

Conflict Coaching Skills for Lawyers: A Response to the Evolving Demands of Legal Service Provision

Richard Denning¹

Abstract

Conflict Coaching may provide skills and an example of a framework for improving the client's experience of the legal system and accessing legal assistance. The article considers several major criticisms of the legal system and the role and practice of lawyers. It then considers what these movements have suggested lawyers should do to improve their services and identifies alignments between these suggestions and the skills espoused in Conflict Coaching.

Introduction

This article presents skills from the emerging practice of Conflict Coaching as a potential response to progressive change in the demands of legal service provision. The legal system has in recent decades, been subject to criticism related to the adverse effects it can have on its participants. Changes to the legal system including increasing costs and delays, a shift to settlement focus and the rise of therapeutic jurisprudence have necessitated a shift in the way in which lawyers and their clients interact. These movements also offer a number of solutions to the issue of the legal system's adverse effects on participants, largely focused on up skilling lawyers to be more responsive to their clients' needs. This has not, however, been formulated into a comprehensive model of practice.

Conflict Coaching has evolved as an approach to conflict management for situations where, for whatever reason, the other party or parties to a conflict are not directly involved. Conflict Coaching, whilst still in an early stage of development, builds on the fields of executive coaching and conflict resolution, and borrows from other therapeutic interventions. Whilst it does not answer the call for a new model of practice for lawyers, it does present a model where skills and understanding from the behavioural sciences and conflict resolution have been applied in a non-clinical one-on-one professional relationship. Conflict Coaching provides a relatively simple and easy to implement approach which can inform legal practice and respond to the demands of a changing legal service-provision environment.

¹ Richard Denning, BA (Peace and Conflict Studies), LLB, GDLP, MCDR, Mediator NMAS.

What is Conflict Coaching?

Conflict Coaching combines the fields of coaching and conflict management.² It is a one-on-one process involving a disputant and a facilitator who is usually a conflict resolution professional. The process involves the two communicating for the purposes of developing the disputant's understanding of the conflict and strategies for approaching it.³ It can be used to resolve or prevent a dispute, prepare for an interaction, or to develop the person's conflict management competency and leadership skills.⁴ The Conflict Coach's role is a unique one, because it is designed to 'attend solely to the client and the client's agenda.'⁵ Conflict Coaching makes space for the client to explore and make sense of conflict, to make and test plans for the management of conflict, and to design specific responses for the client to enact.⁶ The types of conflict-related goals are limitless but reflect a unilateral desire to manage conflict by building the skills and confidence to do so.⁷ The client retains ownership of the conflict and responsibility for its management.⁸

Conflict Coaching has been proposed for a variety of settings. The process is believed to have originally emerged in 1993 at Macquarie University as an intervention employed where one party to a conflict declined mediation.⁹ It is particularly useful, in this respect, because for people who are in conflict and experiencing stress or high emotion, engaging with the other person is often beyond their capacity.¹⁰ Conflict Coaching has also been used to prepare parties to participate in mediation.¹¹

Conflict Coaching is still a burgeoning field and there is still work to be done to develop a consensus around what Conflict Coaching looks like and how it should be done. This, combined with a lack of a

² Cinnie Noble, 'Conflict Coaching: An Emerging Trend in the ADR World' (Paper presented at the Asia Pacific Mediation Forum Conference, Malaysia, 18-20 June 2008) 2 <<https://www.cinergycoaching.com/wp-content/uls/2015/07/Conflict-Coaching-APMF-2008.pdf>> accessed 18 August 2020.

³ Ross Brinkert, 'Conflict Coaching: Advancing the Conflict Resolution Field by Developing an Individual Disputant Process' (2006) 23(4) *Conflict Resolution Quarterly* 517–528.

