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DEBORAH R. DAVIES

HEALING THE RACE RELATIONS RIFT: THE
USE OF CULTURAL UNDERSTANDING IN
CONCILIATION

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Abstract

The aim of the paper is to analyse the best way the Office of the Race Relations Conciliator can promote positive race relations in New Zealand through the use of culture in the process of conciliation. The objective is to prove that the acknowledgment of culture and the use of inter-cultural conflict resolution principles in conciliation can assist the Race Relations Office in two ways. First, it will enable the participants to be comfortable, and the complaint to be settled amicably. Secondly, the use of culture in conciliation will assist participants in the long term to develop awareness of cultural differences and learn how to deal with inter-cultural conflict. This will improve race relations in New Zealand because people will become more understanding of cultural differences. Furthermore New Zealanders who participate in conciliation will be empowered with knowledge of how to resolve cultural misunderstandings and conflict, without resorting to racism. To use culture effectively in conciliation, race relations staff need to be able to analyse the cultural principles at the heart of each situation, provide the participants with information on the issues of culture involved, and facilitate communication between the parties as to the cultural matters important to them. If culture is used in conciliation people who participate in the process will gain knowledge and skills. This knowledge will filter into the community, and help to heal the rift between groups that currently exists in New Zealand.

The Text of this paper comprises approximately 15,103 words.

¹ Office of the Race Relations Conciliator Annual Report For the Year Ended 30 June 1995

(Office of the Race Relations Conciliator, Wellington, 1995) 7.

² Hereafter the "TRCO"

³ Office of the Race Relations Conciliator Annual Report For the Year Ended 30 June 1997

(Office of the Race Relations Conciliator, Wellington, 1997) 42.

⁴ A. Thompson *Using the Power of Culture: Understanding Cultural Diversity in Business* (Dorley, London, 1993) 8.

I INTRODUCTION

“The challenge to promote race relations is like rust: ‘it never sleeps’.¹

This paper aims to analyse the best way the Race Relations Office,² can promote positive race relations in New Zealand through the use of inter-cultural conflict resolution principles in conciliation. Race relations in New Zealand are problematic. Particularly contentious issues at present are the immigration debate and the obligation of the state to promote Maori rights. Perhaps the biggest challenge to New Zealand’s race relations is the increasing level of resistance among the Pakeha majority to the notion of the right of minority cultures to be different, and be treated as such.³

Culture, for the purposes of this paper is defined as the methods groups have developed to solve problems of survival.⁴ This definition is generally based around ethnic groups and the cultural methods they have developed. However, it is also recognised that culture includes other factors such as gender, education, socio-economic status and age. These factors determine people’s values, and the way they prefer to conduct conciliation in order to resolve conflict.

The use of culture in the process of conciliation offers two benefits. First, the use of inter-cultural principles can help the conciliator reach a settlement. With the acknowledgment of cultural differences conciliation has the potential to be effective and comfortable for the parties. Furthermore, conciliation has the opportunity to develop New Zealanders’ awareness of cultural differences on a person level, while they are involved in a dispute. In the future people might use these inter-cultural

¹ Office of the Race Relations Conciliator *Annual Report For the Year Ended 30 June 1996* (Office of the Race Relations Conciliator, Wellington, 1996) 7

² Hereafter the “RRO”

³ Office of the Race Relations Conciliator *Annual Report For the Year Ended 30 June 1991* (Office of the Race Relations Conciliator, Wellington, 1991) 42

⁴ A Trompenaars *Riding the Waves of Culture Understanding Cultural Diversity in Business* (Brealey, London, 1993) 8

conflict resolution principles in their lives and treat others in a more sensitive manner. This will promote positive race relations.

Positive race relations would insure greater acceptance among New Zealanders of people's right to different cultural beliefs and values. This should result in recognition of other's different lifestyles and sometimes the need for special treatment. If positive race relations were achieved high profile situations of racial conflict, like the Haka Party incident.⁵ Instead, differences would be settled in an amicable and understanding manner. Cultural differences should also be settled this way in conciliation.

Race relations conciliation consists of a dispute resolution meeting in which the complainant, respondent and a conciliator meet to discuss a complaint made to the RRO. Conciliation can occur at any stage after a complaint is made to the RRO and is attempted after a finding of substance is made.⁶ The parties and conciliator negotiate a settlement acceptable to the parties, which ideally prevents racism in New Zealand.⁷

RRO conciliation can be improved by viewing it as a process of dispute resolution between parties of different cultures,⁸ as this imports sensitivity into the process. People of different cultures can have quite different values which can lead to misunderstandings. In the process of conciliation these cultural differences should be recognised and discussed by the parties and the conciliator. Consequently the process of conciliation and settlement can be appropriate to the cultural values of both parties. Conciliation can also improve race relations in New Zealand, by changing people's behaviour in the long term. People can learn about other cultural values in the conciliation, and be more sensitive to others' needs in future. Participants can also learn inter-cultural dispute resolution techniques which they can apply in their own lives.

⁵ K Hazelhurst *Racial Conflict in New Zealand: The Haka Part Incident and it's Aftermath* (Peace Research School of Pacific Studies, Canberra, 1988)

⁶ Above n 1, 45

⁷ Rajen Prasad *Interview* July 8 1997

⁸ Above n 7: Most complainants and respondents in conciliations are from different cultures.

To achieve a successful conciliation itself, and improve participants knowledge in the long term, two factors are necessary. First, conciliators need to provide information to participants as to the importance of culture. Secondly, communication is necessary between the parties and the conciliator regarding the cultural values important to each and the manner in which they would like the process conducted.

This paper will first discuss the context of culture and race relations in New Zealand and some important definitions. The office of the Race Relations Conciliator, and the methods of conciliation used will be examined. Inter-cultural dispute resolution principles will be analysed in terms of their use in the New Zealand context of conciliation. A general model, based partly on the work of Trompenaars is suggested as a general guide for conciliators and participants. The paper concludes with a discussion of possible improvements to the RRO based on the in this paper.

The Act prevents discrimination against others based on ethnic groups, race or culture in public places.¹⁰ The Act also prohibits racial disharmony, or racial harassment both of which must also occur in a public place.¹¹ Consequently the legal definition of racism appears to be the creation of racial disharmony, discrimination, or harassment, based on race, in the public arena.

The key ongoing problem from 1971,¹² to the present day,¹³ is that many Pakeha New Zealanders have the attitude that all "kiwis" share a common culture, and should forget their ethnic differences. This in part stems from the assimilation policies of the last one hundred years. This belief fails to recognise that New Zealand has several cultures including a Pakeha culture, which some Pakeha demand other

¹⁰ In past centuries ethnic groups tended to remain in enclaves of origin. The trend towards internationalism occurred from 1990s onwards when the Writs started to import cheap labour.

¹¹ For example discrimination when buying goods and services, under s49 and discrimination in employment s22 of the Human Rights Act 1993.

¹² The Human Rights Act 1993, s. 49 Racial Disharmony. See Appendix 1 the abuse or threat based on race must be published, or spoken in front of people. Under s49 racial harassment must take place in public areas, such as access to land, housing, or other accommodation.

¹³ J. Mingo 2011

¹⁴ Above s. 7.

II CULTURE AND RACE RELATIONS CONCILIATION

This chapter discusses definitions of key concepts, such as racism, culture, conciliation and inter-cultural conflict. These concepts are placed in the context of New Zealand society and race relations conciliation.

A *Race Relations*

1 *Racism*

Racism is a problem of modern society. In this era of international access there is a high degree of immigration, so many different cultures are exposed to each other.⁹ There is also the distinction between Maori and Pakeha. Consequently, many different cultures are exposed to each other in New Zealand, with different attitudes, different values and different ways of life. Some people cannot accept or comprehend this.

B *The Legal Situation*

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⁹ In past centuries ethnic groups tended to remain in countries of origin. The trend towards internationalism occurred from 1600s onwards when the West started to import slave labour.

¹⁰ For example discrimination when buying goods and services, under s.44 and discrimination in employment s.22 of the Human Rights Act 1993.

¹¹ The Human Rights Act 1993, s. 61 Racial Disharmony. See Appendix 1 the abuse or threat based on race must be published, or spoken in front of people. Under s.63 racial harassment must take place in public areas, such as access to land, housing, or other accommodation.

¹² J Metge 311

¹³ Above n 7

ethnicities take on. Cultural differences do exist, will continue to exist and refusing to acknowledge them will only ostracise some groups.

2 Positive race relations in New Zealand

Positive race relations in New Zealand would see a healthy approach to resolving disputes between different cultures, including increased understanding and communication between the different groups involved. Under the legal definition of racism in the Act to achieve positive race relations discrimination, harassment and racial disharmony in public places would no longer occur. However this ignores private situations, such as racism between neighbours and within relationships. Ideally positive race relations exists when there is no discrimination based on race in any sphere of life. This is unlikely to happen in the near future, some people still have firmly entrenched attitudes of separatism and assimilation.¹⁴ However the goal of positive race relations should still be aimed at.

B The Legal Situation

1 The Race Relations Act 1971

In 1971 the Race Relations Conciliator was established by the Race Relations Act.¹⁵ The purpose of the Act was to affirm and improve racial equality in New Zealand, and to implement the International Convention on the elimination of all forms of racial discrimination.

2 The Human Right Act 1993

The Act sets up the Human Rights Commission,¹⁶ and the Office of the Race Relations Conciliator.¹⁷ Section 21(1) prohibits discrimination on the grounds of sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status, and sexual orientation.¹⁸ Discrimination is prohibited in the areas of employment,¹⁹ access by

¹⁴ These attitudes are based largely on the policies followed by New Zealand last century earlier this century.

¹⁵ This was later repealed and replaced by the Human Rights Act 1993.

¹⁶ The Human Rights Act, 1993, ss 5 and 6

¹⁷ Above n 16, s.11

¹⁸ Above n 16

¹⁹ Above n 16, ss 22-23

the public to places, vehicles and facilities,²⁰ provision of goods and services,²¹ and the provision of housing and other accommodation.²² Racial harassment,²³ and creating racial disharmony²⁴ are unlawful.

The Act is very broad, grants the Race Relations Conciliator much power, and allows him wide scope to conciliate disputes in any way. The Race Relations Conciliator, Rajen Prasad can investigate any matter, law, practice, or procedure if it appears that human rights are, or may be infringed.²⁵ The Conciliator can obtain a declaratory judgment, or order of the High Court,²⁶ and can bring civil proceedings.²⁷ The Race Relations Conciliator has wide powers to summon people and hear them under oath, if he considers they are able to give any information relating to a matter under investigation.²⁸ The conciliator is able to override the Privacy Act to obtain information and can prevent the disclosure of matters to the public.²⁹

The Complaints Division which investigates and conciliates disputes consists of the Race Relations conciliator and three other race relations commissioners.³⁰ The functions of the Division is to receive, investigate, conciliate complaints and investigate of its own motion any situation.³¹ The Complaints Division may decide not to investigate a complaint further,³² or not to conciliate.³³ The Complaints Division has the power to call a conciliation agreed upon by both parties, or a compulsory conciliation.³⁴

The objectives of a conciliation conference are to:

1. identify matters in issue between the parties;³⁵ and

²⁰ Above n 16, s 42

²¹ Above n 16, s 44

²² Above n 16, s.53

²³ Above n 16, s. 63

²⁴ Above n 16, s. 61

²⁵ Above n 16, s.5(g)

²⁶ Above n 16, s.6(3)

²⁷ Above n 16, s. 83

²⁸ Above n 16, s.127

²⁹ Above n 16, s.129

³⁰ Above n 16, s.12

³¹ Above n 16, s.75

³² Above n 16, s.76

³³ Above n 16, s.77

³⁴ Above n 16, s.80(3): If a person fails to comply with the proceedings, the Commission can issue a summons.

³⁵ Above n 16, s.80(2)(a) See Appendix 1 for s. 80 set out in full.

2. attempt to secure a settlement between the parties on the matters at issue.³⁶

The Act gives wide scope for conciliation, so disputes can be conciliated in a variety of ways appropriate to the cultures involved. The conciliators are to “use their best endeavours to secure a settlement”.³⁷ This is very broad and could be achieved in a range of ways. For example, the conciliation could be held on a marae with whanau present. However, the idea of a compulsory conciliation may be inappropriate to some cultures, such as Fijians, who tend to resolve disputes in a low-key, informal settings,³⁸ or pakeha, who generally take the western view that mediation should be voluntary. However, if compulsory conciliation was not permitted, the complaint would result in a decision made by the Race Relations, or the Court, which would be even more disempowering for the parties.

“Settlement” means:

1. agreement of the parties concerned and actions that settle the matter. This may include the payment of compensation or the tendering an apology; and
2. includes a satisfactory assurance by the complainant against the repetition of the conduct.³⁹

This section is very broad and suitable for inter-ethnic conflict because compensation is not defined. It could include monetary compensation for pakeha, restoration of mana for Maori and fine mats and an apology to a Fijian complainant.⁴⁰

There are no constraints to prevent conciliators taking into account the culture and dispute resolution procedure used by participants. The RRO, like other bodies in authority is constrained by natural justice, required to hear people carefully, in their own way and to act in good faith. The Office is also constrained by the thresholds in the Act.⁴¹ These constraints are appropriate for the accurate and fair administration of the Act and do not affect methods of conciliation used.

³⁶ Above n 16, s.80(2)(b)

³⁷ Above n 16, s.80(2)(b)

³⁸ A Ravuvu *The Fijian Way of Life* (University of the South Pacific, Suva, 1983) 109

³⁹ Above n 16, s.81(5)

⁴⁰ Refer to Chapter V for a discussion on the importance of restoration for parties.

⁴¹ s.63(1) For example in order to have breached s.63 by committing Racial harassment the offender must have:

- Used language, visual matters, or physical behaviour which;

3 *The New Zealand Bill of Rights Act 1990 and the Treaty of Waitangi*

Under the New Zealand Bill of Rights Act 1990, section 19 grants people freedom from discrimination, and section 20 guards against the rights of minorities. The Treaty of Waitangi was incorporated into a series of statutes by the Labour Government.⁴² The Treaty has been interpreted as setting out the principle of partnership between Maori and Pakeha people.⁴³ However both of these are merely instruments which have the potential to be used to improve race relations, but seldom have. They have no effect unless they are used and enforced.

