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Resolving Conflict

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Book Review

Resolving Conflict

Reviewed by **David Spencer**

Greg Tillett and Brendan French
***Resolving Conflict:
A Practical Approach***
3rd ed, 2006
(Oxford University Press,
Melbourne)

It has been seven years in the making, but the wait has been worthwhile for Dr Greg Tillett's latest addition to his landmark text *Resolving Conflict*. The first edition was published back in 1991 with the second edition finding its way to the shelves in 1999. This places Tillett's contribution to the conflict resolution literature as one of the earliest of its kind and a template for others to follow.

The third edition of this seminal text is significant not only because of the expanded content but because of the addition of a co-author in the guise of Dr Brendan French from the NSW Energy and Water Ombudsman's office.

At first blush the third edition goes beyond just the popularist processes of mediation and arbitration and divides up conflict resolution processes into three important genres namely collaborative, facilitative and determinative. Further, the six original types of conflicts addressed in the second edition are consolidated into one chapter with a couple of notable additions.

Chapter 1 deals with dissecting conflict and sets out the aims of the book. Tillett and French's valuable principles of conflict resolution have been expanded upon to include the principle that not all conflict can be resolved and if future relationships are at stake then conflict resolution becomes an issue of managing the relationships to avoid future conflict that can destroy the relationship. Further, that repetitive conflict may be an indication of a systemic problem dealing with conflict within an organisation or habitual dysfunctional behaviour by an individual. As in the second edition, the section on the positive and negative

elements of conflict are worthwhile revisiting to remind ourselves that positives can flow from the discovery and ventilation of conflict.

Chapter 2 addresses communication issues in conflict resolution and discusses in detail the essential elements of good communication when conflict arises (or for that matter before conflict arises). Communication skills such as active listening, verbal and non-verbal communication, framing and reframing are dealt with, among others, in sufficient detail. However, the section on barriers to communication has shrunk between editions. This is a shame because of the amount of conflict arising from this very problem — often barriers cause the miscommunication or non-communication which lead to the conflict. The chapter features some great framing and reframing exercises that are ideal for novice conflict resolvers and even for those more experienced in conflict resolution to brush-up on. The section on the language of problem-solving probably does not go far enough although the example given is of use.

Chapter 3 is curiously titled 'Investigation for dispute resolution' and deals with how to prepare to practise conflict resolution. A look at the index may confuse the reader because chapter 7 is titled 'Planning and preparation for resolution' — an apparent double up of topics. However, as will be discussed below, the latter chapter is about selecting an appropriate process whereas the former is about preparing for the selected dispute resolution process by embarking upon fact-finding and acquainting oneself with the relevant law and rights-based issues that may arise in the selected process. It is this second topic that shows the authors' bravado (and justifiable confidence in their subject) as many dispute resolution commentators shy away from ever addressing rights-based arguments in dispute resolution. Rights-based issues are seen by some as the 'anti-Christ' of dispute resolution, but realistically



they raise their ugly heads most often as leverage for a party to exploit. Being able to shut down or indulge such arguments depends on being armed with the right information. As Sir Humphrey Appleby would say, 'Why Doctors Tillett and French, this is a very courageous move!'

Other gems in this new chapter include developing an investigative strategy that provides a nice road map for what may lie ahead in the process of dispute resolution, whether you are a party or a practitioner. The sections on identifying areas of agreement and disagreement and setting an agenda are a must-read for all dispute resolution practitioners.

Chapter 4 is titled 'Dispute-resolving interviewing' and is pure gold. It does more than cover pre-dispute resolution process preliminary conferences and the like. It goes to the trouble of providing a plan to conduct interviews by engaging with the reader about the process of interviewing, the types of questioning techniques available to the interviewer and the value of story-telling. Sections on cultural and emotional issues are too thin, but this reviewer appreciates the restrictions placed on authors by publishers. However, the fourth edition should seek to expand these very important sections that will complete this chapter perfectly.

I am not sure why chapter 5 on 'Analysing conflict' comes at this point in the book. I would have thought it would have been better placed earlier on in the text. However, leaving this aside, the chapter acquits itself well by recounting Coltri's nine-step conflict diagnosis model with a balanced critique. I found the conflict analysis elements of this chapter thin and the section on the relevance of the past lacked any cultural exceptions such as those found in Australia indigenous communities. It is fortunate to find a chapter like this included in the book, but it needs further development.

