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Designing systems the ADR way

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The ADR Bulletin

Book reviews

Designing systems the ADR way

Laurence Boulle

Controlling the Costs of Conflict: How to Design a System for your Organisation **by Karl Slaikeu and Ralph Hasson, Jossey-Bass Publishers, US 1998.**

Peace-making in Your Organisation: Conflict Management Design for Groups and Organisations **by Peter Condliffe, Narnia Publications, Brisbane 1999.**

Critical questions

I have always felt that publications by `dispute system designers' do not satisfactorily answer two critical questions in this field:

1. How does an organisation afford and pay for a system which takes seriously all the principles which it is required to incorporate?

2. How, in an age of short term bottom line calculations, does one persuade decision-makers of corporations, public and private, that these systems are necessary?

To what extent do these impressively titled books enlighten their readers on these questions?

DSD and ADR

Dispute systems design (DSD) is an outgrowth of the ADR movement and is now much in evidence. It refers to the purposive planning and operation of procedures for managing conflict and resolving disputes in organisations. It draws on theory and principles in organisational behaviour, management, social psychology, ADR and conflict theory.

There can be little doubt that organisations spend too much time, money and other resources as a result of the ineffective treatment of conflict. Hence the attraction of structures which promise to reduce these wastages and allow the organisations to get on with their real business, or pleasure. (A student of mine has recent written an assignment on DSD in gaming clubs.)

Controlling conflict's costs

The Slaikeu and Hasson book has certainly got the right title. And it pays to advertise. They push hard the promise of `cost control' in organisations — 'in the next century', to make it topical. Rewiring the system, they suggest, will result in reduced legal expenses (50 to 80 per cent), reduced turnover, strengthened long term business relationships, reduced stress, and accomplishment of the organisations's mission. How will all this be achieved? Read on.

Their formula begins by describing the four distinct ways in which humans can resolve conflicts in organisations: avoidance, power plays, appeal to higher authority, and collaboration. Each of these options has their place but, so the argument goes, most organisations rely over-much on avoidance, power plays and higher authority before considering the collaborative options. This is a systemic problem and we should be doing something about it. Nothing new, thus far, for the already initiated.

The authors go on to consider the root causes of conflict, options for conflict prevention and early intervention, ways of building collaborative strength in organisations, using the mediation model for building consensus among decision-makers and users, and the need for organisational vision.

What they argue for is the initial and prior use of the lowest cost resolutions. Generally speaking the avoidance, higher authority and power play options have higher costs (transaction, relationship, and so on) than does collaboration. However, another source of costs is a mismatch between the conflict and the method; for example, negotiation for a protracted rights-based dispute. Much of their arguments make sound common sense, which is not as common as it used to be, and their ➢

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An ombuds for all occasions

Few organisations make full use of the ombudsman concept. As indicated throughout this volume, the ombudsman provides a neutral, confidential, readily available resource (usually available in person, by telephone, email, or some other direct means) to assist parties in self-help, troubleshooting (via coaching), informal shuttle diplomacy, and sometimes convening of the parties to help them select from options such as informal mediation or higher authority resources. An ombuds should fulfill all professional and ethical standards of the Ombudsman Association.

Traditionally, the ombuds handled citizen complaints for governmental agencies. Organisational ombudsmen are now used widely for internal issues (as in student ombuds on university campuses and employment ombuds for dispute resolution programs such as those at Halliburton and Shell). The value of inter-organisational applications is becoming more apparent. As an example of extending the model, it is possible to build an ombuds service into partnering arrangements. An inter-organisational ombuds can serve contractors, subcontractors, governments, and citizen groups involved in projects worldwide. The outside ombuds can help via a telephone hot line by answering questions, coaching parties toward negotiated resolution, and conducting or arranging informal or formal mediation. Such arrangements provide the benefits of early resolution to parties that are members of different organisations but involved in joint projects. The early access feature supports people when they most need it: on the job, when unresolved issues first become apparent. We believe that businesses will increasingly use inter-organisational ombuds in the future.

A similar logic applies, of course, to dispute resolutions through the United Nations. Building on the UN Charter and on the experience of such organisations as the Carter Centre (offering mediation and negotiation assistance in hot spots around the world, monitored on a daily basis), the UN could set up a similar ombuds service linked to third-party assistance in the form of either assisted negotiation or mediation as needed. In sum, the ombuds model, in combination with the technology of immediate telephone access, email, fax, teleconferencing, and other supports could become a primary component of dispute prevention for multiple organisations in both global business and international dispute resolution.

From *Controlling the Costs of Conflict*, p 94.

➢ analysis has much to commend it.

An important structural feature of DSD which they advocate is the convening concept. This provides that where a specified dispute arises the parties will attend a convening meeting to discuss the possible use of ADR, without any presupposition as to what form of ADR would be appropriate. Should the parties be unable to resolve their dispute through ADR within a specified period, then they may submit the dispute to other systems such as the courts.

All these principles are illustrated through reference to case studies. There is also a checklist of conditions required by an organisation to arrange for the early resolution of conflict and the normal guidelines, strictures and wish lists found in this kind of literature.

Don't forget the ombud

An important aspect of DSD which the authors emphasise is that of the ombudsman. Australia has its own tradition of this institution, in respect of both government administration and behaviour within various industries such as banking and telecommunications. However, the comments regarding the tendency for organisations to overlook this institution in the US (see box above) are probably equally applicable in this country.

Too good to be true?

To be fair, the authors raise this critical question themselves, but not surprisingly answer it in the negative. However there are a number of critical comments to be made about this text.