In Canada commitment to preventing racism and enhancing multiculturalism is more than words on paper, or laws in Parliament. Multiculturalism is recognised as a fundamental characteristic of the country's identity and heritage.⁴⁴ The Federal government has had an official government policy of multiculturalism, since 1971 and in 1989 launched an annual anti-racism campaign. More provinces have also established their own formal multiculturalism policies and programs. In the grass roots Canada has community based organisations and coalitions, which promote racial equity, cross-cultural understanding and civic spirit.⁴⁵ Part of this policy involves cross-cultural community mediation.⁴⁶

Lessons from Canada could be well used in New Zealand. Legislation indicates impermissible behaviour, but does not ensure compliance. Laws against racial discrimination do not necessarily change the beliefs, or attitudes of the majority of people. New Zealand has the law to promote anti-racism and multiculturalism. However these instruments must be used by the government and communities to change people's attitudes.

-
- Expresses hostility/contempt/ridicule against any other person;
 - On the ground of the colour, race, or ethnic or national origins of that person and
 - Is hurtful/ or offensive to the victim; and
 - Is either repeated, or of such a significant nature that it has detrimental effect on that other person

⁴² An example is the State Owned Enterprises Act 1984, s.9: "nothing in the Act should infringe the principles of the Treaty of Waitangi"

⁴³ *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 663-664.

⁴⁴ Ministry of Foreign Affairs and Trade *Multiculturalism* (<http://www.dfaif-maeci.gc.ca/English/html/Canada/26multic.htm>) 3

⁴⁵ Above n 44, 3

⁴⁶ B Lund et al. *Conflict and Culture: Report of the Multiculturalism and Dispute Resolution Project* (Uvic Institute for Dispute Resolution, Victoria, 19994)

C New Zealand a Bicultural and Multicultural Society

1 Biculturalism - the treaty partnership

Sullivan defines biculturalism as that which upholds the Treaty of Waitangi and permanently acknowledges the Maori as tangata whenua and all that this entails. He argues that a rethinking of the nature of the bicultural partnership should provide the philosophical and cultural impetus for effective policy-making, redressing the ethnic inequalities of Aotearoa and building a pro-active path to the future.⁴⁷ A major concern is the necessity for recognition of the need for a fair and equitable relationship between Maori and Pakeha people of New Zealand.⁴⁸ New Zealand is recognised as a bicultural nation, there are two official languages, and a recognition of a partnership between Maori and Pakeha under the Treaty.⁴⁹ This paper acknowledges the special relationship between Maori and Pakeha.

In this relationship of partnership there needs to be recognition and acceptance that Maori and Pakeha perspective's can differ. In 1992 there was much press coverage and controversy when a coroner held the body of a Maori man who had died violently. It was held for legitimate forensic purposes, but the family needed the body as part of the tangi.⁵⁰ The Pakeha community was outraged that an autopsy for the purposes of determining death was being interrupted. However Maori were upset that the man was violated to the extent they could not bury his body whole. A change in attitudes of both Maori and Pakeha to accept each others different values and needs would help these groups to cohabit more harmoniously.

2 Multiculturalism in New Zealand

Multiculturalism can best be described as a pluralistic philosophy in which cultural differences between minority groups are recognised and socially accepted as equal,

⁴⁷ Sullivan, quoted in A Watene and T Davies *Biculturalism and Tino Rangatiratanga Tangatiratanga in the Public Administration of Education* (Victoria University Wellington, Wellington, 1996) 12

⁴⁸ Above n 1, 9 : Above n 3, 45

⁴⁹ Above n 43

⁵⁰ Office of the Race Relations Conciliator *Annual Report For the Year Ended 30 June 1992* (Office of the Race Relations Conciliator, Wellington, 1992) 45

intrinsically valuable and worthy of retention.⁵¹ It is a concept which places great emphasis on the right of minority groups to maintain their cultural integrity and be recognised as culturally different without stigma, penalty or discrimination attaching to them as a consequence of their cultural affiliation. In a multi-cultural society cultural diversity is valued and incorporated into the existing social and political system. The complainants to the RRO are indicative of the broad range of groups in New Zealand. Pakeha and Maori make up the majority of complainants to the RRO, but Indians, Chinese, Asian, Europeans and Pacific Islanders also make up a substantial amount of complainants.⁵²

This study acknowledges that all cultures in New Zealand need to be recognised but in the interests of brevity and resources, have used examples of Pakeha, Maori, Samoan, Fijian and Indian cultures. Furthermore, although there is a special relationship of partnership between Maori and Pakeha, there are many other cultures which inhabit New Zealand. Biculturalism should not be promoted at the expense of multiculturalism

3 Pakeha culture

Pakehas are New Zealanders of a European background whose cultural values and behaviour have been primarily formed from the experience of being a member of the dominant group in New Zealand. The label excludes those who continue to practice minority culture ethnicity.⁵³ Census data places this group at 73.81% of the population.⁵⁴

It is difficult to define Pakeha because they are descended from European people of many different nationalities. Pakeha encompasses New Zealanders principally descended from Scots, English, French, Irish, Welsh, Dutch and Germans. These cultures were all different and while to a certain extent Pakeha culture does have a dominant strand there are also many differences within Pakeha society. For example,

⁵¹ Above n 47, 12

⁵² Above n 1, 17

⁵³ P Spoonley *Racism and Ethnicity* (Auckland, 1988) 43

⁵⁴ Department of Internal Affairs *Ethnic Groups in New Zealand: A Statistical Profile Research Series No. 18* Statistics Department, Wellington, 1993) 15

the Scottish culture tends to be clan based and more collective, like Maori society, but the English are individualistic. As a result different strands of Pakeha society, depending on their primary ancestry may be quite distinct. Consequently, there is a danger of generalisation about Pakeha society. This paper concentrates on the dominant strand of Pakeha culture which is the English and North American inspired individualistic, largely success driven culture, but does recognise that there are differences in Pakeha society.

D Culture

It is important that culture is treated as a very important factor of the conciliation process because it is an inherent part of who people are. The recognition of opposing parties cultures would empower both parties in a conciliation.

1 A working definition of culture

This paper concentrates on culture as opposed to ethnicity, although ethnicity often plays an important part in culture. Ethnicity tends to focus on the ancestry of a particular group.⁵⁵ Culture is much broader and includes how individuals define themselves, and their beliefs. Culture also encompasses many other factors including religion, educational level, socio-economic class, gender and age. The main focus of this paper will be the cultural group people identify with based on ethnicity,⁵⁶ such as Maori, Pakeha, or Samoan. However, other cultural factors such as gender are also considered.⁵⁷

Culture is difficult to define. Berger suggests culture is personal interpretation which aids individuals in adapting to everyday life.⁵⁸ Berger also believes culture is created as a way to solve persistent problems a group faces.⁵⁹ If the group uses a method to solve problems of survival repeatedly, it becomes a natural part of the

⁵⁵ Above n 54

⁵⁶ Some people who associate themselves with particular cultures are not necessarily ethnically related to the culture. It is more an issue of identity, rather than the ethnic make up of the person.

⁵⁷ It is important to consider all facets of culture because they have impact on how people prefer to resolve disputes

⁵⁸ R Wuthrow, JD Hunter, A Bergesen and E Kunwail *Cultural Analysis: The Works of Peter L Berger, Mary Douglas, Michael Focalt and Jurgen Habermas* (Routledge and Kegan Paul, Boston, 1984) 240

⁵⁹ Above n 58

way they function, a culture. Therefore it appears culture is the solution to problems a society faces.

2 The Trompenaars model

Trompenaars believes the core of culture is the way people organise themselves to subsist most effectively.⁶⁰ This corresponds to Berger's idea that culture is a group's way of solving problems. In the Trompenaars' model culture is like an onion, there are many layers to it. The outer layer consists of observable reality, like language or dress, and the middle layer of norms, the mutual sense a group has of right or wrong.

The outer layer is generally what people in modern societies look at. Asian immigrants to New Zealand are identified by their appearance and use of native language. There are dangers of concentrating on the outer layer of culture in a dispute resolution situation. First, there is the risk of stereotyping one group as all the same. Secondly, in a multi-cultural society such as New Zealand people tend to dress similarly and usually speak English, so some groups may not be identifiable from the language they speak and their dress.

E Inter-Cultural Conflict

1 Different views of conflict

Culture may result from the way groups solve traditional problems. It follows that the means people choose to resolve problems of conflict, or racism will be determined at least in part by their cultural background. Culture defines the values and interests at the core of each conflict, this shapes people's perceptions of themselves, others and the conflict. People from different cultural settings have developed distinct methods of creating, expressing, interpreting and handling conflict.

Paul Salem elaborates on this theory. He indicates the West's current perception of conflict is negative and the East's view that conflict can be positive in some

⁶⁰ Above n 4, 23

circumstances.⁶¹ History tends to dispute this. All major conflicts including World War one and two have all been in the West. The predominant perception of westerners is that conflict is negative must be a fairly recent phenomenon. Westerners perceive conflict as harmful because it causes violence, suffering and discomfort.⁶² Peace should be obtained at all costs. This assumption ignores the problem of negative peace which seeks to avoid conflict, and is aimed at engendering a static state. The alternative eastern view is that conflict should not always be eliminated or reduced, because it is progressive and it can bring about important political, economic, or social change.

Culture is inherent in the way people view conflict and the methods they employ to resolve it. If a culture views conflict as negative, then people are more likely avoid it. Other cultural attitudes towards conflict are positive. In these cases conflict is perceived as an important step in leading to attitude, or social change, it is more likely much more time will be spent in dealing openly with the conflict and resolving it.

Some Pakeha can view conflict as annoying, or embarrassing and have developed ways of handling this. They tend to avoid conflict by bargaining quickly towards a rapid solution, such as negotiating to buy a house. Another method of conflict resolution developed in western culture is to hire a lawyer to meet the opponent, rather than dealing face to face.

Maori, by contrast can view the resolution of conflict as a chance for utu,⁶³ to restore balance, and put right a wrong. Maori stress that the decision making process is not served unless matters are discussed face to face, openly on a marae.⁶⁴ Participants should stay in the marae until the issues are discussed thoroughly and the matter resolved. Opponents should not leave until they have exhausted their anger

⁶¹ P Salem "A Critique of Western Conflict Resolution From A Non-Western Perspective" (1993) 9 Neg Jnl 361, 363

⁶² Above n 61, 366

⁶³ Utu means reciprocity both good and bad. Traditionally murus were carried out by the injured party's hapu on the offender's hapu. The muru party plundered the offender's village.

⁶⁴ J Metge and P Kinloch *Talking Past Each Other* (Victoria University Press, Wellington, 1978) 36

and reconciled.⁶⁵ Maori do not avoid conflict resolution. The resolution of conflict is an opportunity to restore mana, in intra-cultural, and inter-cultural conflict.⁶⁶

2 Definition of Inter-cultural conflict

Inter-cultural conflict is a conflict, or a series of conflict relating to an issue between at least two parties where an element of the conflict relates to the culture of the parties, and/ or the parties belong to different ethno-cultural groups.⁶⁷

Most of the conflict and racial discrimination the RRO deals with involves parties of two different cultures. Some of this conflict is caused by cultural misunderstandings. Misunderstandings occur when people's cultural beliefs are so inherent within themselves that they tend to accept them as the truth, ignoring the other people's different values.

3 Inter-cultural misunderstandings

Most complaints to the Race Relations Conciliator result from cultural misunderstandings and mis-information.⁶⁸ An example of a cultural misunderstanding involved several complaints to the RRO by Pakeha who believed it was discriminatory to have an all Maori All Black team without allowing other groups to play.⁶⁹ Pakeha culture is very much rights based, and Pakeha tend to believe everyone has the right to be treated equally.⁷⁰ However Maori society is more relationship and group based.⁷¹ Having a Maori rugby team is a possible way of achieving something as a group, particularly as a minority group in a predominantly Pakeha society. This is not racial discrimination, merely a clash of cultural values of rights and relationships.

⁶⁵ Mereana Hond *Interview* June 4 1997

⁶⁶ Mana means dignity, or respect

⁶⁷ Above n 46, 44

⁶⁸ Above n 7

⁶⁹ Above n 7

⁷⁰ Refer to the discussion of collectivity versus individuality in Chapter V.

⁷¹ Above n 65

E Conclusion

New Zealand faces the difficulty of reconciling biculturalism, multiculturalism and the ethnocentric ideology of the dominant Pakeha culture. New Zealand's many cultures have a right to practice their own beliefs and values. To promote positive race relations in New Zealand it is important participants in the conciliation process have their culture acknowledged and incorporated in the conciliation. As culture is an integral part of how people choose to resolve problems and conflicts, the recognition of this should play a vital role in race relations conciliation.

The main activities of the office are to:

1. investigate complaints and inquiries;
2. educate the public;
3. perform research and submissions;
4. publish and prepare educational resources, and
5. provide public policy advice.⁷⁴

The RRO is involved in all of these functions, but their chief responsibilities are education and receiving complaints.⁷⁵

A Functions of the RRO

1 Investigating complaints and inquiries

The investigation of complaints is one of the key functions of the Race Relations Conciliator. Complaints can be made by the public, via telephone, letter or a visit to the offices. When a complaint is received it is examined by RRO staff to determine if there is substance and jurisdiction to investigate. If there is jurisdiction cases are thoroughly investigated and attempts made to resolve the situation.

In the 1995/6 financial year 497 complaints were laid. Of these complaints, 47.66% had no substance, or were discontinued, 14.0% the investigation is still continuing, 12.10% were outside the jurisdiction of the Act and 23.21% were resolved under the

⁷⁴ Above n 16, s.11.

⁷⁵ Above n 1, 12.

⁷⁶ As described by Walter Hinds in *Office of the Race Relations Conciliator Annual Report For the Year Ended 30 June 1995* (Office of the Race Relations Conciliator, Wellington, 1995) 40.

⁷⁷ Above n 1, 23-24.

III OFFICE OF THE RACE RELATIONS CONCILIATOR

The Office of the Race Relations Conciliator was established under the Human Rights Act 1993.⁷² The role of the office is to prevent racial discrimination by educating the public, and resolving complaints of racial discrimination. The current Race Relations Conciliator is Rajen Prasad. He has a support staff of about twenty people throughout the Auckland, Wellington and Christchurch offices.⁷³

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⁷² Above n 16, s.11

⁷³ Above n 1, 12

⁷⁴ As described by Walter Hirsh in: Office of the Race Relations Conciliator *Annual Report For the Year Ended 30 June 1988* (Office of the Race Relations Conciliator, Wellington, 1988) 46

⁷⁵ Above n 1, 22-36

Act.⁷⁶ In 21.93% of cases a mediated settlement was achieved during investigation, and in 0.60%, after investigation.⁷⁷ Of the cases which fell within the jurisdiction of the act, and were resolved, 87.5%, were mediated.⁷⁸ There is a very high proportion of justified complaints which are conciliated. This allows much scope for changes in behaviour as parties meet face to face and deal with their different viewpoints over an incident.