Chapter 6 is a short chapter — but very sexy! I like the idea of taking a series of 'evaluations' as the basis of your preparation and the conduct of your chosen dispute resolution process. Evaluating critical process and substance elements of disputes is a vital yet often ignored element of the process of

dispute resolution. Tillett and French suggest that one should evaluate:

- (1) parties;
- (2) relationships;
- (3) power;
- (4) timing;
- (5) third parties (or additional parties); and
- (6) the need to take action.

The first three are probably 'no-brainers' in that anybody slightly experienced in dispute resolution knows these are factors to evaluate before even suggesting a dispute resolution process. Factor four is often ignored, namely is the timing right for a dispute resolution process? Any lawyer will tell you that clients come in pounding their fists on your desk with instructions to, 'Sue the bastards on principle!' At that point in time suggesting a dispute resolution process to your client is not advisable unless you enjoy personal injury. However, some time later when the client has cooled down (and the first few interim bills have been sent) it may be the right time to broach the subject of dispute resolution. So the timing of evaluation is essential — well done Tillett and French.

The greatly ignored issue is whether to do anything at all. Many commentators will not acknowledge that that sort of sedate reaction is a calculated strategy in the armoury of dispute resolution practitioners — on the contrary, it is! Depending on the party and the type of dispute, once the testosterone has dissipated so might the dispute.¹ Leaving it lie can be beneficial — although not always.

Chapter 7 addresses planning and preparation, and discusses the range of conflict resolution responses available to those in need. The chapter includes an interesting section from the previous edition on unilateral actions and the art of coercion as a tactic in conflict resolution. It sets out the three areas of conflict resolution processes that are addressed in more detail in the subsequent chapters. There is a short section on balancing power that seems too thin and the planning for resolution section seems a rehash of chapter 4.

Chapter 8 begins three sequential chapters on the various processes available — this chapter dealing with collaborative processes. It is quite a

good chapter and sets out the concept of collaboration as well as the process of assisted and unassisted negotiation and facilitation. I quite liked the section on the environment of resolution and could have read more on this — unfortunately a reference to Boullé's extensive work on the physicality of dispute resolution has been omitted from the further reading list.

Chapter 9 addresses the facilitative process of mediation and gives an account of the process itself, including whether one should choose mediation and what are the risks in doing so. The hybrid forms of mediation make for interesting reading on pages 150–151, though there is no explanation of why they are hybrids and how they work. The section on how mediators should help improve the dynamics (and not make them worse) is a must-read, and the sections on resistance and emotions at the end of the chapter contain some good tips on how to deal with these situations. I particularly liked the confrontation strategy as a way to deal with resistance.

Chapter 10 discusses the determinative process of arbitration and details how a determination comes about under this process. Further, the hybrid forms of arbitration are mentioned and this time they are explained in enough detail. The sections on the arbitrator and the stages of arbitration are very 'nip-and-tuck' in nature and sadly the chapter suffers from not mentioning the other more popular form of determinative process: expert assessment/refereeing. In Australia arbitration is on the decline while expert assessment/refereeing is on the rise. The Institute of Arbitrators and Mediators of Australia report that assessments far outweighed arbitrations in NSW last year — about a dozen arbitrations compared to around 150 assessments/referees. Further, given the change in funding and entry rules adopted by the District Court in NSW recently, arbitrations in that jurisdiction are at an all time low.

Chapter 11 is titled 'The conflict resolution process' and deals with the stages of conflict resolution. Intake topics such as defining the purpose, conflict and process are dealt with satisfactorily while areas such as



reality-testing benefit from a checklist approach. A personal peccadillo is satisfied by this book with some emphasis being placed on the role of brainstorming as part of the option generation phase — a problem I continually see in novice negotiators. I enjoyed the option selection and would have been happy to have read more on this.

Chapter 12 addresses the issue of skills training in conflict resolution. It starts by presenting NADRAC's list of competencies for conflict resolution practitioners and includes a section on motivation to resolve the dispute — again an area often ignored by other texts. The parties' motivation to solve the problem is often the key to reaching resolution. Maslow's human needs hierarchy is wheeled out again and still stands the test of time as a way to understand what makes humans tick and therefore what issues could be at the forefront of the minds of disputants.