⁴ Cinnie Noble, 'Conflict Coaching for Leaders' on *Mediate.com* (May 2003) <<https://mediate.com/articles/noble3.cfm>> accessed 18 August 2020; Ross Brinkert 'The ways of One and Many: Exploring the Integration of Conflict Coaching and Dialogue-Facilitation' (2013) 12 *Group Facilitation: A Research and Applications Journal* 46.

⁵ Julie Starr, *The Coaching Manual* (Pearson Education, 3rd ed, 2010) 4, 8, quoted in Judith Herrmann, 'A Comparison of Conflict Coaching and Mediation as Conflict Resolution Processes in the Workplace' (2012) 23 *Australasian Dispute Resolution Journal* 47.

⁶ Brinkert, (above n 3), 518.

⁷ Noble, (above n 2), 3.

⁸ Brinkert, (above n 3), 524.

⁹ Alan Tidwell, 'Problem Solving for One' (1997) 14(4) *Mediation Quarterly* 311.

¹⁰ Captain Helen Marks, 'Results through People' *Defence* (Canberra) August 2005, 1.

¹¹ Noble, (above n 2), 6.

single driver behind the development of Conflict Coaching, means that there are currently a variety of different models in existence. One model of Conflict Coaching is REAL from Conflict Coaching International. The REAL acronym reflects the model's conception of the coach's role to assist the client to:

- *reflect* – clarifying the conflict situation and understanding the needs and goals of the parties to the conflict, including their own;
- constructively *engage* with the conflict rather than avoid it, and to identify and evaluate their choices; as well as to
- *learn* new skills and develop confidence in their ability to manage conflict 'at the level of *artistry*.'¹²

The REAL model includes an intake stage which involves establishing rapport, performing a client needs analysis, assessing the clients readiness for coaching and the match between client and coach, providing information about the coaching process, and then obtaining informed consent to proceed.¹³ The coaching session itself involves the client setting a goal for the interaction, before engaging in a story-telling process so the client can reflect on what happened and unpack why it matters. The coach assists the client to assess the incident through a variety of different perspectives, including that of the other disputant. The coach then facilitates the client to imagine another preferred future and then to chart the necessary steps to achieve that future. This is followed by a reflection on the learnings obtained and concluding the session.¹⁴ Coaching utilises a specific goal or goals and occurs over a finite term. The process is concluded by reviewing the coaching, reinforcing learnings, making referrals to other services (where necessary), and finally an evaluation of the coaching process.¹⁵ Key skills exhibited by a REAL conflict coach include rapport building, deep or intentional listening, effective summarising, reflecting and acknowledgment of emotions, using appropriate questioning and non-directive language, challenging the client's perspective, and providing feedback to encourage greater insight.¹⁶

Why Lawyering and the Legal System Must Change

Before examining the ways in which Conflict Coaching may assist in improving the provision of legal services, it is important to first make the case for why these services need to change. The legal system in common law jurisdictions has been the subject of considerable criticism related to increasing costs

¹² Nadja Alexander and Samantha Hardy, 'Real Conflict Coaching: Fundamental 4-day Workshop' (2013) 3 *Conflict Coaching International* 31-33 (emphasis added).

¹³ *Ibid* 33–36.

¹⁴ *Ibid* 42–65.

¹⁵ *Ibid* 66–68.

¹⁶ *Ibid* 69–89.

and delays.¹⁷ It has also been criticised as being excessively formal and intimidating¹⁸ and as making justice inaccessible to most people.¹⁹ This has been associated with increasing rates of dissatisfaction amongst parties to legal proceedings and the general public.²⁰ As a result, many people no longer see a relationship between going to a lawyer and solving a problem they may have.²¹ Lawyers have further alienated the general public by increasingly targeting their services at institutional clients.²² These clients, however, demand legal services which are responsive to commercial needs, including avoiding unnecessary expense, delays and destruction of commercial relationships.²³

