he employed them in this conflict he was bewildered that they were not working for him.

He also had resource power. Both he and the organisation knew the cost of training someone to his level of skill and experience. He represented an investment on the part of the ADO — it is cheaper to transfer and re-train than to recruit and train. Generally the ADO is finding it challenging to recruit and retain people.

Jack also had power by association with powerful allies. He had a link with a 'very senior officer' with whom he had worked, who was loyal, and who intervened on his behalf.

Also Jack was asserting his 'rights' through the formal rights based 'redress of grievance' process. Members who wish to make a formal complaint must submit a redress of grievance in writing. There is a significant cost and administrative burden associated with dealing with formal complaints through the redress of grievance process and Jack had lodged not one but three similar complaints.

Hilary: So Jack had several sources of power – but what of the power of organisation?

Helen: It had considerable power. It had the power to decide Jack's future. As I said before, Jack's needs were subordinate to those of the ADO. It also had the power to control Jack's behaviour by punishing him for breaches of 'rules' governing appropriate behaviour.

Those who wish to make a formal complaint in writing must go through the redress of grievance process. That process and its resolution are in the hands of the chain of command. The organisation makes the ultimate decision. Individuals are complaining about an organisation with significant resources. These include access to legal advice from the Legal Branch, information, and the infrastructure resources of the ADO. The rules of the formal processes allow Jack access to legal advice, but do not provide an advocate to represent him in the proceedings.

Hilary: How then did Jack and his dispute come to mediation?

Helen: It was Jack who approached DADRCM asking if mediation could be used to help him.

Hilary: How did you respond?

Helen: First we had to decide whether it was possible or appropriate to mediate in this case. I spoke with Jack at length. However, at that stage I only had his view of the dispute. In the normal course, mediation is command initiated or command referred – otherwise it could be seen to subvert formal authority. Therefore the challenge was to get command to agree to mediation.

I had to persuade those who have power in a culture based on authority to use that power in support of an

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interest based process rather than an authority based process. The redress of grievance process was already in train and had its own momentum. Although no-one in the organisation can, by law, prevent or dissuade a member from pursuing a redress of grievance, Jack's behaviour had so antagonised people that there was opposition to giving him any more opportunities — such as mediation.

However, Jack – and likely everyone else – thought that the rights based system would not in this case give Jack what he wanted. Nor would it realistically benefit the ADF – it would cost resources and would likely result in the loss of Jack's valuable skills. A lose/lose outcome seemed highly likely. So there were reasons to look for an alternative.

Further, the intake process clarified Jack's needs and interests. It revealed qualities in Jack beyond his anger and insubordinate style that suggested that he was able and ready to look for solutions. We were also able to school Jack in one important area of power. We educated him to display respect for formal authority in his communication, in general and in mediation, to respond in an appropriate way in negotiating, and not to be forceful to the point of insubordination.

At this point we also discovered that the head of the Career Management section had been approached by the 'very senior officer' with an instruction to 'sort it out'. This added to the pressure on command, further complicating an already difficult relationship issue. In a hierarchical organisation formal authority is powerful when used to support resolution of disputes. In Jack's case mediation opened up new options for resolution and could respond comparatively quickly.

Hilary: So the organisation was persuaded to try something different. How did you set up the mediation?

Helen: We made a decision to use external mediators who were not from within the ADO because this case involved an individual who saw himself pitted against the organisation and it was important that Jack have confidence in the impartiality of the mediators. Equally command wanted to be reassured that their position would not be undermined in the process and in this case had a preference for mediators who understood Defence but who were from outside the 'system'. This costs money and notwithstanding the 'in principle support' for mediation from both parties I used lots of personal power, knowledge of the organisation and negotiation to find that money.

We also had to consider who would be the parties in the mediation. They were first, Jack and second, a particular staff member from the Career Management section. That staff member had authority to agree — to make a decision that would be carried through. Also he had personal qualities that meant he would be open to the communication process in mediation. Further, if Jack stayed in the ADF he would have ongoing responsibility for Jack's career — there would be an ongoing relationship and rebuilding that relationship was important.

Hilary: Tell me what happened in the mediation.

Helen: It was successfully mediated. Mediations are, of course, confidential. A successful outcome in a case such as Jack's could have been that Jack stayed in the military , with financial and pension benefits. He was taken back onto the course he previously failed to complete. Meaningful communication with the Career Management section was established, which was important for Jack's future career. The ADF got Jack in a specialisation where there was a severe shortfall in personnel. Jack voluntarily withdrew his three formal complaints from the redress of grievance process. Mediation provided an opportunity for issues of emotion and identity to be given a voice and validated.

Hilary: How does the culture of the ADO impact on what can be agreed in mediation?

Helen: A part of the culture is that in Defence there is the power of the 'third side'. A successful outcome has to be one that works and can be implemented within the system – including by those not in the mediation. In Defence it is possible that many people will become aware of what happens as a result of mediation. The saving of face, of reputation, is thus very important for all concerned, both for individuals and the organisation. The reputation of

mediation as a fair and effective method of resolving disputes is also implicated. Mediation cannot be seen to be used as a means of undermining command and proper authority. Restoring relationships is also very important — teamwork in day to day activities and more especially in crisis situations where people rely on others to protect them is vital, not only for self-preservation but also for achievement of the military mission.

Hilary: The story of Jack demonstrates clearly that a simple theory of power as 'power over', power as a commodity, power as only a negative force is inadequate to analyse real disputes. We can keep our shorthand references to 'power imbalances' but we must be alert to the rich, subtle, complex and fluctuating forms that power takes in our work.

Even in an organisation very strongly marked by formal authority, other forms of power have a strong impact. In Jack's case power ran not just up and down the hierarchy of rank but in a network of meanings and connections throughout the whole organisation. Power operated within a culture that gave complex meanings to different forms of power. Culture was also not a binary phenomenon. Power and culture operated in a network through the parties, their confidantes and families, members of the ADO and into the wider society.

The ADF is an affirming place for the post-modern mediator, since some forms of power are, quite literally, written on the body. It is, however, also inscribed in many ways that are not immediately apparent. Further, power is importantly also about the power of discourse, of stories. Perhaps the most fascinating to me are the warrior stories. These are not only embedded in the ADO but also in the wider Australian culture. The warrior stories frame forms of power that can be determinative in the ADO but which are not necessarily visible to the outsider.

Helen: As you initially suggested, at first glance it is challenging for an external observer to see interest based processes being used within a highly structured and hierarchical organisation like Defence. I hope the example of 'Jack' has given you a sense of why these processes really do have a place in a modern Defence Force. Indeed negotiation, mediation and conflict management have a number of roles in the ADO. Leaders in the ADO and elsewhere need to have a variety of tools and strategies available to them. They need to be open minded, flexible and courageous enough to acknowledge and use informal methods of dealing with conflict in the various contexts. Using ADR and conflict management accords with the many and varied roles of the ADO, and is of particular note in recent times when the ADF is performing in its peacekeeping role. It accords with the nature of a workforce integrated with civilians and with the practices, processes and values of the wider Australian society.

The ideas of 'mateship' and providing equity and 'a fair go' are part of the Australian character and ethos. These phrases are used in Defence to convey that while Defence is a disciplined and hierarchical organisation, these qualities are not inconsistent with its people being motivated, resourceful and adaptable, and being united by ideals of 'mateship' and a 'fair go' in support of themselves and their mission. Mediation is a process which supports that goal. ●

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