The centrepiece of this chapter is the competency self-assessment check list which is a very useful tool for negotiators and mediators who perform their skills in isolation and therefore, without the benefit of an observer to debrief with at the conclusion of the process.

Chapter 13 is a must-read for all conflict resolution practitioners and for anybody holding any sort of management position in any organisation. Its title says it all — 'When things go wrong'. Splitting up the problems into people or process is a good start for this chapter and it really consists of a lengthy list of impasses and how to break them. This chapter reads extremely well and is very useful for anybody involved in conflict management. It is a well-paced and engaging chapter with some very useful tips.

Chapter 14 deals with the specific types of conflict and primarily addresses interpersonal conflict that includes domestic relationship conflict, family conflict and gender-based conflict. Look out for the list on page 242 that highlights gender differences and incorporates some of Carol Gilligan's landmark findings in her 'Heinz' experiment of the 1980s. Understanding the different voices of different genders

is a good first step to being able to deal with people in a more effective way. Neighbourhood and inter-group conflict is addressed in this chapter, as are intra-community, employment and commercial/consumer conflicts. Environmental, multiparty and international disputes are also addressed, but again in short form given the number of topics sought to be dealt with in one chapter.

The second edition dealt with these areas in far greater detail and it is a shame that they have all been crammed into one chapter. But once again, the reviewer understands publishing imperatives and the fact that authors have to make forensic decisions on what to include, omit and consolidate — these are not easy decisions!

Chapter 15 is largely the same as the second edition, but is an essential chapter to include in any book on conflict resolution.

Chapter 16 is titled 'Making conflict resolution work' and is largely the same as the second edition. However, it is an important chapter as it sets out to encourage conflict resolution practitioners to be self-reflective in their approach to the practice of conflict resolution. Tillet and French state at page 276:

The majority of those practising conflict resolution seem to operate as if in a theoretical vacuum, where no assumptions, theories, or beliefs are encouraged to get in the way.

They confirm that all conflict resolution practitioners, like anybody else in society, have theoretical orientations that must impact on their role. Instead of denying and trying to suppress this theoretical baggage the authors rightly suggest self-reflection as a way to deal with it and convert its potentially negative force into a positive force to assist the conflict resolution practitioner.

The final chapter gives an example of analysis and planning using a case study. It translates some of the theory into practice by setting out a template of questions and answers, using at times some useful diagrammatic representations.

At the end of the book there is a paper on John Burton's theory of conflict resolution practice and there is a useful

glossary of terms which acts as a quick reference to some of the terms used throughout the book.

The production values of the book are high. Oxford University Press are in the habit of working hard to make their books easy on the eye and engaging to read.² The shaded boxes for checklists and examples are not overdone and the headings are plentiful and make the book easy to navigate. I had no trouble finding my way around the index and everything seemed to have been included. The case studies at the end of each chapter are very useful and will undoubtedly be a popular reference for teachers of conflict resolution. The 'Suggested reading' list at the end of each chapter is also a great idea that allows readers to further their research into any topic they choose.

As with anything Dr Greg Tillet (and his new co-author Dr Brendan French) writes, this book is worth reading. My only criticism is that there is not enough to read! Some topics are given a very cursory treatment. Once again publishers' production imperatives come into play but the hope is that there is more scope for the fourth edition! This is a book that could easily go to 600–800 pages to provide the sort of treatment that some of the topics deserve. For the moment it is a valuable addition to the library on conflict resolution and should find its way on to the shelves of practitioners and students alike.

One final note — the authors have produced a workbook that accompanies the text book. This is a nice resource for teachers and students of conflict resolution as it contains detailed notes on how to approach the topics with references to the text book contained at the relevant points. ●

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Endnotes

1. Note: the reference to testosterone is not a sexist reference to males as being the only ones involved in disputation as females also produce the hormone despite the fact that males produce 20-30 times more than females.