Throughout the complaints process conciliation is always regarded as a possibility and can be undertaken without prejudicing the rights of any party. Due to the broad scope of the Human Rights Act 1993 the conciliator can investigate and conciliate even before a concern becomes a formal complaint.⁷⁹

The majority of complaints under the 1971 Act were against inciting racial disharmony.⁸⁰ Under the Human Rights Act 1993, racial disharmony was also the most common complaint.⁸¹ In 1995-6 171 complaints were against racial disharmony.⁸² An example of such a situation involved the complaint of a listener to a pirate radio station over racist comment made by the announcer. The announcer targeted Japanese and Chinese using stereotype and anti-immigrant sentiment.⁸³ As the comment made was racist and published it was found an attempt to incite racial disharmony.

Other matters commonly the subject of complaint were discrimination in employment,⁸⁴ the provision of goods and services,⁸⁵ accommodation,⁸⁶ and advertising.⁸⁷ These areas which complaints have been made over the last decade

⁷⁶ Above n 1, 16: See Appendix 2 for a table on these figures.

⁷⁷ Above n 1, 16

⁷⁸ This was calculated using the results from Above n 1, 16

⁷⁹ Rajen Prasad said in some cases a complainant may not wish to lodge a complaint and may first request mediation by the Race Relations Conciliator.

⁸⁰ Above n 1, 9

⁸¹ Under s.61(1) of the Human Rights Act 1993, it is unlawful for any person - to publish written matter, or to use in any public place, or within the hearing of the public words which are threatening, abusive, or insulting being matter or words likely to excite hostility against, or bring into contempt any group of persons based on their colour, race, or ethnic, or national origins.

⁸² Above n 1, 2

⁸³ Above n 1, 2

⁸⁴ The Race Relations Act, 1971, s.5

⁸⁵ Above n 84, s.4

⁸⁶ Above n 84, s.4

⁸⁷ Above n 84, s. 7

have remained relatively unchanged.⁸⁸ This indicates there is persistent problems in these areas which have not been resolved either by the complaints or education process. Consequently, these areas need to be targeted to improve race relations in New Zealand.

Of the complainants in 1996 30.98% were Pakeha and 24.98% Maori making up half of all complainants. Other major groups in the complainant statistics are: Indian,⁸⁹ Chinese,⁹⁰ Other Asian,⁹¹ European,⁹² and Pacific Islanders.⁹³ There are many reasons why Pakeha are the major complainants. First, Pakeha make up the majority of the population, so statistically a complainant is more likely to be pakeha. Secondly, many Pakeha do not make complaints about themselves, but increasingly about racial discrimination to other groups.⁹⁴ Finally, in the current climate of opposition to special treatment of minorities many Pakeha are sensitive to this and even in cases where it does not exist can perceive a situation as discriminatory and complain.⁹⁵

Respondents to complaints over the past fifteen years have been predominantly pakeha individuals or organisations.⁹⁶ Only 29% of respondents were individuals,⁹⁷ compared to 58% which were organisations.⁹⁸ Since complainants are usually individuals,⁹⁹ much conciliation could result between an individual complainant and an organisation. The conciliator ought to ensure the power is fairly balanced between

⁸⁸ Assessed by a comparison of the Office of the Race Relations Conciliator's annual reports from 1981-1996.

⁸⁹ Above n 1, 17, 7.44% See Appendix 2 for a graph on these statistics.

⁹⁰ Above n 1, 17, 3.82%

⁹¹ Above n 1, 17, 4.02%

⁹² Above n 1, 17, 3.62%

⁹³ Above n 1, 17, 5.60%

⁹⁴ Above n 7

⁹⁵ Office of the Race Relations Conciliator and the Human Rights Commission *Making A Stand and Fifteen Other Cases From Our Files* (The Office of the Race Relations Conciliator and the Human Rights Commission, Auckland, 1993) 3: In a recent race relations case a Pakeha woman, Madeleine, complained about waiting hours at a government department. She believed the delay resulted because she was asked if she was Maori and when she responded no, was told she would have to wait. In the conciliation meeting, it came out that she was actually asked if she was married, not Maori. She was told to wait because the department was really short-staffed. Madeleine had gone into the situation with pre-conceived ideas that Maori received special treatment, so she imposed this interpretation onto the situation.

⁹⁶ Above n 88

⁹⁷ Above n 1, 18 of the 523 respondents, 133 were mainly Pakeha individuals, 12 were neighbours and 10 members of parliament.

⁹⁸ Above n 1, Conversely, 78 were companies, 84 the media, 53 government department 9 local bodies, 33 involved educational organisation, 26 medical bodies, and 19, licensed premises.⁹⁸ See Appendix 2 for details as to respondents.

⁹⁹ Above n 1, 17: That is why they are participants are classified on their ethnicity, while respondents are classified in organisations.

parties, because often organisations will have more resources at their disposal, like evidence, money and solicitor's opinions. The object of conciliation in this paper is to promote positive race relations. This may be difficult to do if there is an power imbalance between a Pakeha based organisation and a complainant of a different culture. In such a case there is a danger the organisation may try to 'win' to save face, rather than conciliating the differences and changing attitudes.

2 *Educative programme*

The RRO runs a "vigorous" educational program.¹⁰⁰ In 1995-6 the office received 115 requests for information and provided this and materials on 960 occasions.¹⁰¹ The staff speak on a variety of issues to government agencies, individual community groups, businesses, the media and schools.¹⁰²

This is very positive because it distributes to a wide range of people information regarding racial toleration and acceptance. However race relations staff usually speak to people who have requested information on race relations,¹⁰³ whereas it may be the people who do not want to know, who need education on tolerating cultural differences. This is where the complaints process is useful because if a justifiable complaint is made about a respondent, it will be investigated and they will probably be requested to participate in a conciliation. In this way people can learn about other cultures in a more personal and direct manner.¹⁰⁴

3 *Research and Submissions*

The RRO has a policy to carry out a minimum of two research projects annually.¹⁰⁵ In 1987 the RRO published a report on rental accommodation confirming that some private landlords and a high proportion of Real Estate institute members actively prevent Maori and Pacific Islanders gaining access to rental accommodation.¹⁰⁶

¹⁰⁰ Office of the Race Relations Conciliator *Annual Report For the Year Ended 30 June 1984* (Office of the Race Relations Conciliator, Wellington, 1984) 36

¹⁰¹ Above n 1, 19

¹⁰² Above n 1, 19

¹⁰³ Above n 1, 19

¹⁰⁴ Above n 1, 43: If a complaint is found to have substance the settlement process is commenced

¹⁰⁵ Above n 1, 47: regarding either: affirmative action, immigration, race stereo-typing, cultural safety, the history of RRO, or racial harassment in employment.

¹⁰⁶ Office of the Race Relations Conciliator *Annual Report For the Year Ended 30 June 1987* (Office of the Race Relations Conciliator, Wellington, 1987) 46

Through research the RRO can assess the state of race relations and recommend positive change to improve this.

4 Prepare and publish educational resources

The RRO has prepared extensive resources for schools, particularly Maori language for children. As part of this Mahi Tahī Tatou was distributed to every school in New Zealand in March 1996.¹⁰⁷ Educational resources help young people become aware of cultural differences and how to deal with these.

5 Provide policy advice

The RRO provides policy advice to MPs and government and other agencies about the Act, cultural awareness and current issues.¹⁰⁸

B Informal and Formal Conciliation

The RRO basically deals with two types of complaints:

1. informal inquiries and situations which do not fall within the Act; and
2. formal complaints which fall within the scope of the Act and are investigated by the office and settled by conciliation.

1 Informal Conciliation

Matters in which people have on-going relationships were dealt with by informal conciliation. A great deal of informal complaints are neighbourhood disputes. In 1994, 25 respondents were neighbours and 12, in 1995.¹⁰⁹

Other parties with ongoing relationships also need assistance in resolving informal disputes. In 1989 the conciliator helped resolve a conflict over the status of a whanau class at St Albans school and averted potential conflict between members of a gang and a police station in South Auckland.¹¹⁰

It is important that people who have on-going relationships are able to receive conciliation or informal mediation through the offices. People in such relationships

¹⁰⁷ Above n 1, 45

¹⁰⁸ Above n 1, 54: In 1995-6 policy advice relating to all three topics was provided to 8 government organisations including the health and disability commissioner, and the department of labour. Requests for policy advice were received from 47 organisations and were responded to.

¹⁰⁹ Above n 1, 18

¹¹⁰ Above n 1, 57

are continually faced with each other, neighbours and colleagues generally have contact every day. These people need to be able to discuss their cultural differences, see the other person's side and broaden their views towards racial discrimination with the help of a conciliator.

In the Prasad administration informal complaints which do not fall within the Act, and disagreements, are usually dealt with over the telephone by staff. Generally, meetings are not facilitated by staff in these informal situations when there is not a justifiable complaint under the Act.¹¹¹

This is not satisfactory because it does not allow the parties to meet together in a neutral atmosphere to discuss the allegation. Complainants may be told their complaint is invalid, or not within the jurisdiction of the Act. This does not solve the problem between the parties. People are better able to negotiate and evaluate each other's values and their own, in person. In this situation they can discuss face to face with the other person what caused the problem and what can be done to rectify the situation. The conciliation is quite official yet non-threatening, so parties may be more receptive to learning about other cultures and the particular problem involved. As a result attitudes will be changed and discrimination prevented from occurring in future.

2 Formal Conciliation

A formal conciliation is the result of a complaint made to the RRO under the Act. The complaint can be conciliated during the investigation, if the parties agree. When a complaint is found to have substance the RRO endeavours to reach a settlement by initiating a conciliation between the parties. In the conciliation meeting the RRO will usually require an assurance from the respondent that the incident will not be repeated.¹¹²

C Methods of Conciliation

¹¹¹ Above n 7

¹¹² See the section on complaints in Chapter III for more details.

1 Neutrality

Rajen Prasad places great importance on the impartiality of the mediator. It is the policy of the current RRO that the staff member who investigates the case should not act as the conciliator.¹¹³ The reasoning behind this is Prasad believes that the investigator will have developed certain prejudices and furthermore that the parties may prefer someone they do not know. It is a very western view that mediators be neutral, and unknown to the parties.¹¹⁴ This may be appropriate for some cultures that value neutrality, but others do not.

2 Importance of identifying culture

Rajen Prasad claims it is important for all the participants to have their own culture identified and for each to understand the culture of the other. For example, a Samoan party slouching in his chair and looking downwards to keep his eye level below others from respect may look shifty, until this is explained to the other party.

The Race Relations Conciliator uses a variety of conciliation processes, taking into account the different cultures of participants on a cases by case basis. The participants must agree on the process and Rajen Prasad acknowledges in his experience there has always been agreement.¹¹⁵ If parties could not agree on a process the conciliation would have to be held at the offices, and in the style of the Race Relations Conciliator.¹¹⁶ Recently the Race Relations Conciliator has conciliated cases involving Europeans and Pakeha around the table at the RRO and held healing conferences on a marae. This indicates the RRO takes a fairly flexible approach to conciliation. Furthermore the conciliators acknowledge that culture is a fundamental part of the process, both to resolve the particular dispute and change people's attitudes to different cultures the future.

When planning the conciliation the RRO ask each party individually, over the telephone how they wish the meeting to proceed. For example, whether they wish a

¹¹³ Above n 7

¹¹⁴ See the discussion of mediation for more details in Chapter IV.

¹¹⁵ Above n 7

¹¹⁶ Above n 7

prayer to be said at the start of a meeting,¹¹⁷ or an agenda presented.¹¹⁸ The proceedings are clarified before the meeting begins. This has the potential to be unworkable, because the parties may not be comfortable discussing over the phone their cultural preferences for dispute resolution, particularly if this is very different from the Pakeha system. Furthermore the RRO's identification of culture may be quite superficial. If the structure or venue is all that is considered, such as whether a prayer should be said at the start of the conciliation, it is likely that more important values and principles at the heart of conflict resolution and the incident will be ignored.

D Analysis of Conciliation Methods

3 *Different views of successive conciliators*

Christopher Laidlaw, conciliator in the early 1990s believed it was important to acknowledge the parties' different perspective's openly and honestly before conciliation. He believed this would avoid ill feelings and frustration.¹¹⁹ Laidlaw felt this was particularly important in informal mediation. This may be necessary in many situations because some Pakeha perceive their culture as the only correct one, eliminating all other cultural differences. An acknowledgment of differences before the parties meet, whether young, old, male, female, Maori, pakeha, or Indian, is a beginning to recognition and acceptance of other cultures.

Hiwi Tauroa, Race Relations Conciliator from the late 1970s to the mid 1980s was completely opposed to any legal advocacy in the conciliation process.¹²⁰ He believed parties subjected to racial discrimination deserved a simple explanation, clarification, or expression of regret by the respondent to the complainant.¹²¹ Opinions of solicitors could give the proceedings an adversary tone. The respondents may be less able to accept that their words or actions have been wrong, and instead focus on whether they have done anything which contravenes the Act. Lawyers would obstruct the process, since they have a rights based, not a conciliatory approach.

¹¹⁷ Above n 7: In practice Maori or Indians use these techniques

¹¹⁸ This tends to be a pakeha methods of conducting a meeting.

¹¹⁹ Above n 1, 46

¹²⁰ Above n 100, 35

¹²¹ Above n 100, 35

Walter Hirsh, conciliator, 1986 - 1990 stressed the need for a mechanism to resolve informal and neighbourhood disputes.¹²² He complained that often by the time neighbourhood disputes reached the offices through other mechanisms they had escalated severely.¹²³ A fast track, informal dispute resolution process would allow people with on-going relationships or minor complains to conciliate. This would provide the face to face contact and help acceptance of cultural differences, improving race relations in people's every day lives.

D Analysis of Conciliation Methods

1 Process culturally sensitive, or prescriptive?

The current Race Relations Conciliator recognises cultural differences in conciliation processes in a reasonably effective manner. This enhances race relations in New Zealand because people are usually able to reach a settlement, by understanding the cultural issues involved.¹²⁴ However, there is a danger of superficiality and the RRO must be sure to reach the cultural values involved, not merely to identify culture in a procedural manner.

It is of primary importance that the culture of participants be considered in the process so both parties are comfortable with the form of dispute resolution used. Two problems with the RRO using the telephone to organise the conciliation process are that it appears hollow and a problem may arise if the parties disagree. Consequently the RRO should consider a pre-conciliation conference with the parties in some cases to negotiate how the conciliation should proceed. This would avoid the consideration of cultural principles in a superficial manner and may prevent disagreement.