The conventional wisdom is that ➢

➢ conflict is not bad in itself, that it presents opportunities for growth and renewal, that early collaborative intervention is the way to go ('self-help first'), that law should be a last not a first resort, and that training in conflict handling skills and other internal resources are important in relation to all of the above. These are all valuable themes in the book.

However a real problem with much of the DSD work is that it tends to be overly prescriptive (you should do this, that and the other thing) and insufficiently descriptive of actual organisational reality.

Furthermore, it often overlooks the difference between structural and behavioural / attitudinal aspects of dispute resolution. Changing structures in organisations is no doubt a valuable innovation where they introduce mechanisms for early intervention, negotiation, creative decision-making, and the like. However structural change alone will not suffice. Much dispute resolution revolves around perceptions, attitudes, values, vested interests and power realities, and these do not magically change when structures do.

Most practising mediators will identify with this view. While the mediation process avoids a structurally adversarial system it does not always prevent the mediating parties from being adversarial and positional. Mediation, as they say, is not for sissies.

Moreover much conflict has a social and political dimension in the real world. Conflicts within organisations have to do with competing ideologies and interests between management and labour, with downsizing and rightsizing, with casualisation of labour and takeovers, with control and manipulation of information and, sadly today, with short term economic realities.

And conflict between organisations, or between organisations and their clients and suppliers, has to do with competitiveness, with secrecy, with reputational interests, with commercial expediency and, sadly today, with short term economic realities.

In both these settings conflict is also prone to escalate through a range of predictable features.

Unfortunately these harsher realities of organisational life and conflict are not adequately considered in the sanitised version provided in this text. Serious DSD must take account of the tougher facts of life before it can be responsive to real organisational needs and realities.

Local DSD

What has been needed for some time is an Australian based text on this subject. Enter left of stage: Peter Condliffe.

This is by no means the first substantial local writing on the topic. Bobette Wolski of Bond University wrote an extensive piece for volume 13 of the *Laws of Australia* title on dispute resolution which dealt with the principles and practice of DSD. Despite its thoroughness, this publication did not have much in the way of local authority to call on.

Peter Condliffe is Executive Director of the Dispute Resolution Centres in the Queensland Attorney General's Department and has a varied background in dispute resolution and peacekeeping in Australia and abroad. To meet modern disclosure requirements, it should also be pointed out that he is on the editorial panel of this Bulletin.

His work draws on some of his earlier writings and brings into the picture some of the sociology of group conflict and its resolution. The 'peacekeeping' dimension derives in part from his experiences in Cambodia and refers to the need in groups and organisations to rebuild symbols and belief in the possibilities of constructive change. Some timely reminders here, given current political turbulence in different parts of the globe.

For Condliffe, effective peacekeeping requires changes in perceptions, communication, resource allocation and structures in order that the culture of conflict in groups and organisations can be changed. This is reflected in the so-called R quadrant (see box opposite).

This approach tends to come closer to dealing with the deeper sources of conflict in organisations referred to above. There are also some rare and rather thoughtful insights, for example in relation to the role of secretaries in conflict resolution, based on the power which they derive from longstanding knowledge of the organisation.

Condliffe's is the shorter and more concentrated of the two works and the case studies tend to be briefer and less illustrative. In the nature of the text it tends to be rather 'listy', but many ADR books do tend to contain lists of important things which can be learned and recalled, but which are not necessarily much good in ➢

The R quadrant model of conflict management in organisations

Reframe Perceptions
- Reformulate interests
- Deal with stereotypes
- Create new visions
- Education / training

Redirect Communication
- Redefine / reframe issues
- Generate alternatives
- Alter communication patterns
- Alter behaviour / tactics

Group Culture (Values, beliefs and assumptions)

Resource Allocation
- Change interdependency variables
- Change power relationships
- Change resources available

Restructure
- Change group boundaries
- Change rules and procedures
- Renegotiate norms and values
- Refocus group incentives

➢ practice. Dispute resolution is not after all a didactic process, and the mediator or other dispute intervenor discovers that it is about complex action and reaction among three or more consenting adults. Lists tend to be of rather limited use in this dynamic and organic process.

It also reminds us that dispute resolvers in their reflective moments tend sometimes to indulge in what appears to be circular logic — for example (at p 29):

> For collaborative problem-solving to work well depends on the parties having, or developing a reasonable level of trust in each other. It is also helpful if the parties have interdependent interests and there is not a great disparity of power between them. Chances of success are also improved if there is motivation to reach mutually satisfactory outcomes.

Hmmm. I wonder how often there would still be a dispute where these conditions applied.

Conclusion

What about my first two questions? Neither, it must be said, is convincingly answered, though to be fair neither is squarely addressed by the authors. There still seems to be a gap between writing about designing systems and actually convincing decision-makers to develop and operate them. And unfortunately they need to be convinced on the economics.

Are these books still of value? My response is yes, because they both, in different ways, give useful and logical frameworks for thinking about, and doing something about, conflict and disputes in groups and organisations. They contribute to the 'science' of conflict management and move it away from the realms of being considered a rather fluky art. At the moment it is rather like theoretical physics, with not enough application to test its assumptions. But then Stephen Hawkings' theories are being tested and partly vindicated all the time. ●

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➢ **continued from page 120**

> ADR is a risk management tool for all parties and a set of options to be built into sound business and legal planning.

By integrating ADR into a corporate risk management program, there will be a 'front-ending' of ADR options. This will have significant beneficial effects in terms of the early intervention of the appropriate ADR option into a dispute with concomitant cost and time reductions (around 90 per cent), better solutions and improved commercial relationships and reputation. ●

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