The above factors have been an important impetus for the proliferation of early and informal dispute resolution processes, and an increasing focus away from trials toward settlement.²⁴ Notwithstanding this shift, adversarialism persists and may have become even more entrenched in the legal system due to the ultra-competitive environment which developed in the latter part of the twentieth century.²⁵ This has been compounded by failings in the education of our next generation of lawyers – to recognise and impart the skills which will equip them to respond to this changing environment and the changing expectations of their clients.²⁶ As a result, the rise of early and informal resolution hasn't had the empowering impact for disputants that had been hoped for. Indeed, many lawyers remain sceptical of allowing their clients to fully engage in mediation, motivated by a desire to retain control over the dispute resolution process.²⁷ Whilst lawyers have suggested that legal representation will boost parties confidence to participate in mediation, where they are acting as gatekeepers this has, in fact, undermined self-determination and client satisfaction.²⁸

The therapeutic jurisprudence ('TJ') movement has been another avenue of criticism of the legal system. Therapeutic jurisprudence asserts that law is a social force which impacts upon the psychological

¹⁷ Julie MacFarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* UBC press, (2008) 1.

¹⁸ *Ibid* 131.

¹⁹ Charles Owen, Ronald Staudt and Edward Pedwell 'Access to Justice: Meeting the Needs of Self-Represented Litigants' (Report, National Center for State Courts (US), Illinois Institute of Technology & Chicago-Kent College of Law, 2001) 3–4.

²⁰ MacFarlane, (above n 17).

²¹ *Ibid* 132.

²² *Ibid* 1.

²³ *Ibid*; Jill Chanen, J, 'The Heart of the Matter' (1995) 81 *The American Bar Association Journal*.

²⁴ MacFarlane, (above n 17), 7.

²⁵ *Ibid* 13.

²⁶ *Ibid* 15.

²⁷ John Campbell, 'Mediation – Don't Miss Out on the "Hidden" Benefits' (2013) June *Proctor*, 44.

²⁸ Alison Finch, 'Harnessing the Legal and Extralegal Benefits of Mediation: A Case for Allowing Greater Client Participating in Facilitative Mediation' (2010) 21 *Australasian Dispute Resolution Journal*, 162.

functioning of participants in the system.²⁹ In the civil system, the family courts have been particularly criticised by TJ as encouraging parties to have negative and unrealistic perceptions of each other, evoking shame and hostility.³⁰ Allan has contended that the family law system discourages problem-solving, casts help-seeking as capitulation, reduces ownership of solutions, and reduces all acts to moves in a tactical game.³¹

It has also been asserted that lawyers have exerted undue influence on the agency of their clients. This unspoken authority exerted over clients, is exercised in simple actions such as making recommendations without an explanation.³² Lawyers have similarly propagated the image of themselves as the 'holders of knowledge' to an inaccessible legal system. This provides lawyers with control over even what their clients expectations will be,³³ and undermines their accountability for the way in which they provide their services.

Lawyers are also accused of completely misunderstanding the needs and wants of their clients. Most lawyers believe that end results are what determine client satisfaction with their services. Most clients, however, indicate that the way in which services are delivered is essential to their satisfaction with their lawyers.³⁴ This is further illustrated by a 2009 survey which found that most medical negligence lawyers consider their clients sued only for money. The study found that in reality their clients' main drivers were to seek an admission of responsibility and to prevent the accident from occurring again.³⁵

²⁹ Dennis Stolle, David Wexler and Bruce Winnick, *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* (Carolina University Press, 2000) cited in Diana Bryant CJ and John Faulks J, 'The "helping court" comes full circle: The application and use of therapeutic jurisprudence in the Family Court of Australia' (2007) 17 *Journal of Judicial Administration* 94.

³⁰ Alfred Allan, 'Therapeutic Jurisprudence in Family Law' (Paper presented at the Family Court of Western Australia's Conference 'In the Child's Best Interest', Perth, 9 November 2001) cited in Diana Bryant CJ and John Faulks J, 'The "helping court" comes full circle: The application and use of therapeutic jurisprudence in the Family Court of Australia' (2007) 17 *Journal of Judicial Administration* 97.