¹²² Above n 106, 50

¹²³ Above n 106, 50: An illustration of a neighbourhood dispute involved the mother of teenage children, who laid a complaint of racist verbal abuse by her neighbour. By the time the dispute reached the RRO the parties were not speaking to each other. At the conciliation the neighbour expressed remorse and promised it would not happen again. The neighbour was a shift worker, who had constantly told the children to be quiet. In these circumstances, racism was the outlet, but there was also a problem with the neighbour relationship. The parties were able to meet face to face, on neutral ground with the help of a trained facilitator.

¹²⁴ Above n 7 *Preparing For Peace (Sydney University Press, 1995)*

Race Relations Office staff use some prescriptive models which is problematic because they are usually developed in western settings.¹²⁵ This may be a problem for cultural groups that do not practice western values. If models are applied that are not sourced in the cultures that are negotiating, the parties may not be comfortable with such a process, may not get the best potential settlement, or learn about other cultural values.

Rajen Prasad believes there are three ways the RRO can improve conciliation. First, by developing the competency of New Zealand people including RRO staff in handling disputes. Secondly, dispute resolution models should be used flexibly. Thirdly there should be more education for New Zealanders as to the importance of cultural awareness.

These points are very valid for improving race relations in New Zealand through conciliation. It is likely that RRO staff will need more training in considering the importance of culture in conciliation and the skills to bring this out. Furthermore the staff will need to have good general knowledge of the key cultures in New Zealand that make complaints to the RRO and the ability to communicate with the parties to determine how they would like to resolve the conflict. If models are used they should be adapted from one case to the next, depending on the culture, age, gender, class and dispute of the participants. Conciliators should learn how to track a situation, and decide what issues to work on, and which are irrelevant. Education at all levels of society is needed to increase people's awareness of inter-cultural conflict, and how to handle this.

2 Neutrality

The RRO does not use the investigator of a case as the conciliator in the interests of impartiality, which is desirable for western cultures. However, collectivist cultural groups in New Zealand, such as Maori and Samoans may prefer a mediator who is known to the parties and involved in the situation. Perhaps it would be appropriate for the investigator to conciliate in situations where participants prefer someone known and involved. Where both cultures prefer a neutral conciliator, the investigator should not be used. This should be decided on a case by case basis.

¹²⁵ JP Lederach *Preparing For Peace* (Syracuse University Press, Syracuse, 1995)

3 *Pre-negotiation*

Particularly in contentious cases where a compulsory conciliation is called it may be important for the parties to actually meet to discuss the process first. Macduff states that this is useful in issues where the parties are widely separated in their expectations acceptable outcomes to shift the debate away from the solutions bargain about how to negotiate.¹²⁶ To focus on finding common grounds for a process can decrease the value gap between participants.

4 *Preparation of parties*

It is important for parties in the negotiation to be made aware of each other's cultural values and methods of dispute resolution. If parties are aware they are more likely to be open to participating in a different process or understanding the other's culture, preventing the misunderstanding occurring again. Parties could be prepared to have their way of thinking questioned and challenged. If parties are aware what is important to them and to the other party, they might be better placed to identify middle ground where cooperation may be achieved.

Many of the cases the RRO deal with have positive results. When complaints are found to be within the jurisdiction, have substance, and are being investigated, there is a 76% chance they will be resolved by a mediated settlement.¹²⁷ It is likely that conciliators are succeeding in changing attitudes in this process,¹²⁸ because people have to meet, they have an opportunity to see where the misunderstanding or discrimination occurred and prevent it happening again.

¹²⁶ J Hudson *Tikanga Maori and the Mediation Process* (LLM Negotiation) (Victoria University Wellington, Wellington, 1996) 46

¹²⁷ Above n 1, 16

¹²⁸ Above n 50, 56: In the situation where two young men were asked not to bring their bikes into a shopping centre they believed they were being discouraged from entering because they were Maori. Offensive language was exchanged between the young men and the custodian. In the conciliation conference both the complainants and the custodian apologised for their behaviour which they admitted was inappropriate. The decision not to admit bikes was probably a Pakeha rule which was not broken for anybody. Once the young men understood all bikes were not allowed the hostility abated. The meeting concluded with the custodian and the mall manager offering the complaint part-time work.

IV CULTURE AND INTER-CULTURAL CONFLICT PRINCIPLES

Culture plays a large role in resolving disputes. However, this has been ignored in the past by western models which have advocated an across the board approach for all cultures based on western assumptions.

A *Inadequacy of Dispute Resolution Models for Inter-Cultural Conflict in New Zealand*

1 *Traditional models*

Cultural groups assign varying roles to third party interveners in disputes. Mediation in North America, Canada, Australia, United Kingdom and New Zealand are generally based on the culture bound assumptions that:

1. conflicts are communication problems;
2. there is middle ground in disputes;
3. open forthright discussion is the best way;
4. individual interests are emphasised;
5. a third party intervener must be neutral with no connections to the parties;
6. reasonable and rational formats and procedures are used; and¹²⁹
7. conflict resolution processes are driven by analysis, the breaking of facts and issues into component parts.¹³⁰

2 *Problems with western models*

Other cultural groups may find these processes inappropriate because:

1. conflicts are not necessarily communication problems, for example where there is injustice and power imbalance;¹³¹

¹²⁹ Above n 46, 32

¹³⁰ Above n 125, 26 In Somali to deal with an inter-clan conflict a guurki (Supreme council of elders) will meet. When clans are evenly divided women contracted to one clan by marriage are sent back to their original clan to pass on communication and encourage initiation of cross-clan dialogue. Prior to a multiple cross-clan peace conference, there is a combination of intra-sub-clan representations and deliberations. The actual peace conference is usually large, involving orators, stores and extensive use of poetry. Poetry helps to locate and situate grievances and meaning, and justifies demands of different groups. The elders help achieve an eventual consensus and arbitrate procedural problems.

¹³¹ Above n 46, 32-33

2. there is not necessarily middle ground, if there is structural inequality a power imbalance, or valued based conflicts which could occur in some societies;
3. open discussion may be inappropriate in a mediation in some societies, indirect conflict may be preferred;
4. many groups emphasise collective, not individual interests;
5. Salem notes particularly with regard to eastern cultures an anonymous mediator, or facilitator can be inappropriate.¹³² Some ethnic groups would prefer mediators they know and trust who perhaps are aware of the problem;
6. No conflict is standard and one format is likely to be inappropriate to fit every situation; and
7. In some cultures each party telling their story keeps the process together. Some collective cultures such as Somali tribes tell their stories as a way to resolve disputes.¹³³

European models have severe limitations when applied in a multicultural setting. A fundamentally incorrect assumption made by proponents of traditional models is that they are universal and easily transferable across different cultures.¹³⁴ Current dispute resolution models do not take into account other cultures or ethnic groups. This is possibly because western culture has been dominant in much of the ideology of the last four centuries and continues to be so.

Linda Putnam suggests that current models are instrumental, rational and individualistic.¹³⁵ These models ignore:

1. the transformative aspects of negotiation, where disputants raise issues, challenge and confront each other's view of the situation,¹³⁶
2. that some groups are communitarian. Individualist models emphasise autonomy, strategic choice, self-determination and self-interest of negotiators; and
3. models assume human rationality, but people are only rational in terms of their own interests.

¹³² Above n 61, 364

¹³⁴ Above n 127, 27

¹³⁵ L Putnam "Challenging the Assumptions of Traditional Approaches to Negotiation" (1994) 10 *Neg Jnl* 337, 342

¹³⁶ Above n 135, 338

Rational models treat emotion as invisible and destructive to the bargaining process. Emotions are useful and should be treated as indicators for where a critical shift in the process occurs.¹³⁷

Western values very much govern mediation used in dispute resolution and to some extent by the Race Relations Conciliator. This means that middle-upper class Pakeha values are enshrined in mediation and therefore the process favours participants from this culture. These people may be more comfortable with the process than others.

Lower-socio economic, less educated and younger Pakeha may not be comfortable with such a mediation process. Although the values of rationality and individuality will be part of their culture, they may not be at the heart of people in these groups, and as a result they will not be comfortable with the experience of conciliation. Less educated or younger Pakeha may not have been exposed to a semi-legal situation. Consequently, they may wish to bring along a support network, express emotions and construct the process of conciliation in a different way to the middle class, well educated instigators of western dispute resolution models.

Applying rational, individualistic, instrumental models which have fundamental western assumptions, across the board to all ethnic groups would be disastrous because many cultures would not be comfortable with the process, and the conflict may not be settled. Furthermore, middle-class Pakeha participants would have a procedural advantage and may not bother learning anything new about the other parties culture in the conciliation.

C An Alternative

1 Lederach

Lederach believes understanding conflict and developing appropriate models to handle it, must draw from the cultural knowledge of the people involved.¹³⁸ He

¹³⁷ Above n 135, 342

describes this as the Elective model, because information is elicited from the participants. By contrast the Prescriptive model draws from the knowledge of the expert, and is prescribed for the participants even before the process begins. In terms of the RRO, each situation will be different so this may mean the participants could discuss how they would like to proceed together. Culture is a very important factor to take into account when attempting to resolve conflict. The method used must be appropriate for the group or groups involved.

Inter-cultural settings require great sensitivity and creativity by third parties and should not be understood as a challenge to be overcome through technical recipes.¹³⁹

An Elicitive model would require the participants and the conciliator to sit down together and negotiate a venue, time frames and process. It would be very empowering to the parties to have control over the procedure. The parties would have more of an opportunity to learn the values of another culture and how that group chooses to resolve disputes.

2 *Slim and Saunders*

Slim and Saunders discussed a five step model that could be used to manage conflict in a divided society.¹⁴⁰ The important point of this model for present purposes is step five, to implement practical ideas to promote compliance with the agreement. In the New Zealand context this would promote positive race relations. The complainant can explain to people what cultural values are important to them, therefore preventing cultural misunderstanding occurring again.¹⁴¹ The respondent may be encouraged to learn more about different cultures and recognise that other people have distinct ways of thinking.

¹³⁸ Above n 125, 10

¹³⁹ Above n 125, 115

¹⁴⁰ RM Slim and HH Saunders "Managing Conflict in Divided Societies: Lessons from Tajikistan" (1996) 12 *Neg Jnl* 31, 35-41 The Five step process is:

- decide to engage and reach agreement to meet and understand the nature, purpose and ground rules of the dialogues;
- identify the main problems that affect the relationship of the participants;
- probe the dynamics of the relationship;
- for participants have to identify obstacles and think of steps to be taken; and
- practical ways need to be developed to implement ideas

¹⁴¹ For example, Pakeha tend to express aggression verbally, which can be very harmful to Maori people. Consequently a Maori may explain to Pakeha colleagues that any kind of verbal abuse which Pakeha perceive as a joke is hurtful to them.

3 *Impact of inter-cultural conflict models on conciliation*

The models of Lederach, and Slim and Saunders are useful for two key points. First it may be helpful to negotiate ground rules, how to communicate and a venue before conciliation convenes. At present the conciliator organises this over the telephone, but perhaps it would be helpful for the parties to have more input and be able to negotiate the process together. Secondly, to promote positive race relations in New Zealand lasting change must result from the conciliation. By setting out goals and attempting to implement changes parties can promote good race relations.

The anthesis of the models of Lederach, and Slim and Saunders is a model by Graham.¹⁴² In this model Graham lists about fifteen countries and briefly summarises how they prefer to resolve disputes. He notes, that Japanese are the least aggressive and most polite culture in negotiation.¹⁴³ Furthermore he determines that the French are aggressive, and use a high number of threats, Germans ask few questions and have a high level of self-disclosure and United States and British citizens are exactly average.¹⁴⁴ This indication that Western cultures are average in politeness, aggressiveness and self-disclosure indicates the author is probably from this background, and measures all other cultures against the West. This model attempts to provide a brief description of what negotiators should expect in a negotiation with another culture.

This approach tends to be unhelpful because it is too general, stereotypical and does not take into account cultural values which lie behind so called, 'negotiation styles'. This model does not promote sensitivity towards other cultures and ignores the courtesy of asking the person how they would like to negotiate. Furthermore it is extremely unlikely all French are aggressive, and all Japanese polite. This is a very narrow view and ignores variables such as age, personal background and gender. This type of model should not be used by the Race Relations Conciliator. It is an insensitive way to view other cultures, and promotes the use of stereotypes.

¹⁴² J Graham "The Japanese Negotiation Style: Characteristics of a Distinct Approach" (1993) 9 Neg Jnl 123, 130

¹⁴³ Above n 142, 130

¹⁴⁴ Above n 142, 130

D Stereotypes

1 The Problem of Stereotyping

The issue of stereotyping is at the very centre of promoting positive race relations in New Zealand. It is the generalisations people make about others that lead to prejudice and discrimination. People have a powerful tendency towards stereotypes in conflict resolution situations because it is easier to associate an opposing party with general beliefs, however wrong, than go into an unknown situation. However, stereotypes rob both the perceiver and the "victim" of a sense of underlying individuality.¹⁴⁵

Many stereotypes exist, and these are likely to emerge in conciliation conferences. For example, some Pakeha view Maori as stupid, or dirty.¹⁴⁶ Some Maori view Pakeha as cold, and uncaring.¹⁴⁷ The implications of these stereotypes for conciliation conferences is that Pakeha may be disdainful of Maori and consider the conference a waste of time and Maori many not be prepared to talk openly to a person, who does not obviously care.

2 The Avoidance of Stereotypes

It is very important that conciliators help parties to address their stereotypes before entering the conciliation. Ideally stereotypes should be discussed first and discarded. It may be useful for participants to have an opportunity to ask general questions about each others lives in order to develop a more neutral view towards the person they will be negotiating with.

Cultural stereotypes should be confronted and eliminated. Before the conciliation participants could be asked by the conciliator to discard any preconceived notions about the other party. If stereotypes exist, they should be openly discussed because

¹⁴⁵ JZ Rubin and FEA Sander "Culture, Negotiation and the Eye of the Beholder" (1991) 7 Neg Jnl 249, 253

¹⁴⁶ An example of a race relations case involving discrimination on the basis of race dealt with a stereotype against Pacific Islanders. The particular stereotype involved was that Maori and Pacific Islanders are dirty tenants, who damage the property and overcrowd. A young couple put their names on a real estate agencies' books for rental accommodation. The couple's referee was rung by the agent and comments passed about the fact they were Polynesian. A complaint was laid. In a meeting with the parties, the conciliator decided the couple had been treated differently on account of their race.