2. I have to declare that this reviewer is an OUP author too!



developments in ADR

- The **Australia Centre for International Commercial Arbitration (ACICA)** launched the Australian Maritime and Transport Arbitration Commission (AMTAC) on 6 March 2007. Convener of the AMTAC working party, Peter McQueen, has labelled AMTAC as an 'exciting opportunity for ACICA to continue to develop and promote Australia, in particular Sydney, as a viable arbitral venue for a diverse range of international arbitrations.' For more information, visit <www.acica.org.au/index.html>.
- The Full Court of the Federal Court of Australia has adopted a strong pro-arbitration stance in its recent decision **Comandate Marine Corp v Pan Australia Shipping Pty Ltd** [2006] FCAFC 192. This case is a departure from Rares J's decision in *Pan Australia Shipping Pty Ltd v The Ship 'Comandate' (No 2)* [2006] FCA 1112. The Australian Centre for International Commercial Arbitration (ACICA) has labelled this decision as 'an excellent example of the recognition by a court of the significance and importance of party autonomy in international commercial disputes and the role of international arbitration'. It is indicative of the liberal stance the courts have adopted in interpreting arbitration agreements.
- The **Kuala Lumpur Regional Centre for Arbitration (KLIRCA)** and the **United National Commission on International Trade Law (UNCITRAL)** held a joint conference in Kuala Lumpur on 21–23 November 2006. The Conference examined the UNCITRAL Arbitration Rules, which have been in place for approximately 30 years, and compiled suggestions for potential revision of these rules. It was concluded that the Rules, while being relatively effective, were in need of revision because of the changing nature of arbitral practices and the need to develop a set of guidelines on specific procedural matters. The proposed revised rules can be viewed in Jan Paulson and Georgio Petrochilos' report 'Revision of the UNCITRAL Arbitration Rules' at <www.uncitral.org/pdf/english/news/arbrules_report.pdf>.
- The **Karachi Centre for Dispute Resolution** in Pakistan has announced its first successful mediation. The Centre, which opened in July 2006, is supported by the Centre for Effective Dispute Resolution (CEDR) and International Financial Corporation (IFC), and works in conjunction with the High Court of Sindh. The need for ADR in Pakistan stems from the backlog of approximately one million cases, one-third of which are commercial in nature and can be resolved through dispute resolution.
- A pending court battle in London over the return of 19th century remains of Tasmanian Aborigines has been suspended in favour of mediation. While no agreement has been reached as to where or when these negotiations will take place, the threat of exponential legal fees and the delicate nature of the subject matter led both parties to agree to mediate. The British Natural History Museum is insisting on taking samples from the remains, while Aboriginal leaders are claiming that such scientific testing would constitute desecration of the remains.
- **Mediators Without Borders (MWB)** is a non-profit, humanitarian conflict resolution organisation established to partner with communities worldwide to build their capacity for preventing, resolving and healing conflict. MWB is the brainchild of Ken Cloke and Robert Creo who, in 2006 created and incorporated the organisation. Planned activities by MWB are conciliation, consulting, facilitation, consensus building, conducting public dialogues, system design, restorative justice initiatives, education and capacity building to mitigate or prevent violence. For more information, or to become a member, visit <www.mediatorswithoutborders.org/index.cfm>
- The **Commonwealth Attorney-General** has released for publication the report, **Collaborative Practice in Family Law**. The Terms of Reference on Collaborative Law were received from the Attorney-General on 31 January 2006, and subsequently a committee has been convened to advise the Government, in partnership with the legal profession, how collaborative law can be promoted in Australia. Particular consideration was given to what legislative changes, changes to court processes and changes within the legal aid system need to occur to promote collaborative law. The report also discusses whether it might be desirable to have national guidelines for the practice of collaborative law, and the process by which these could be developed. The Government is considering its response to the report, which can be viewed at <www.ag.gov.au/agd/WWW/flcHome.nsf/Page/Latest_News>.
- With mediation for divorcing couples now mandatory prior to litigation new mediation services are emerging around the country. An organisation which offers, if necessary, to take mediation into homes seven days a week is InterMEDIATE Dispute Management (IMDM). IMDM provides a co-mediation service, with a male and a female mediator at each session. The IMDM co-mediation model incorporates technology which allows agreements about parenting, property and finance to be printed at the end of the mediation. For further information see <www.InterMEDIATE.com.au>.

contributions

Contributions to the **ADR Bulletin** for 2007 are welcome. Submissions should be presented as a Word file, attached to an email. Please submit articles or notes for publication to:
carolyn@richmondventures.com.au