³¹ *Ibid.*

³² Lucy Lauziere, 'Dependence and Interdependence in the Lawyer-Client Relationship' in The Law Commission of Canada (eds), *Personal Relationships of Dependence and Interdependence in Law*, (UBC Press, 2000) 71; Finch (above n 28), 159.

³³ William Simon, *The Practice of Justice: A Theory of Lawyers' Ethics* (Harvard University Press, 2000) cited in MacFarlane (above n 17), 127.

³⁴ Marcia Pennington Shannon 'Cultivating the Art of Effective Client Communications' (2011) 37 *Law Practice Magazine* cited in Campbell, (above n 24), 46.

³⁵ Tamara Relis, *Perceptions in Litigation and Mediation: Lawyers, Defendants and Gendered Plaintiffs* (Cambridge University Press, 2009) cited in Finch (above n 26) 160.

How Conflict Coaching Can Assist Lawyers to Respond to the Evolving Demands of Legal Service Provision

Given the criticism outlined above, it is clear that the legal profession must make some significant changes to the way it provides services in order to maintain its relevance to the business of dispute resolution. The following section describes some of the various ways the literature has suggested lawyers improve the provision of legal services and considers the ways in which Conflict Coaching can provide skills and an example of a framework that lawyers may be able to utilise to achieve this aim.

Effectively Engaging in Conflict Resolution Processes

As outlined, the decline of litigation in favour of conflict resolution processes has necessitated a change in the focus of lawyering. Conflict Coaching skills may assist lawyers to better prepare their clients for engaging in informal and early dispute resolution. Processes such as mediation provide for and often demand greater involvement from clients.³⁶ Lawyers can assist their clients to prepare for mediation by accurately explaining the process, assisting them to consider their interests, and by using their legal knowledge to assess the risk-profile of settlement.³⁷ Preparation for mediation will also assist in identifying areas requiring further clarification, can deepen a client's understanding of the legal issues, may 'reality test' areas of weakness in the client's case, may address a client's unreasonable expectations, and may assist in further developing their litigation strategy.³⁸ Conflict Coaching offers tools for operating in a facilitative way, and has been suggested as an ideal way to assist disputants to prepare for mediation.³⁹

The influences which have resulted in a shift in the focus of clients from litigation to conflict resolution has also led to new information being important to lawyers. For example, in commercial matters, lawyers should now be concerned with the client's business relationship with the other disputant – considering its duration, what future opportunities there may be together, and whether there is an interest in maintaining the relationship long-term. This demands lawyers know a lot more than just the facts of the case and the legal rights and obligations in the dispute.⁴⁰ Conflict Coaching provides a model and a

³⁶ MacFarlane, (above n 17), 135.

³⁷ Donna Cooper and Mieke Brandon, 'How Can Family Lawyers Effectively Represent Their Clients in Mediation and Conciliation Processes?' (2007) 21(3) *Australian Journal of Family Law* cited in Finch, (above n 28), 162.

³⁸ Campbell, (above n 27), 45.

³⁹ Noble, (above n 2), 6; Alexander and Hardy, (above n 12), 23.

⁴⁰ MacFarlane, (above n 17), 140.

set of skills for seeking and obtaining this information and considering it in the design and testing of resolution strategies.⁴¹

Empowering Clients

Conflict coaching also provides a framework for increasing clients' sense of control over their own situation and its effective resolution. As discussed above, lawyers have a great power to influence their clients' decision-making process. As a result, they are well placed to encourage their clients' active participation in resolution processes and ownership of outcomes. This requires a shift from the role of aggressive advocate⁴² to one of facilitating the client to be active in shaping and testing solutions to a problem and advocating for themselves in negotiations with the other side.⁴³