¹⁴⁷ Above n 64, 12

this gives the other party a chance to refute the generalisation. In some instances discussion between the parties about themselves may be appropriate to invalidate any stereotypes.

E Loss of Culture

1 Potential for loss of culture in New Zealand

One of the problems in New Zealand that could be faced by conciliators is some parties may have lost traditional methods of resolving conflict and failed to develop new ones. This may be partly because New Zealand's legal framework is very monocultural and does not provide alternative dispute resolution mechanisms, to the legal system. Cultural changes occur when people realise old ways of doing things no longer work, but this development takes time and for immigrants to New Zealand who have lost their dispute resolution networks, this change may be too sudden to develop new methods. Furthermore, there is the added difficulty of learning to resolve conflicts with a variety of different cultures.

A Canadian study on culture and conflict reported that traditional means of resolving conflict used by natives and immigrants to Canada were no longer used because the extended family structures used to resolve the dispute are not intact and the community is less cohesive.¹⁴⁸ This is not conducive for immigrants and often native groups to use traditional conflict resolution skills. Usually groups adopt traditional methods to meet present day conditions, but sometimes there may need to be some leeway in the legal system to assist adoption. The decline of social, cultural and religious institutions which have traditionally mediated conflict, means some new dispute resolution mechanisms could be put in place to assist ethnic groups in adapting their traditional processes for modern conditions.

¹⁴⁸ Above n 46, 33

The influence of the West has altered many of the traditional activities and cultural values of people. In Samoan villages there is leadership, in the form of the matai system. The matai is the male elected head of the household. This survives in New Zealand but the family heads have greatly decreased authority.¹⁴⁹ Urban Maori no longer have hapu and a marae immediately available to them. These were the traditional people to help resolve a dispute and the traditional venue for doing so.¹⁵⁰

2 Empowerment for transitory cultures

Lederach introduces the approach of "re-cycling" to assist groups that are experiencing, or have experienced significant cultural change and transition.¹⁵¹ People who experience transition cannot completely rely on traditional means of social organisation, yet western models do not entirely fulfil their needs. Re-cycling is a dynamic process that mixes traditional practices with fresh modern ideas to create a new product suitable for the participants and their situation.¹⁵²

The RRO could use this approach for groups that lack the support networks to resolve disputes. For example, Maori could be asked if they would like to bring along friends in the absence of whanau. Matai could also be given a greater role in the Samoan community, to facilitate dispute resolution. For example they could have a voluntary role in informal dispute resolution processes advocated in Chapter VII.

F Pakeha Dominant Culture in New Zealand

1 Western views

It is a common complaint for Pakeha to make that New Zealanders are all the same and should be treated as such.¹⁵³ The reality is that New Zealand is made up of many different cultures. When Pakeha New Zealanders express the desire for all New Zealanders to act and be treated the same they mean that everyone should comply

¹⁴⁹ LD Hohes and ER Hohes *Samoan Village: Then and Now* (2nd ed, Brace Jvanovich College Publisher, USA,) 56

¹⁵⁰ Above n 65

¹⁵¹ Above n 125, 112

¹⁵² Above n 125, 112

¹⁵³ Above n 7

with the Pakeha culture. Part of the reason for this is Pakehas' are so immersed in their culture that they do not perceive it as culture, just a way of living. This attitude is possibly based on western thought.

“The entire western intellectual ‘canon’ has been performed by a male, white, European elite, who preached truths about ‘man’, ‘reason’, ‘civilisation’ and ‘progress’ which are intellectually and morally bankrupt.”¹⁵⁴ Tiers contends that western intellectual thought is now beginning to question its history of expansionism and exploitation, colonialism, slavery, genocide, Semitism, oppression of women, people of colour, and minorities.¹⁵⁵ Western thought is now beginning to question what its cultural assumptions are based upon. Western intellectual thought is beginning to question its ethno-centric beliefs. This can be seen in recent legislative and judicial recognition of the rights of indigenous people, which earlier this century were ignored.¹⁵⁶

However cultural questioning appears to have taken time to filter down to the grass roots of society. Pakeha New Zealanders are so immersed in their own culture that they are often not aware of the importance of others' values. An example of such thinking is when Maori students at college were told they must remove mania from around their necks.¹⁵⁷ They refused to do so as they considered them taonga, part of their cultural identity heritage as tangata whenua in New Zealand. The schools decision was based on the premise it was a rule that no student wear anything around their neck because of risk of injury when playing. The school probably did not realise the cultural implications of this rule.

2 *Education for Pakeha*

Pakeha need to become aware that being Pakeha is a culture, like Maori, or Indian, not just a way of life. This could be done through education in the general public

¹⁵⁴ R Tanas *The Passion of the Western Mind: Understanding the Ideas that have Shaped Our World View* (Pimlico, London, 1996) 400

¹⁵⁵ Above n 154, 400

¹⁵⁶ See *Mabo v State of Queensland* (1992) 107 ALR 1 ; *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, and the Treaty of Waitangi Act 1975.

¹⁵⁷ Above n 50, 19

arena¹⁵⁸ and in conciliations where this attitude may be perceived as a problem by the conciliator. In the conciliation process Pakeha parties should be made aware before the meeting that Pakeha is a culture, and to consider their own values and beliefs and the reasons behind these.¹⁵⁹ For parties to understand their own and others cultures is a major step to promote racial harmony in multicultural New Zealand.

in a position of having to assess. Culture is fundamental to the norms people hold and the way they choose to live. Differences in these views may cause clashes, resulting in racial discrimination,¹⁶¹ or misunderstandings. In a conciliation these differences in cultural values should be made clear to parties, so they have the opportunity to see where the misunderstanding occurs, broaden their horizons and prevent it occurring again.

Based partly on the work of Trompenaars,¹⁶² but mainly on the situation of New Zealand this paper establishes a model which could be used for inter-cultural conflict conciliation in New Zealand. The model lists different norms and preferences which people from different cultures may have. It could be useful for race relations staff to achieve positive race relations in New Zealand. Parties will be able to see how different values fit in with their own and perhaps they share some similar norms. They may be able to see others as different, not wrong.

The risk of such a model is that it may encourage stereotyping. The model should be applied to each different situation, in a flexible manner, remembering that people are different. There are differences between cultures and within cultures. It is important for participants to be aware of this.

¹⁵⁸ Perhaps using a series of culture awareness weeks involving Pakeha and other cultures would alert people to this fact.

¹⁵⁹ The model discussed in Chapter V may be helpful to do this.

V CROSS-CULTURAL CONCILIATION MODEL

DIAGRAM: Inter-cultural conciliation in New Zealand

Modern society tends to be multi-cultural, so many people who have values, morals and belief systems of a sometimes very different character are placed in a position of having to coexist.¹⁶⁰ Culture is fundamental to the norms people hold and the way they choose to live. Differences in these views may cause clashes, resulting in racial discrimination,¹⁶¹ or misunderstandings. In a conciliation these differences in cultural values should be made clear to parties, so they have the opportunity to see where the misunderstanding occurred, broaden their horizons and prevent it occurring again.

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¹⁶⁰ Above n 58, 57

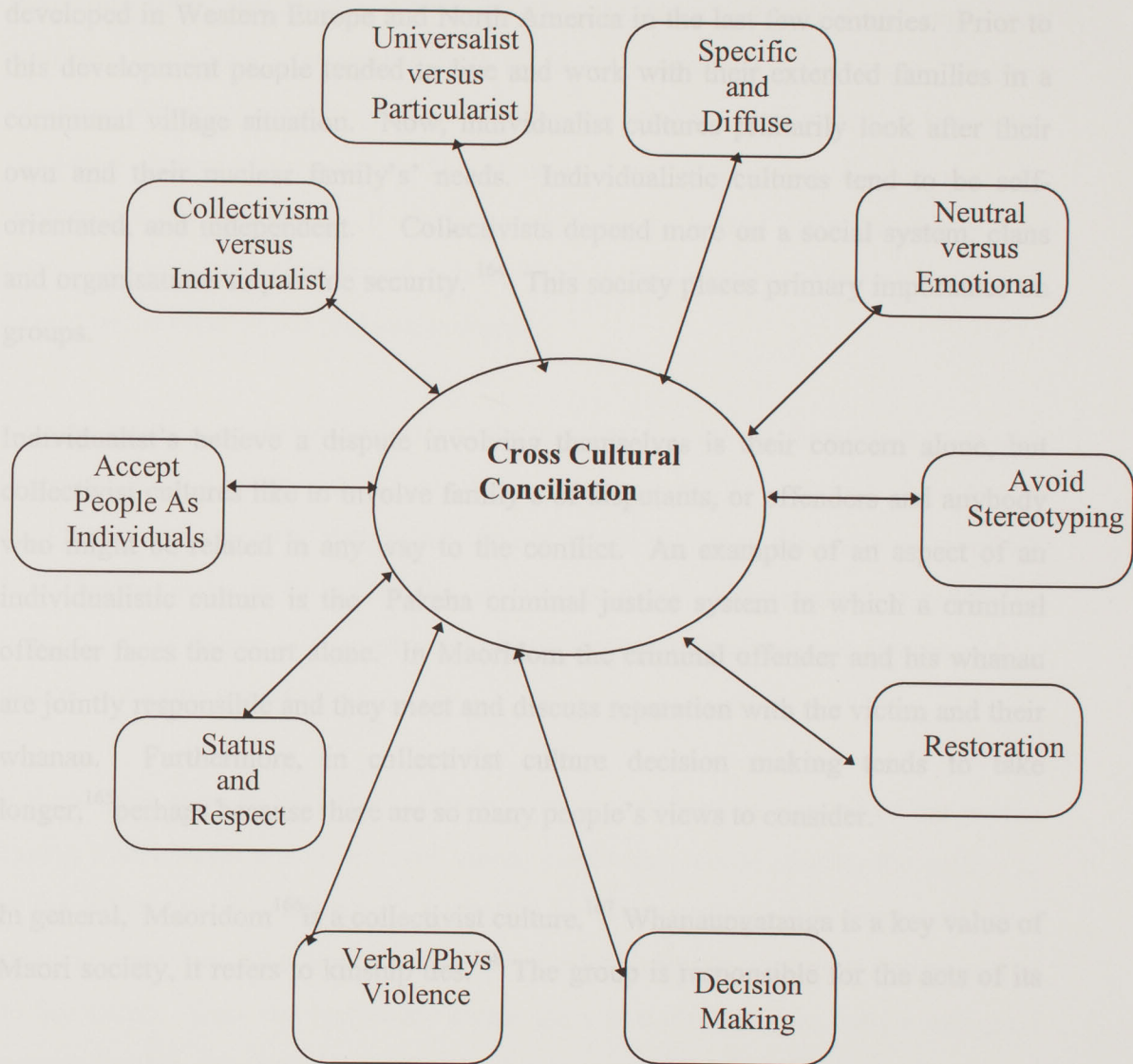
¹⁶¹ As defined by the Human Rights Act 1993, ss. 21 - 69.

¹⁶² Above n 4

DIAGRAM: Inter-cultural conciliation in New Zealand

A Collectivism Versus Individualism

All cultures involve individuals and groups, but they vary as to the emphasis placed on the individual or the group.¹⁶³ Individualism is a fairly recent phenomena. It has developed in Western European countries. Prior to this development people lived in a communal village situation with extended families in a communal village situation. Individualistic cultures look after their own and their family's interests. Collectivist cultures depend more on a social system and organization for security. This society uses primary groups.



¹⁶³ Above p. 47
¹⁶⁴ Lester K. Born, "Ethnic Identity and Its Social Role: Organizational Conflict: A Comparative Analysis of Conflict Styles Across Cultures" (1996) 7 JCM 71-73. A study compared the United States, an individualistic culture, with the Middle East, a collectivistic culture. The study concluded that the United States culture was self-oriented, the people believed everyone had a right to take care of themselves. In the Middle East, identity was based on the social system, people were dependent on institutional organizations and laws which provided order, duty and security. The researchers found that United States cultures tended to use a dominating style to resolve their inter-personal conflict, while their Middle Eastern counterparts handled conflict by avoiding it.

¹⁶⁵ Above p. 47
¹⁶⁶ A Maori is a person of the Maori race of New Zealand and includes any descendants of such a person (Maori Affairs Amendment Act 1974 and The Electoral Amendment Act 1950). In practice it is self-

A Collectivism Versus Individualism

All cultures involve individuals and groups, but they vary as to the emphasis placed on the individual or the group.¹⁶³ Individualism is a fairly recent phenomena. It has developed in Western Europe and North America in the last few centuries. Prior to this development people tended to live and work with their extended families in a communal village situation. Now, individualist cultures primarily look after their own and their nuclear family's' needs. Individualistic cultures tend to be self-orientated, and independent. Collectivists depend more on a social system, clans and organisations to provide security.¹⁶⁴ This society places primary importance on groups.

Individualist's believe a dispute involving themselves is their concern alone, but collectivist cultures like to involve family's of disputants, or offenders and anybody who might be related in any way to the conflict. An example of an aspect of an individualistic culture is the Pakeha criminal justice system in which a criminal offender faces the court alone. In Maoridom the criminal offender and his whanau are jointly responsible and they meet and discuss reparation with the victim and their whanau. Furthermore, in collectivist culture decision making tends to take longer,¹⁶⁵ perhaps because there are so many people's views to consider.

In general, Maoridom¹⁶⁶ is a collectivist culture.¹⁶⁷ Whanaungatanga is a key value of Maori society, it refers to kinship ties.¹⁶⁸ The group is responsible for the acts of its

¹⁶³ Above n 4, 47

¹⁶⁴ Senior Manager Elsayed-Ekhouly and R Buda Sayed "Organisational Conflict: A Comparative Analysis of Conflict Styles Across Cultures" (1996) 7 IJCM 71, 73: A study compared the United States, an individualistic culture, with the Middle East, a collectivistic culture. The study concluded that the United States culture was self-orientated, the people believed everyone had a right to take care of themselves. In the Middle East, identity was based on the social system, people were dependant on institutional organisations and clans which provided order, duty and security. The researchers found that United States citizens tended to use a dominating style to resolve their inter-personal conflict, while their Middle-Eastern counter-parts handled conflict by avoiding it.

¹⁶⁵ Above n 4, 57

¹⁶⁶ A Maori is a person of the Maori race of New Zealand and includes any descendants of such a person (Maori Affairs Amendment Act 1974 and The Electoral Amendment Act 1950) In practice it is self-

member and the good of the individual cannot be separated from the good of the group. Maori place a very high value on unity in social life. For the benefit of the group and to preserve unity, it is likely that Maori complainants, or respondents in the conciliation process may choose to bring along whanau, or on a wide reaching issue, hapu. Whanau regularly attend conciliations.¹⁶⁹

It is quite likely that Pakeha would attend conciliation conference also and resent members of another community, such as Maori joining the other party. In these situations Pakeha should be educated by the race relations staff as to this is the way the Maori community operates. The group is there because they feel involved the problem of the individual. It might be advisable to inform Pakeha who will be present at the conciliation, thereby giving them an opportunity to take a close friend, or partner, in order to not feel outnumbered.