ADR diary

- **NADRAC** will be holding its 3rd **National Alternative Dispute Resolution Research Forum**. The Forum will be held on 13 and 14 July 2007 at the La Trobe University City Campus in Melbourne. It will provide an opportunity for researchers to discuss their research, as well as trends and issues in researching alternative dispute resolution. For more information please contact the NADRAC secretariat by phone (02) 6250 6272, by email with the subject 'Research Forum Enquiry' to <nadrac@ag.gov.au>, or by fax (02) 6250 5980.
 - The **Australian Dispute Resolution Association (ADRA)** will be holding a conference on 22 June 2007 at the Australian Museum in Sydney. The conference is aimed at experienced practitioners of ADR, as well as students and those wishing to learn more about this area. The focus of the conference will be two-fold; to reflect on the past 20 years of ADR in Australia, and to discuss the future path of ADR. For more information about this conference, visit <www.adra.net.au>.
 - The **Institute of Arbitrators and Mediators (IAMA)** is holding a conference titled 'New Horizons in ADR' on 1–3 June 2007. The Conference will be held in Glenelg, South Australia, and will include plenary sessions and specialist streams for arbitration, mediation and adjudication. For more information, contact <national@iama.org.au>, or visit their website: <www.iama.org.au>.
 - The **Australian Commercial Dispute Centre (ACDC)** will be holding one-day workshops in Sydney on 18 April, 29 May, 3 July and 12 September 2007. These workshops will include foundation skills and information to handle conflict and disputes. It is also an opportunity for participants to prepare themselves for the ACDC Mediation Course. For more information or to reserve a place, visit <www.acdcltd.com.au>.
 - The **Australian Commercial Dispute Centre (ACDC)** will also be holding four- and five-day Mediation workshops that incorporate activities, practice, coaching and an optional accreditation assessment day. These will be held in Sydney on 7–11 May, 18–22 June, 23–27 July and 17–21 September 2007. An additional course will be held in Melbourne on 20–24 August 2007. For more information, visit <www.acdcltd.com.au>.
 - **LEADR** Association of Dispute Resolvers will be holding four-day mediation training sessions in Australia and New Zealand. This course is open to individuals who are keen to add mediation to their professional skill set, in addition to those who are engaged in dispute resolution on a daily basis. Australian courses will take place in **Sydney** on 15–18 May, 8–11 August and 7–10 November; in **Adelaide** on 12–15 September; in **Melbourne** on 2–5 May and 17–20 October; in **Brisbane** on 23–26 May and 31 October–3 November; in **Darwin** on 30 May–2 June; in **Hobart** on 20–23 June; in **Canberra** on 1–4 August; and in **Perth** on 17–20 October. New Zealand courses will be taken place in **Auckland** on 18–21 April and 7–10 November; in **Wellington** on 20–23 June; and in **Christchurch** on 22–25 August. Early registration is recommended, and can be done at <www.leadr.com.au>.
 - For **advanced mediation practitioners**, the Australian Commercial Dispute Centre will be holding three-day advanced mediation training courses. The first day of the course will be devoted to discussions and coaching, while the second day will involve advanced stimulated mediation roleplays. Participants will be assessed for ACDC Advanced Mediation Accreditation in their specialist field of interest on the third day. These courses will be held in Sydney on 31 October–1 November 2007. For more information, or to book a place, contact <stevegibbeson@acdcltd.com.au>, or visit <www.acdcltd.com.au>.
 - The **Trillium Group** will be holding four-day Negotiation and Mediation Workshops. This course will be centered on the concept of principled negotiation and will involve practical training in effectively resolving disputes. Courses will be held in **Melbourne** on 1–4 May and 25–28 September; in **Sydney** on 15–18 May; and in **Perth** on 21–24 August. For more information or to register, visit <www.thetrilliumgroup.com.au>.
 - The **Centre for Effective Dispute Resolution (CEDR)** are holding their fast-track mediation skills training course in London on 16–22 May, and 4–10 July 2007. This initial skills training course includes one practice day and two assessment days. For participants who wish to undertake the CEDR Accreditation, practice days will be held on 19 June and 11 October, while accreditation will occur on 26 June or 18 October 2007. For more information or to reserve a place, contact <training@cedr.co.uk> or visit <www.cedr.co.uk>.
- Please email details to <carolyn@richmondventures.com.au> to submit information for publication in ADR Diary.

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