In order to become what MacFarlane calls the 'New Lawyer', one must be self-aware about their personal biases, and present a variety of options to the client to ensure that these don't interfere with the client's decision-making process.⁴⁴ This requires a complex balance between performing due diligence and offering the expertise which the client is paying for, and creating space for the client to truly enact their autonomy.⁴⁵

Conflict Coaching offers skills to assist in this endeavour, it privileges client self-determination by using a facilitative style.⁴⁶ Conflict Coaches achieve this by avoiding the provision of advice, recognising that this advice usually reflects their own beliefs, values, opinions, desires and flawed understandings.⁴⁷ REAL Conflict Coaches go so far as to use tentative and non-directive language, as well as avoiding questioning and other practices which might unnecessarily centre them in the process. REAL Coaches recognise clients as the experts in their own lives, and ultimately the client's responsibility for managing their own conflict.⁴⁸

⁴¹ Brinkert, (above n 3), 518.

⁴² Finch, (above n 28), 161.

⁴³ Wilton Sogg 'What do we do now, coach?' (1998) 44(5) *Practical Lawyer*; MacFarlane, (above n 14) 24.

⁴⁴ MacFarlane, (above n 17), 24, 142.

⁴⁵ Ibid 144, 157–158.

⁴⁶ Brinkert, (above n 3), 524; Ross Brinkert, 'The ways of One and Many: Exploring the Integration of Conflict Coaching and Dialogue-Facilitation' (2013) 12 *Group Facilitation: A Research and Applications Journal*, 46.

⁴⁷ Noble, (above n 2), 13.

⁴⁸ Starr, (above n 5), cited in Alexander and Hardy, (above n 12), 77, 83.

Becoming the ‘Therapeutic Lawyer’

Conflict coaching also potentially provides an avenue for implementing the logic and wisdom contained in the TJ movement. Whilst this article has already outlined the ways in which TJ highlights the legal system’s ability to negatively impact upon participants, the main thrust of TJ is to use the legal system to achieve therapeutic goals by drawing on the tools of the behavioural sciences.⁴⁹

Legal proceedings are often one of the most stressful life events for people, so there is an important impetus for lawyers to act in a manner which minimises negative effects on their clients and maximises the opportunities for positive growth.⁵⁰ It is important for lawyers seeking to act therapeutically to understand their client’s emotions and other psychological processes related to the resolution of a legal problem.⁵¹ Therapeutic jurisprudence suggests lawyers and clients work together to identify ‘psycho-legal soft spots’ – sources of anxiety, depression and hurt which may be unintended consequences of the legal process or strategy.⁵² A client’s inability to resolve emotional issues related to a legal problem may prevent a dispassionate assessment of the legal options available to them, potentially leading to a protracted litigation process.⁵³ It can also impede the client’s ability to utilise the advice provided by the lawyer and even undermine their satisfaction with the outcomes.⁵⁴ Therapeutic jurisprudence suggests lawyers should encourage their clients to tell their story, being attentive to the details, showing understanding by seeking clarification and providing advice which takes their full range of concerns into account.⁵⁵ This demands high levels of self-awareness by lawyers – of their own emotions, motivations, biases and behavioural patterns to manage their reactions to clients and ensure that they are fostering therapeutic outcomes.⁵⁶

Conflict Coaching provides a vehicle of acquiring these high levels of self-awareness which are required to avoid undermining the client’s self-determination.⁵⁷ Similarly, most models of Conflict Coaching propose some kind of story-telling process and prescribe a set of skills for facilitating this. For example,

⁴⁹ Bryant and Faulks, (above n 30).

⁵⁰ Michael King, ‘Therapeutic jurisprudence in Australia: New directions in courts, legal practice, research and legal education’ (2006) 15 *Journal of Judicial Administration*, 137.

⁵¹ Michael King, ‘Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice’ (2008) 32 *Melbourne University Law Review*, 1122.

⁵² MacFarlane, (above n 17), 137.

⁵³ Ibid.