Race relations staff should understand the members of collectivist cultures may wish to bring family or friend so the conciliation and take awhile to discuss the effect or the incident on everyone, particularly family whom they may see as being involved. Individualists may prefer to face the conciliation alone. Consequently they may be intimidated by facing a large group of people, particularly if they are the wrongdoer respondent to the complaint.

If there does seem to be major differences in expectations as a result of the parties having individualist and collectivist views, conciliators could educate the parties as to the differences in cultures. If it appears to the conciliator that there may be a problem involving either an individualist, or collectivist, discussion of this point can be facilitated. Once the parties are aware there is a difference in values and good reasons for this, they may be more amenable to cooperate with each other. If there is still a problem, perhaps the conciliator could arrange a pre-conciliation conference in

affiliation which determines whether an individual who is conscious of having any Maori ancestry nominates Maori as his or her ethnic group.

¹⁶⁷ Although some Maori who are younger, or based away from whanau and hapu may have more individualistic values.

¹⁶⁸ Above n 65

¹⁶⁹ Above n 7. Samoan New Zealanders are also orientated towards group well-being, rather than individual satisfaction. Above n 149, 149: Research carried out in Western Samoa in 1966, found that Samoa was a communitarian society leaning towards societal, rather than individual goals. This continues today in New Zealand with emphasis on Fano, church groups and extended families.

which the parties could negotiate the terms on which they would like the conciliation held.

B Universalist v Particularist Cultures

Trompenaars documents the difference between universalist societies and particularist societies.¹⁷⁰ In universalist societies there is an obligation to adhere to standards which are universally agreed by society and a tendency to resist exceptions which may weaken the rule. Particularist cultures by contrast deal round the premise that individuals are obligated to people they know above standards.¹⁷¹

It is difficult to determine which cultures in New Zealand society are universalist and which have particularist tendencies. There have been no studies performed on this point. It is quite likely that different individuals in a particular culture could be either universalist or particularist depending on their age or gender. For example, high school teenagers maybe more likely to be particularist. Placing friendships first by lying for their friends, because of the strong peer group pressure.

Trompenaars indicates that universalism is more common in Protestant cultures because the congregation relates to God by obedience to his laws.¹⁷² As Pakeha culture developed last century largely based on Protestantism, it is likely Pakeha tend towards universalism. Further evidence of this is Pakeha society is very rights orientated. For, example the New Zealand Bill of Rights Act passed in 1990, by a mainly Pakeha parliament.

Indians, Samoans and Maori live by very strict standards. Therefore it would be incorrect to assume these groups rely entirely upon relationships, ignoring laws. Maori have a tika (right) way of doing things and a wrong way (he). Samoans have a

¹⁷⁰ Above n 4, 31

¹⁷¹ Above n 4, 34: Trompenaars surveyed people with the question, does a friend have the right to expect you to lie for him as to the speed he was driving at, if he was speeding. North American and most northern Europeans were almost universal in their approach. By contrast in Venezuela two thirds of respondents were particularist, they would lie to the police to protect their friend.

¹⁷² Above n 4, 33

well established idea of what acceptable behaviour is.¹⁷³ Indians live by the principle of Dharma.¹⁷⁴ Inherent in this is ideals of truth, special love and respect within the family, tolerance of others and hospitality to all. The fact that Maori Samoa and Indian societies are collective, relationship based societies indicates they may be particularist too, but this is indeterminable at present.¹⁷⁵

However, it is likely that Maori society is particularist. If Maori commit crimes they are chastised by their whanau, but particularly after being dealt with by the criminal justice system they are welcomed back again.¹⁷⁶ By contrast, Pakeha society shuns ex-criminals. It is harder for these people to get employment and enter relationships with other pakehas because of a criminal record.

In terms of promoting positive race relations in New Zealand through conciliation it is important to recognise that universalist cultures tend to focus on rights, and particularist cultures on relationships. Pakeha tend to be quite rights based and use lawyers. They wish to be clear of their legal rights. By contrast particularists focus on relationships. There is a danger in the conciliation process that universalists will ignore the emphasis particularists place on relationships, particularly if the conciliator is a universalist. For example, in a neighbourhood dispute one neighbour may be concerned with their right to be defended against allegations of racism, but the other neighbour might be concerned with preserving the relationship.

C Specific And Diffuse Cultures

This involves the degree to which people engage others in specific areas of their life and personality. In a diffuse society the status of a person in one area of their life carries through into all areas so a manager would expect to be deferred to by all those who knew him. By contrasting a specific society a person has a number of reputations in different, specific roles, such as at work, at home and in sports.¹⁷⁷

¹⁷³ Above n 149, 164: When the first Samoan about to be hung for a capital offence in Western Samoa he thanked the authorities for punishing him for the serious crime of which he was guilty.

¹⁷⁴ KN Tiwan (ed) *Indians in New Zealand: Studies in a Sub-Culture* (Price Milburn for the New Zealand Central Indian Association, Wellington, 1980) 103

¹⁷⁵ More research on this area is required.

¹⁷⁶ Above n 65

¹⁷⁷ Above n 4, 75

Trompenaars tested whether cultures were specific or diffuse by surveying people as to whether they would help their boss to paint his house. More diffuse cultures answered in the affirmative because the status of the employer carried across into their personal lives, but more specific cultures answered no. China, Nepal and Indonesia are very diffuse orientated. These cultures obviously sway towards diffuse in respect of which the status of a person carries across all spaces of life. By contrast, 89% of United States citizens, 92% of United Kingdom, 93% Dutch and 96% of Australians would refuse to help their boss. These societies therefore sway toward the more specific which means the respect and deference they accord their employer at work does not carry across to their personal life.

It is interesting that the most specific country is Australia. Australia has a very similar history to Pakeha New Zealand of colonialism and immigration. Compared to Britain both are fairly classless societies, emphasising the values of independence and individualism. Therefore it is quite likely that Pakeha society, like Australia will tend toward the specific, while other cultures in New Zealand may favour a diffuse approach. Evidence of this is that Pakeha have clear cut distinctions between work and private life.

By contrast New Zealand Maori are probably diffuse. The Maori community carries the concerns and personal relations of one sector of life into others. For example, workmates often spend their leisure time together.¹⁷⁸ Maori have a tendency to view life in an integrated, holistic way.

In terms of the RRO the distinction between diffuse specific societies has implications both to cause cultural misunderstandings and in conciliation conferences. Specific cultures with their small areas of privacy clearly separated from public life have freedom for direct speech in one situation because it does not carry through in other situations. However diffuse cultures do not have such freedom

¹⁷⁸ Above n 12, 72

to speak because what they say in one context will be taken by the diffuse people as effecting them throughout their whole life.

In conciliation there may need to be rules about what is said because there is a danger that an off-hand comment by a specialist, could be very hurtful to someone from a diffuse culture. Furthermore avoiding loss of face is very important for diffuse cultures because if they are offended or lose mana in one context, like an employment situation, it affects them personally as well.

The difference between diffuse and specific cultures could result in disputes. Specific cultures like the Pakeha tend to have a strong belief of freedom of speech,¹⁷⁹ particularly in the political arena in the belief it only affects parties politically, not personally. Whereas for diffuse cultures a loss of face in the political arena may translate to other parts other life too.

An example of such a cultural misunderstanding dealt with by the Race Relations Conciliator is a newspaper printed a cartoon with a pot-bellied, fat-lipped Maori, threatening shellfish with a spear marked 'Treaty of Waitangi'.¹⁸⁰ The cartoon was in response to a High Court decision overruling any Act or regulation allowing Maori people to take seafood for their own use. The editor argued that all racial groups and political figure were caricatured and people did not take it seriously. However, the complainants believed the cartoon was a racist stereotype, and caused loss of face to Maori by inciting anti-Maori attitudes in the reading public.

The Pakeha newspaper perceived the situation as specific merely targeting the specific rights of Maori to kai Moana. However, Maori saw the cartoon as affecting Maori in a diffuse way. In light of these differences the conciliator could educate New Zealanders as to the difference between diffuse and specific cultures, encouraging sensitivity among New Zealanders in individual conciliations and throughout society generally.

¹⁷⁹ The New Zealand Bill of Rights Act, s.14

¹⁸⁰ Office of the Race Relations Conciliator *The Case of the Vanishing Flat and Fourteen Other Cases From Our Files* (The Office of the Race Relations Conciliator, Auckland, 1988), 6

In terms of race relations conferences diffuse cultures are more likely to take longer getting to a point and avoid hurting people's feelings. Diffuse cultures are also more likely to be severely insulted by anything a specific person may say even it was only intended in a specific way, such as work performance. It would be quite hard for diffuse participants not to take comments personally. Therefore race relations conciliators maybe advised to ask participants at the beginning of the negotiation how participants would like matters discussed what tone is to be taken and how long. If necessary, together with the participants the conciliator could develop a general boundary of time and rules about the conduct and the comments parties are able to make to one another..

D Neutrality v Emotionality

Neutral societies tend not to display their feelings, keeping them carefully controlled. By contrast cultures high in affectivity plainly show their feelings by laughing, scowling, smiling and crying.¹⁸¹

In terms of conciliation conferences, overly neutral, or affective cultures could have problems reaching a settlement. The affective party may perceive the neutral personal as uncaring about the situation, or unrepentant for the hurt caused to the other party. The neutral party may perceive affective person as out of control, inconsistent, embarrassing, or over-reacting to the issue. The first essential step for conciliators is to ensure the parties recognise the key differences, and refrain from making judgments based on evidence of emotion, or the lack of emotion expressed. It is important that both participants be comfortable with the level of emotion the meeting takes and this may need to be discussed.

Pakeha society is likely to follow the trend in the United Kingdom of being fairly neutral. As a colony of Great Britain Pakeha society to some extent have inherited the English 'stiff upper lip' and reserve. Pakeha society require individuals to hide their aggressive feelings under surface politeness. By contrast, Maori and other

¹⁸¹ Above n 4, 63: Trompeanaars surveyed different cultures regarding whether they would display emotions at work. Exhibiting emotion was least acceptable in Japan then Indonesia and the United Kingdom. Showing emotion was most acceptable in Italy, followed by France and then the USA

Polynesian cultures tend to accept and encourage displays of emotion, both positive and negative.¹⁸² However there are some emotional Pakeha and some unemotional Maori and Polynesians. There is a need to also ensure that the preference of each individual as well as the general practice of their culture should be taken into account.

E The Importance of Respect

Different cultures assign status to people in different ways. Some cultures, are achievement orientated cultures.¹⁸³ However, ascriptive cultures, tend to confer status based on age or experience.¹⁸⁴ This has implications for conciliation because people who are a very much respected in one society may not be by another culture. This could be a major insult and impede settlement in a conciliation.

Maori and Samoans tend to award status on the basis of age, wisdom, and leadership. Maori *kuia* and *kaumatua* have great knowledge and wisdom. In the past they had power as elders of the tribe and could punish or reward people.¹⁸⁵ Now their power stems from respect and goodwill of the people. Leaders of households in Samoan villages were *matai* who in New Zealand are paid respect based on their dignity and age.¹⁸⁶ Maori and Samoan cultures still revere people for their wisdom and knowledge, even though society has changed so that these elders have no real power.

Pakehas, by contrast confer status to young, white, wealthy males and sometimes females. The chase of material wealth in the west has reigned supreme, and those who achieve it are revered.¹⁸⁷ For example, Michael Faye and Douglas Myers¹⁸⁸ are

¹⁸² Above n 64, 14-30

¹⁸³ Above n 4, 93

¹⁸⁴ Above n 4, 93: The Japanese are an ascriptive culture and spend heavily on in-house education to ensure that older people are actually wiser for the years they have spent in the corporation

¹⁸⁵ Above n 65

¹⁸⁶ Race Relations Office *Faa Samoa: The World of Samoans* (Office of the Race Relations Conciliator, Auckland, 1985) 38 In Samoa, a titled male, or *matai* is the most respected man of the *aiga* (village). A *matai* is responsible for the behaviour and welfare of the entire household who live under his authority. *Matai* are elected to hold the title on the basis of their service to the family and their age (usually over forty).

¹⁸⁷ Above n 154, 395

¹⁸⁸ Financiers and members of the New Zealand Business Round Table.

respected by New Zealand society because they have achieved wealth. The elderly by contrast are considered too old to work at sixty five and the wisdom of many Pakeha senior citizens in New Zealand is ignored, not revered.

In a conciliation between an elderly Maori, or Polynesian and a young Pakeha representing an organisation, there may be a failure to accord respect on both sides. The needs of the parties could be placed in context by the conciliators and perhaps an agreement reached between the parties that they will both offer each other respect for the duration of the meeting.

F Verbal and Physical Violence

Different cultures have different ways of handling aggression, whether to express it as verbal or physical violence. This distinction is based on whether the culture displays expression, such as affection, or anger in a verbal or physical way. Furthermore it depends on which outlet of aggression has lower cost and impact for the society. These differences have implications both in causing racial disharmony and in conciliation conferences.

Pakeha and western society tend to be very verbal.¹⁸⁹ Communication is usually via papers, film and conversation. Even affection tends to be expressed verbally.¹⁹⁰

Consequently Pakeha also tend to vent aggression through verbal abuse as verbalisation is the basic forms of communication. Furthermore, verbal abuse to Pakeha has a lower cost than physical violence, "Sticks and stones may break my bones, but words will never harm me."¹⁹¹

Conversely in both Maori and Samoan societies physical touch is used as a means of communication.¹⁹² In both Maori and Samoan societies aggression may manifest more in physical, than verbal violence, because it is less harmful to society. A

¹⁸⁹ Above n 12, 68

¹⁹⁰ JB Pride *Cross-Cultural Encounter: Communication and Mis-communication* (River Seine Publications, Melbourne, 1985) 121-3: Pride writes that New Zealand Pakeha parents state their children after school age do not want physical affection, and tend to communicate by talking

¹⁹¹ Above n 5, 3: An often chanted saying by European children

¹⁹² Above n 64, 11-17

traditional Maori saying is, "The shaft of the spear may be parried, but the shaft of the word cannot", and Samoans believe, "Words hurt more than fists".¹⁹³

Cultural misunderstandings can occur because Pakeha can use cruel words, expecting them not to be taken seriously, and are horrified at the physical aggression that can result. Racial abuse and name calling are used by Pakeha as a substitute for physical aggression. It frequently sparks off in Maori or Pacific Island victims a feeling of being belittled and harassed by pakeha. Pakeha law does not condone physical violence, but is culturally insensitive in that it generally does not prevent verbal violence.¹⁹⁴

An example of the distinct ways Pakeha and Maori express aggression is shown in the complaint of Matu to the Race Relations Conciliator.¹⁹⁵ Matu complained of verbal harassment from his supervisor. Matu threatened to punch his supervisor if he did not stop, but in the end resigned because he could not stand the racial abuse. The manager of the company said the insults were just a joke, not enough to make anyone resign. The supervisor failed to realise that Maori people can be extremely hurt by verbal abuse and perhaps the RRO could educate the public, as to difference cultural views on the manifestation of aggression. The law takes the Pakeha viewpoint, but Pakeha need to know verbal insults can be very harmful to other cultural groups, even though Pakeha may perceive them as jokes.