⁵⁴ Finch, (above n 28), 160; Stephanie Sogg and Wilton Sogg, ‘Coping with adversity: Your clients’ and your own’ (2000) 46(6) *Practical Lawyer*, 28.

⁵⁵ King 2006, (above n 50), 136.

⁵⁶ Susan Daicoff, ‘Growing pains: The integration vs. specialisation question for therapeutic jurisprudence and other comprehensive law approaches’ (2008) 30 *Thomas Jefferson Law Review*, 557.

⁵⁷ Noble, (above n 2), 13; Brinkert, (above n 3), 524.

the REAL Conflict Coaching model provides that it is the coach's role to non-judgementally and supportively assist the client to understand their own situation, including all relevant factors and assumptions before making decisions about how to improve the situation. The coach does this by helping the client to tell their story and promote thinking which acknowledges complexity.⁵⁸ REAL encourages coaches to explore the emotional content of the dispute and examine their feelings resulting from the conflict, how those are being expressed, their impact on options for taking action, and what might need to happen to create positive emotions.⁵⁹

But what does a lawyer do when a client chooses an option that the lawyer considers is not in the client's best interest? Therapeutic jurisprudence does not condone coercive persuasion as this does nothing to assist the client's awareness of the unfortunate consequences of the choice and to make a better one.⁶⁰ Therapeutic jurisprudence suggests that lawyers use 'motivational interviewing'⁶¹ to overcome defence mechanisms which manifest as resistance, expressing empathy and highlighting inconsistencies between the client's behaviour and goals whilst avoiding oppositional arguments.⁶² Conflict Coaching also privileges client self-determination, but provides techniques for challenging misalignments between behaviours and identified goals.⁶³ REAL Conflict Coaches will challenge the client's story, looking for assumptions, potential biases, and inconsistencies in the story in order to explore different interpretations of the events.⁶⁴ They do this by helping the client to explore the situation from a range of perspectives and inviting clients to examine and modify some aspect of their thinking or behaviour. Successfully applied it can lead to greater client self-awareness but must be applied sensitively to avoid damaging the relationship between coach and client.⁶⁵

Embracing 'Counselling' Skills

Lawyers reading this article may, by this point, be saying to themselves: *But I'm not a counsellor!* Indeed, this is not what the client has come to the lawyer for. Nevertheless, some authors have supported

⁵⁸ Alexander and Hardy, (above n 12), 45-46.

⁵⁹ Ibid 55.

⁶⁰ King 2006, (above n 50), 136.

⁶¹ 'Motivational interviewing is a collaborative conversation style for strengthening a person's own motivation and commitment to change.' William Miller Stephen Rollnick, *Motivational interviewing* (3rd ed, The Guilford Press 2013) 12.

⁶² King 2006, (above n 50), 137.

⁶³ Noble, (above n 2), 13.

⁶⁴ Alexander and Hardy, (above n 12), 49.

⁶⁵ Richard Nelson-Jones *Lifeskills Helping: A Textbook of Practical Counselling and Helping Skills* (Holt, Rinehart and Winston 1992) cited in Alexander and Hardy, (above n 12), 85.

the use of counselling skills to assist lawyers to function more therapeutically.⁶⁶ But where does a ‘therapeutic lawyer’ draw the line to ensure they are not functioning dangerously out-of-scope? Conflict Coaching provides an example of a model and practice where therapeutic skills are applied within a narrow scope which does not stray into ‘therapy’.

Conflict Coaching shows strong alignment with many important aspects of counselling practice. For example, Rogers suggests that there are three conditions which are necessary for therapeutic progress in a counselling relationship, these are:

- Congruence – whereby the counsellor is genuine in their interactions with the client.
- Unconditional positive regard – whereby the counsellor accepts their client regardless of client’s flaws.
- Empathic understanding – listening to and understanding what is going on for a client and being able to reflect this understanding in some way.⁶⁷

Rogers asserts that if a counsellor can express the above characteristics this will make the client feel safe, valued, free to be creative and take risks, and free from judgement.⁶⁸ This would accord with Conflict Coaching’s preference for non-judgemental and supportive interactions between coaches and clients.⁶⁹

Egan suggests that therapeutic relationships can be further strengthened by challenging clients to identify the ‘blind-spots’ in their stories and to gain insight. Examples of blind-spots may include a failure: to own a problem; to define a problem in a manner which is amenable to solving; to understand the consequences of their actions; or faulty interpretations of experiences, distortions and evasions.⁷⁰ Challenging the client and identifying ‘holes’ or ‘blind-spots’ in the client’s story is also an essential component of most Conflict Coaching models.⁷¹

Brayne draws on the work of Egan who also suggests a three-stage approach for implementing counselling skills as a lawyer:

⁶⁶ Hugh Brayne, ‘Counselling Skills for the Lawyer can Lawyers Learn Anything from Counsellors?’ (2010) 32(2) *The Law Teacher*, 142.

⁶⁷ Carl Rogers, *On Becoming a Person* (Houghton Mifflin, 1961) cited in Brayne, (above n 66), 143; Steven Keeva, ‘Beyond the Words’ (1999) 85 *American Bar Association Journal*, 63.

⁶⁸ Brayne, (above n 66); King 2008, (above n 51), 1123.

⁶⁹ Alexander and Hardy, (above n 12), 45.

⁷⁰ Gerard Egan, *The Skilled Helper* (Brookes/Cole Publishing Company, 1994) cited in Brayne, (above n 66), 147.

⁷¹ For example, Alexander and Hardy, (above n 12), 49.

1. Review the scenario in order to help the client identify, expand and clarify their problem.
2. Develop a preferred scenario so as to assist the client to identify their goals based on this understanding of the problem.
3. Help the client to develop an action plan for getting what they want.⁷²

This approach is also shared by most Conflict Coaching models.⁷³

Whilst Barton concedes that many legal clients will not need psychological therapy, their problems will inevitably involve strong emotions or damage to relationships – for which the counselling skills will be particularly useful.⁷⁴ Barton encourages lawyers to be bold in implementing these strategies in their practice. To do so he suggests that lawyers must trust themselves to engage with people about their feelings and relationships. Indeed asking open-ended questions, reflecting the client's words and behaviours, identifying feelings, and prompting clients to identify and evaluate solutions are not beyond the capabilities of lawyers.⁷⁵ At the same time lawyers must trust their clients, that they are not morally inept or without the capacity for reflection.⁷⁶

Whilst Conflict Coaching has been suggested as having its origins in brief therapy,⁷⁷ and acknowledges that its interventions may have therapeutic value, Conflict Coaching is not supported by the same training and regulatory structures which counselling is, and is also more future focused.⁷⁸ It does, however, provide a precedence and a model which may assist lawyers to implement many of the above counselling skills outside the counselling framework.

Becoming an Intentional Listener

Conflict coaching also offers a range of skills and an example of a framework for a lawyer attempting to engage in more effective listening with their clients. Keeva suggests that good listening is a way for a lawyer to distinguish themselves from other technically strong practitioners. Listening only for the facts as they relate to the legal issues denies the client the opportunity to explore how they feel about the problem, to discuss the actions of the parties to the dispute, and what kind of outcome would provide

⁷² Egan cited in Brayne, (above n 66), 146.

⁷³ For example, Alexander and Hardy, (above n 12), 27–28.

⁷⁴ Thomas Barton, 'Therapeutic Jurisprudence, Preventive Law, and Creative Problem Solving: An Essay on Harnessing Emotion and Human Connection' (1999) 5(4) *Psychology, Public Policy, and Law*, 934.

⁷⁵ *Ibid* 942.

⁷⁶ *Ibid*.

⁷⁷ Tidwell, (above n 9), 312.