During conciliation physical violence is unlikely to erupt unless the circumstances are extreme.¹⁹⁶ However, it is not impossible that some verbal abuse may occur on

¹⁹³ Above n 5, 3

¹⁹⁴ Unless under statutes like the Human Rights Act, 1993 the comment is racist. However the usual punishment is an apology from racist comment. For assault the punishment can be imprisonment.

¹⁹⁵ Office of the Race Relations Conciliator and the Human Rights Commission *Making a Stand and Fifteen Other Cases From Our Files* (The Office of the Race Relations Conciliator and the Human Rights Commission, Auckland, 1993) 11. Another case from the RRO's files indicates that Greeks may shy away from expressing verbal violence. A Greek restaurant owner had been involved in a number of disputes with the local council. The council officer was alleged to have used racially abusive language against the Greek, this led to the Greek manhandling the officer and assault charges were laid. In the conciliation meeting the parties expressed regret that the incident had occurred and an offer of friendship and conciliation was made by the complainant.

¹⁹⁶ As New Zealand law prohibits violence, and a conciliation is quite a formal procedure which would inhibit violence

the part of pakeha. This may be in a covert form, such as a joke, but it still could inhibit the conciliation process. The conciliators could, depending on the situation and parties involved draw boundaries at the start of the situation to avoid any language which could be construed as insulting. It may be explained to the parties why this is necessary because of the cultural differences. Furthermore, if parties are made aware in the conciliation of the differing outlets of aggression and the effect on either culture, they are more likely to avoid hurting other people because of this knowledge.

G Decision Making

Different cultural groups employ distinct methods of decision making. In a conciliation the parties need to reach an agreement. The conciliator could facilitate discussion at the start of the mediation, as to how the parties would like the decision to be made, and generally how long the process should take and where the meeting should be held.

When meeting to resolve a dispute Pakeha expect to debate and make some, if not all the necessary decisions at the first meeting. This is in contrast to Maori and Pacific Islanders who require a number of meetings to be aware of all the facts and issues, to hear everyone and make a fully informed decision.¹⁹⁷ This can take a much longer period of time, so it may be a good initial step to assess how much time both participants would like and are willing to spend on the process.

Maori and Samoans generally prefer to make decisions based on the principles of consensus.¹⁹⁸ In both the Fano and the marae everyone involved in the issue can speak without interruption.¹⁹⁹ However, the principles of open and thorough discussion may clash with speed and efficiency. It is important this be discussed at the beginning of the conciliation to avoid parties becoming upset, or frustrated with

¹⁹⁷ Above n 64, 23

¹⁹⁸ M Wharepouri "The Phenomenon of Agreement: A Maori View" (1994) 7 Auckland University Law Review 603, 605

¹⁹⁹ Above n 86, 35

each other because the mediation is taking too long, or they feel the issues are not given sufficient consideration.

H Restoration

The aim of a conciliation is to reach a settlement suitable to both parties. Pakeha society generally perceives an adequate restoration of wrongdoing to be a verbal apology, or perhaps a sum of money. However for different cultures in New Zealand restoration involves restoring the situation to the way it was before the racial discrimination occurred.

Fundamental Maori values operate in the dispute resolution process. Utu encompasses the principle of reciprocity, the aim is to restore the balance to what it was prior to the conflict.²⁰⁰ In seeking utu the victim tries to restore the mana lost. This restoration can be a matter between kin groups, not individuals. In a dispute involving a Maori complainant it may be appropriate for the conciliator to ask the respondent what would restore their mana. The Human Rights Act allows broad scope for restoration between parties.²⁰¹

In Fijian society the person who initially cause the conflict, or was proved wrong in the public confrontation is expected to be apologetic, express sorrow for his actions and offer an object for appeasement. (I sovo or bulu bulu). Where the two parties cannot resolve the dispute themselves a third party intervenes to initiate an atonement. After the presentation and acceptance of the atonement the two parties should forget their differences and be friendly to each other again.²⁰² In New Zealand custom is not as strict, however village life and traditions continue to be recognised as the focal point of the Fijian community.²⁰³ Perhaps a small gift may be appropriate for a respondent to give a Fijian complainant.

²⁰⁰ Above n 12, 64
²⁰¹ Above n 16, s.81
²⁰² Above n 38, 110
²⁰³ Above n 38, 109

The practice of Ifoga and reconciliation is essential to resolving disputes among Samoans, even in New Zealand.²⁰⁴ Ifoga is a public confession of guilt, which encompasses a plea for forgiveness, a public display of preparedness for any punishment and an act of humbling oneself and one's aiga.²⁰⁵ If the offence is against another aiga, chiefs of the offending village will carry out an Ifoga to the offended aiga.²⁰⁶

An Equal Opportunity Tribunal decision indicated that reconciliation was important for a Samoan involved in a case of racial abuse.²⁰⁷ The case involved a mechanic who worked on a Samoan's car. He swore at the Samoan customer, racially abused him and fixed a placard to the car with offensive wording that the Samoan did not notice until several hours later. The mechanic believed it was a joke but when the case reached the tribunal he realised his conduct had been distasteful and apologised to the Samoan. The tribunal gave the Samoan, his family and the mechanic a time to talk alone because they recognised discussion between the victim and offender was an important step in the reconciliation process according to Samoan custom.²⁰⁸

For different cultures what will be necessary to compensate for the racial discrimination will be distinct. For some people simply talking may be enough, for others a gift, restoration of mana, or just an apology. The only way to find out what will compensate a complainant is for the respondent and complainant to discuss this in the conciliation.

Race relations need to use a model such as this very flexibly, judging the situation and the participants as to what explanation and negotiation about cultural differences is needed before the conciliation commences. Even though some cultures do have

²⁰⁴ Above n 186, 48

²⁰⁵ Ifoga comprises four main aspects:

1. Agasala - The acceptance by the offender and his aiga of guilt in the crime committed;
2. Le Faaoesegla - the plea for forgiveness both by the individual and the aiga;
3. Le Faaleleiga - the goal of reconciliation; and
4. Ien le vafealoau - the restoration of good relationships between the two aiga

²⁰⁶ Above n 186, 44 - The offender and their family cover themselves in fine mats and kneel before the house of the wronged family. Afterwards offenders give victims the fine mats. If a minister is involved he preaches the Christian principle of forgiveness. Once the mats are accepted forgiveness is taken as granted. The dignity of the injured part is restored through the offender and his aiga's voluntary public humiliation of themselves.

²⁰⁷ Above n 186, 44

²⁰⁸ Above n 186, 44

preferences for one formula it is misleading to assume that everyone from the culture is the same. Differences in age, gender, socio-economic status time spent in New Zealand will also weigh upon how a particular party would like to conciliate.

The main point to take from this model is that there are cultural differences in the ways people choose to resolve disputes. This extends to race relations conciliation which will usually involve a complainant and respondent of distinct cultures, in a charge of racial discrimination. The methods used in a conciliation should differ in each case depending upon the culture of the participants in each of the key differences suggested in the model. This model could also provide general information for the parties and the conciliators, but is not a substitute for communication between everyone at the conciliation.

Models are useful as frame reference, but should not be applied across the board. Within cultures there are differences between the young and old, different gender, life experience and socio-economic class. For example, even though Pakeha society generally is individualistic, rights based and universalist; young, lower socio-economic Pakeha may have more of a collective approach because of the importance of peer group they may be less educated as to their rights and so therefore will place more importance on their relationships. In essence, each situation should be taken separately.

VI PROPOSALS OF IMPROVEMENT TO RRO CONCILIATION

The RRO conciliation process does operate reasonably efficiently but it could be improved by using inter-cultural conflict resolution principles and by targeting more people.

A Flexible Use of Dispute Resolution Models

The model in the previous chapter is useful if applied in a flexible manner by staff. In some situations it may be used if there is potential trouble in the conciliation, or one or both parties exhibit a characteristic in the model. However, in other situations it may be irrelevant. It will depend on the individuals involved. If possible western models should be avoided because they can be ethnocentric. It might be advantageous for staff to learn a range of models, and in a situation where one is applicable use it in the conciliation. Staff should not adopt a prescriptive approach and should always use the knowledge and values of the parties in the conciliation. Staff should not adopt a prescriptive approach and should always use the knowledge and values of the parties in the conciliation, as well as their own expertise.

Models are useful as frame reference, but should not be applied across the board. Within cultures there are differences between the young and old, different gender, life experience and socio-economic class. For example, even though Pakeha society generally is individualistic, rights based and universalist; young, lower socio-economic Pakeha may have more of a collective approach because of the importance of peer group they may be less educated as to their rights and so therefore will place more importance on their relationships. In essence, each situation should be taken separately

B Target More for Conciliation

At present very few conciliations take place in terms of New Zealand's population. On average 59 complaints are conciliated each year.²⁰⁹ In a population of nearly four million people this small amount of people learning about different cultures will not improve New Zealand's race relations very rapidly. The RRO recognises a larger group needs to be reached although they perceive the means to this as education.²¹⁰ However education is not as personal as undergoing a conciliation and it is likely people learn more about other cultures from participation in the process, than through education. Encouraging people to complain and conciliate will help to avoid stereotyping, promote understanding and avoid hostility as a result of cultural misunderstandings.²¹¹

C Develop Two Conciliation Processes

The RRO can attract more people to conciliation by offering two systems of conciliation. If this policy was adopted an amendment would be required under the Human Rights Act 1993.

1. Informal conciliation

This would cater for dispute and misunderstandings, without people having to lay a formal complaint. It would attract people with ongoing relationships, those who do not believe the situation is serious enough to make a formal complaint and those whose complaints do not fall within the jurisdiction of the Act. This would facilitate conciliation and promote positive race relations in New Zealand.

²⁰⁹ This figure was reached by calculating the average number of complaints that result in conciliations, from the last six years. If the figure was assessed from 1981 - 1996 it would be much lower.

²¹⁰ Above n 7

²¹¹ Above n 106, 56: A complaint by a Thai business woman from the Race Relations Conciliator's files is an example of the necessity to conciliate more. Upon conciliation, and frank discussion it was discovered that the complaint was unjustified. However, had conciliation not occurred in this case, the complainant would have felt very bitter towards the Pakeha customs department. This may have developed into feelings of racial hostility. In resolving the situation in this way a misunderstanding was cleared up.

In an informal conciliation system a conciliator could arrange a meeting. At the conciliation the parties can discuss how they would like it to proceed, the issues and the relationships involved. Race relations conciliators need to be able to analyse the situation and be able to see what cultural principles are interfacing. The key factor in an informal dispute is to make parties aware of the cultural roots of the misunderstanding, and develop guidelines upon which to conciliate and which the parties can also use to negotiate their disputes in the future. Conciliators should ensure open communication between the parties.

2. *Complaint Conciliation*

The second form of conciliation, should be a process which results from justified complaints.

This will probably need to be more formal as it will involve more serious situations in which racism has arisen from cultural misunderstandings.²¹² Such situations can be too complex and volatile for informal mediation techniques. Consequently there needs to be two systems of conciliation offered.

D Factors For Conciliators to Consider

In both formal and informal situations where it is necessary, conciliators can discuss with participants:

1. an agreement to take each party at face values and not use stereotypes;
2. that the process should be open and honest; and
3. that Pakeha is a culture, not the only fundamental way of living.

In formal situations, it may be useful for the parties to meet first to discuss how the negotiation is to take place. During informal mediation it may be sufficient to

²¹² Office of the Race Relations Conciliator *Annual Report for the Year Ended June 30 1982* (Office of the Race Relations Conciliator, Auckland, 1982) 57: An example of a situation which is suited to more formal resolution involved a Pakeha landlord. A tenant had two Asian guests when the landlord visited and saw the guests he told the tenant to move out. When the tenant vacated the landlord abused him shouting, "Who do you thin you are, you b... bringing f... niggers into this clean white house!" In this type of situation there are substantial issues to be worked through, particularly on the part of the Pakeha landlord, such as the values he held that, caused him to behave in this manner.

discuss guidelines for the dispute resolution. It is very important in disputes between different cultures that parties have a chance to develop their own dispute resolution 'model'.

In pre-negotiations, or guideline talks it may be useful to discuss any of the following:

1. the support members of the parties should be present, what are the rights and relationships important to the parties involved;
2. the time frames the conciliation should try and work in;
3. guidelines to prevent verbal abuse;
4. the level of emotion the parties are comfortable expressing;
5. methods can be used to implement the changes suggested by the parties;
6. the necessity of both parties to respect each other; and
7. adequate compensation.

Analytical and communication skills are required, so it is necessary for conciliators to be very well trained.

E Training

Race Relations Conciliators need to be trained well enough to identify the cultural issues in each conciliation. It is the goal of the RRO to ensure that mediated settlements are dealt with by appropriately trained staff.²¹³ "Appropriately trained staff" are defined as mediators that have appropriate qualifications in the form of legal degrees or appropriate work experience.²¹⁴ A legal degree does not necessarily equip a mediator with knowledge of other cultures. Furthermore, work experience as a mediation does not ensure the ability to mediate in a cross-cultural situation, it would depend on the particular experience.

The conciliator needs to be able to apply models flexibly and avoid stereotypes or generalisations. Conciliators should identify what cultural issues are causing the

²¹³ Above n 1, 43

²¹⁴ Above n 1, 43

problem and how the conciliation should be conducted, based on the cultural values of the parties. For example, a conciliator may identify that one participant is from a collective, consensus based culture and would like a network of friends and family present at the conciliation and the issue thoroughly discussed before a decision is made. The conciliator should present this to the parties and let them discuss the issues. It is very important that the conciliator facilitates the parties organising their own conciliation, because it is the parties who best know their own values and how they prefer to negotiate.