⁷⁸ Noble, (above n 2), 11.

them with satisfaction – all of which are relevant to how the lawyer proceeds.⁷⁹ Similarly, if the lawyer does not dig deeper they are likely to only hear which facts support the client’s position and their desire to exact revenge on the other party. As such, deeply listening allows lawyers to piece together a more complete factual scenario.⁸⁰

In order to achieve this style of listening, lawyers must learn a new style of questioning. Chanen suggests that lawyers use ‘enlightened stupidity’ to dig deeper instead of filling the gaps and metaphors of what people say with their own assumptions.⁸¹ Chanen also suggests that lawyers treat pauses in the conversation as an important process for reflection and thought in both the client and in themselves.⁸² MacFarlane conceives of this listening process as ‘working from the client’s own narrative, rather than imposing an external framing of the issues’.⁸³ She suggests that this process will also assist greatly in preparing clients to engage in non-legal processes such as mediation.⁸⁴

Conflict Coaching models provide guidance for the use of active or intentional listening and other techniques designed to facilitate the client’s exploration of what’s going on in the situation.⁸⁵ REAL Conflict Coaches provide the client with a safe and attentive space to talk through their concerns, to identify gaps or inconsistencies and to notice how the client is feeling about what they’re saying. This deep or ‘intentional listening’ process, which involves only minimal and brief verbal and non-verbal interventions, encourages further exploration and a sense of the client having the coach’s overt attention.⁸⁶

Benefits for Lawyers Using Conflict Coaching Skills

This article has outlined the ways that Conflict Coaching skills can improve client experience, however, there is also potential for significant benefits to flow for lawyers themselves. Daicoff reports significant dissatisfaction amongst lawyers with their profession, particularly for lawyers with humanistic, interpersonal orientations and whose personalities do not sit well with traditional legal practice.⁸⁷ She suggests that TJ practices allow lawyers to ‘help people, prevent harm, avoid interpersonal conflict,

⁷⁹ Steven Keeva, ‘Beyond the Words’ (1999) 85 *American Bar Association Journal*, 61.

⁸⁰ Ibid.

⁸¹ Jill Chanen, J, ‘The Heart of the Matter’ (1995) 81 *The American Bar Association Journal*, 78.

⁸² Ibid.

⁸³ MacFarlane, (above n 17), 137.

⁸⁴ Ibid 139.

⁸⁵ Ross Brinkert, ‘The ways of One and Many: Exploring the Integration of Conflict Coaching and Dialogue-Facilitation’ (2013) 12 *Group Facilitation: A Research and Applications Journal*, 46; Alexander and Hardy, (n 12), 74.

⁸⁶ Alexander and Hardy, (above n 12), 72.

⁸⁷ Daicoff, (above n 56), 838, 843.

build and maintain relationships instead of tear them asunder, and become a positive force in people's lives rather than a necessary and often hated evil.'⁸⁸ On a commercial level, a lawyer utilising Conflict Coaching skills can create stronger relationships with their clients, and may in turn maximise opportunities for further business.⁸⁹ MacFarlane also suggests that by shifting the moral and practical responsibility from lawyer to client, this assuages what is a significant source of stress for lawyers.⁹⁰

Conclusion

This article has attempted to make a case for the use of Conflict Coaching skills to assist lawyers to address criticisms of lawyering and the legal system and respond to a shift in the needs and expectations of their clients. As outlined, there are strong links between the changes to legal service provision which have been suggested by movements such as TJ and the values and skills which are espoused by Conflict Coaching. Lawyers cannot act as Conflict Coaches, whilst still being lawyers, owing to mutually exclusive positions on aspects such as the provision of advice, and clients are unlikely to attend lawyers for purely facilitative services. However, there is reason to believe that incorporating Conflict Coaching skills into the lawyer's toolkit can produce real benefits for clients and lawyers alike.

⁸⁸ Ibid.

⁸⁹ Campbell, (above n 27), 46.

⁹⁰ MacFarlane, (above n 17), 141.