In order to receive this training conciliators need to be exposed to a wide range of inter-cultural models and learn flexible application. Most importantly, conciliators should become very familiar with different culture in New Zealand and the different categories within cultures. In doing this Race Relations Conciliators will also become acquainted with the extent traditional ways cultural groups have used to resolve conflict have changed New Zealand conditions. Could perhaps help people develop ways to solve disputes during the conciliation which synthesise traditional ways of dispute resolution with modern conditions.

F Resources

All of the improvements to the RRO suggested in this paper would involve increased costs to the RRO. At present the RRO has a budget of \$1.474 M.²¹⁵ The conciliator considers that this sum is too modest, and the Office is under funded by about \$500,000.²¹⁶ With the improvement suggested much more than this would be needed to finance an expanded conciliation process, an informal and formal conciliation framework, pre-negotiation meetings and extensive staff training.

These developments would go towards using conciliation and inter-cultural resolution principles to promote positive race relations in New Zealand. Knowledge of cultural differences is power and does help change people's behaviour. However

²¹⁵ Above n 1, 22

²¹⁶ Above n 1, 22

the government must balance these benefits against the financial cost to society of achieving this.

Race relations in New Zealand can be improved by taking into account cultural values and inter-cultural conflict resolution principles in conciliation. In the situation of racial discrimination, the use of cultural principles will ensure a conciliation that is effective and comfortable. In that situation the racial problems will be diffused and resolved. Furthermore, a settlement is likely to be reached. This is better for the relationship of the parties and future behavioural change than referring the case to the complaints division for a mandatory decision.

The more potent and long term method of improving race relations through conciliation lies in changing people's attitudes through the process. The conciliation will involve both the complainant and the respondent learning a little about the other culture and basic inter-cultural conflict resolution techniques. In the future a more sensitive understanding regarding other cultures will promote more positive race relations in New Zealand.

There are a number of key inter-cultural principles that should be taken into account in conciliation. It is important that the parties have some input into how the process is conducted. Furthermore stereotypes and dominant culture ideology should be confronted. Staff should be wary about using models based on western ideas, such as the importance of neutrality, and always consider the views of the individual parties in the conciliation.

Conciliation staff need the ability to analyse, communicate and provide information to participants. The RRO need to be able to use models, such the one advocated in the paper, to analyse the key principles of culture involved in each case. This could be any number of issues, including collectivism, universalism, respect, neutrality, or restoration. The conciliator needs to be able to provide information to the parties on the basis of these cultural differences, so they understand the basis of the conflict. Finally the conciliator needs to be able to communicate with the parties as to how they would like the conciliator to proceed.

VII CONCLUSION

Race relations in New Zealand can be improved by taking into account cultural values and inter-cultural conflict resolution principles in conciliation. In the situation of racial discrimination, the use of cultural principles will ensure a conciliation that is effective and comfortable. In that situation the racial problem will be diffused and resolved. Furthermore, a settlement is likely to be reached. This is better for the relationship of the parties and future behavioural change than referring the case to the complaints division for a mandatory decision.

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APPENDIX 1

As New Zealand moves into the twenty first century the situation of race relations needs to be redressed. There are problems with relations between the Maori and Pakeha 'partners' of this country. There is also a need for recognition of the rights of minority cultural groups. For years New Zealand has prided itself on having the best race relations in the world, but this is superficial. It is time New Zealand began to enforce policies of anti-racism and multiculturalism. Conciliation is the way to do this because it is personal and gives the opportunity to impart much knowledge. Providing people with cultural knowledge gives them power to stop racism.

(1) To use in any public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting; or

(2) To use in any place words which are threatening, abusive, or insulting if the person using the words knew or ought to have known that the words were reasonably likely to be published in a newspaper, magazine, or periodical or broadcast by means of radio or television.

being matter or words likely to excite hostility against or bring into contempt any group of persons in or who may be coming to New Zealand on the ground of the colour, race, or ethnic or national origin of that group of persons.

(3) That this is a breach of subsection (1) of this section to publish in a newspaper, magazine, or periodical or broadcast by means of radio or television a report relating to the publication or distribution of matter by any person or the broadcast or use of words by any person, if the report of the matter or words accurately conveys the intention of the person who published or distributed the matter or broadcast or used the words.

(4) For the purposes of this section,—

"Newspaper" means a paper containing public news or observations on public news, or consisting wholly or mainly of advertisements, being a newspaper that is published periodically at intervals not exceeding 3 months.

"Publisher" or "distributor" means publishes or distributes to the public at large or to any member or members of the public.

"Written matter" includes any writing, sign, visible representation, or sound recording.

Cl. 1971, No. 150, s. 94; 1977, No. 49, s. 86; 1989, No. 127, s. 2

APPENDIX 1

Other Forms of Discrimination

61. Racial disharmony—(1) It shall be unlawful for any person—

- (a) To publish or distribute written matter which is threatening, abusive, or insulting, or to broadcast by means of radio or television words which are threatening, abusive, or insulting; or
- (b) To use in any public place as defined in section 2 (1) of the Summary Offences Act 1981, or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting; or
- (c) To use in any place words which are threatening, abusive, or insulting if the person using the words knew or ought to have known that the words were reasonably likely to be published in a newspaper, magazine, or periodical or broadcast by means of radio or television,—

being matter or words likely to excite hostility against or bring into contempt any group of persons in or who may be coming to New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.

(2) It shall not be a breach of subsection (1) of this section to publish in a newspaper, magazine, or periodical or broadcast by means of radio or television a report relating to the publication or distribution of matter by any person or the broadcast or use of words by any person, if the report of the matter or words accurately conveys the intention of the person who published or distributed the matter or broadcast or used the words.

(3) For the purposes of this section,—

“Newspaper” means a paper containing public news or observations on public news, or consisting wholly or mainly of advertisements, being a newspaper that is published periodically at intervals not exceeding 3 months:

“Publishes” or “distributes” means publishes or distributes to the public at large or to any member or members of the public:

“Written matter” includes any writing, sign, visible representation, or sound recording.

Cf. 1971, No. 150, s. 9A; 1977, No. 49, s. 86; 1989, No. 127, s. 2

63. Racial harassment—(1) It shall be unlawful for any person to use language (whether written or spoken), or visual material, or physical behaviour that—

- (a) Expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race, or ethnic or national origins of that person; and
- (b) Is hurtful or offensive to that other person (whether or not that is conveyed to the first-mentioned person); and
- (c) Is either repeated, or of such a significant nature, that it has a detrimental effect on that other person in

respect of any of the areas to which this subsection is applied by subsection (2) of this section.

(2) The areas to which subsection (1) of this section applies are—

- (a) The making of an application for employment:
- (b) Employment, which term includes unpaid work:
- (c) Participation in, or the making of an application for participation in, a partnership:
- (d) Membership, or the making of an application for membership, of an industrial union or professional or trade association:
- (e) Access to any approval, authorisation, or qualification:
- (f) Vocational training, or the making of an application for vocational training:
- (g) Access to places, vehicles, and facilities:
- (h) Access to goods and services:
- (i) Access to land, housing, or other accommodation:
- (j) Education.

81. Settlement—(1) Where it appears from a complaint, or any written response made under section 78 (1) (b) (ii) of this Act in relation to a complaint, that it may be possible to reach a settlement between any of the parties concerned, the Complaints Division may, without investigating the complaint or, as the case may be, investigating the complaint further, act as a conciliator in relation to the complaint and use its best endeavours to reach a settlement in relation to the complaint.

(2) Where the Complaints Division has investigated a complaint and is of the opinion that the complaint has substance, the Complaints Division shall act as a conciliator in relation to the complaint and use its best endeavours to reach a settlement in relation to the complaint.

(3) Where the Complaints Division has of its own motion investigated any act, omission, practice, requirement, or condition and is of the opinion that the matter ought to be proceeded with, the Complaints Division shall act as a conciliator, and use its best endeavours to reach a settlement, in relation to the investigation.

(4) The Commission shall decide whether a complaint has substance or whether a matter ought to be proceeded with in any case where the Complaints Division asks the Commission to make the decision.

(5) For the purposes of subsections (1) to (3) of this section, “settlement”—

(a) Means the agreement of the parties concerned on actions that settle the matter, which actions may include the payment of compensation or the tendering of an apology; and

(b) Includes a satisfactory assurance by the person to whom the complaint or investigation relates against the repetition of the conduct that was the subject-matter

of the complaint or the investigation or against further conduct of a similar kind.

Government			
Local			
Business	2	22	13
Industry	2	14	2
Other	2	7	3
Public	4	26	1
Transport	2	3	3
Health	2	2	7
Police	2		1
Transport		1	
Authority			
Other Issues			
Organisations	3	11	10
Other Public			
Organisations	5	7	13
TOTAL	27	69	52

APPENDIX 2

TABLE 6: Classification of Respondents

Year	1993/94	1994/95	1995/96
Individuals	14	131	133
Organisations			
Company/Firm*	3	57	78
Media	57	104	84
Government Departments	31	55	53
Local Authorities	-	11	9
Employment Agencies	-	-	4
Real Estate Agents	14	19	5
Club/Sports Bodies	9	6	3
Education Organisations	12	52	33
Community Groups	-	1	-
Hospitals	-	4	15
Churches	-	3	2
Employers	25	25	4
Retail	17	13	-
Colleague	13	18	7
Licensed Premises	12	13	19
Member of Parliament	10	5	10
Medical	9	3	11
Neighbours	6	25	12
Magazines	5	14	2
Bank	4	7	4
Advertiser	4	26	-
Tourism	2	5	3
Prison	2	2	7
Union	1	-	1
Transport Authority	1	2	-
Other Private Organisations	16	11	10
Other Public Organisations	6	7	14
TOTAL:	273	619	523

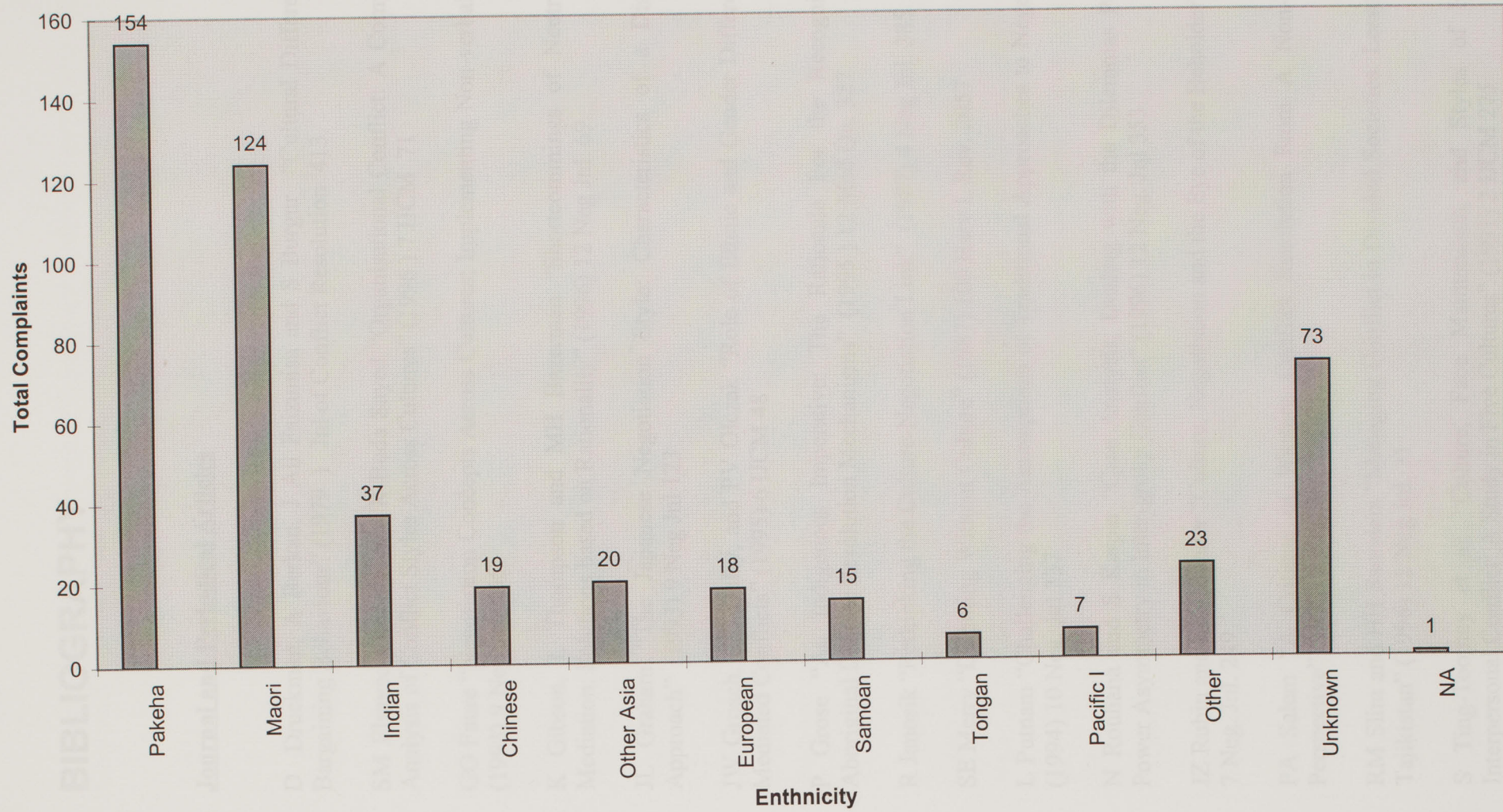
* Some complaints concerned more than one respondent

TABLE 3: Disposition of Complaints Received 1995-1996

Investigations completed	Number	%
No substance	24	4.83
Substance cannot be established	20	4.00
Substance	2	0.40
Discontinued because:-		
(a) The subject matter is trivial; or	2	0.40
(b) Having regard to all the circumstances the Conciliator decides not to investigate further,	52	10.46
(c) The complainant does not wish the investigation to be continued: or	121	24.35
(d) There is another adequate remedy or right of appeal.	16	3.22
Mediated Settlement - resolved during investigation	109	21.93
Mediated Settlement - Complaint settled following finding of substance	3	0.60
Referred to Complaints Division or Proceedings Commissioner	-	
Section 76 (2)(a) Applies	2	0.40
Section 77 Applies	11	2.21
Section 151 Applies	3	0.60
Section 153 Applies	-	
Outside Jurisdiction (determined after investigation)	60	12.10
Investigations Continuing	72	14.50
TOTAL	497	100.00

Chart1

Ethnicity of Complainants



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