



# AFRICA CENTRE FOR DISPUTE SETTLEMENT

At the University of Stellenbosch Business School

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## SWIMMING WITH CROCODILES An interview with Kim Wilson

Linda Botha with Pablo Lumerman

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*Kim Wilson is an experienced engagement specialist, mediator, facilitator and alternative dispute resolution practitioner. He has successfully conducted mediations for over 15 years, many involving multiple parties and complex issues and interests. He is a specialist in social development strategy, and designs and delivers engagement strategies and implementation plans. He is experienced in company-to-community engagement, strategic negotiation and working with indigenous interests in Australia and beyond. He also conducts workshops on company-to-community engagement and negotiation.*

**Question: What is one of the more significant challenges or dilemmas you face when you are facilitating company-community dialogue?**

**Answer: Working with power imbalances among parties during dialogues.**

In most of the situations in which I engage there is an immediate imbalance between stakeholders. One of the parties, representing government or company interests, arrives with a high level of technical skills, clear objectives, motives and policies. The other party, coming from a rural and remote area, doesn't necessarily share the same sort of technical and educational background with those sitting opposite it. Straightaway, one interest group has a kind of "underdog status." This is often the case with indigenous communities, especially in the Northern territories of Australia.

Sometimes corporate clients say to me, "look, we don't have time to go out into the bush to have these conversations." They want everyone to come to them, because they have the power to make it happen. But as a facilitator, I know this approach won't work. Dialogue takes place in a particular context. If you bring rural people into the city and stick them in a boardroom, they won't be comfortable. You need a safe, appropriate environment where people can meet, and talk, as equals. In the case of aboriginal people, research has shown how skillful advocates in the past have manipulated conversations with them to get to a particular outcome. For example, in settings such as

the criminal courts, aborigines have been influenced into saying “yes” when they meant “no,” or simply saying “yes” when they didn’t clearly understand what was being asked. This is not about giving untruthful answers, but about how people react differently to power, and the use of language in these settings.

It is my job to bring these imbalances to the attention of clients, even if it means telling them something they might not want to hear. They need to recognise that they are the big players in terms of the power relationship, and that this can have an enormous impact on how the relationship develops with the other party.

**Question: *What is an example of this challenge?***

**Answer: *A negotiation process that took place in the remote parts of Australia with tribal groups.***

The further north you go in Australia, the more you work with remote people who still live according to traditional values. We had to engage with aboriginal people in a very explosive situation. The stakeholders, including government and local farmers, were getting anxious to reach an agreement. The tension and impatience were palpable.

During an initial meeting, a senior aboriginal man had a strong presence, being the local spiritual and community leader. Some of the stakeholders wanted me to rush in and immediately start the proceedings. But I felt we were guests in their country, so I just sat quietly, waiting. I resolved to wait until the leader was ready to see me. While many of the other parties were getting frustrated, complaining that “*nothing was happening,*” I was actually actively showing the leader my respect. And was not rushing in to do what the strongest party, in this case government, wanted me to do.

Finally he came out to see me. For a long time we just sat in silence. I have learned that sometimes you could communicate more with silence than with words. We started chatting about water and swimming in the nearby pond. He told me that later I could go swim in the *billabong* (pond) and I thought to myself – “there are crocodiles in that billabong!” But he assured me that it was all right, and that he would see to it that the crocodiles didn’t injure me. What he was really saying was, “*You are here to reach an understanding which involves my culture, so now I will test you - you will have to trust me.*” I had to be aware of the cultural interface of the situation. I accepted what the man said, and after the proceedings finished I went into the water. I needed to show that I believed his assurance. As a result we reached a crucial agreement that very same day. At the center of this story is two cultures coming together and leveling the playing field.

**Question: *How did this impact the parties’ ability to achieve rights-compatible, interest-based outcomes?***

**Answer: *Parties felt they all had a legitimate point of view that could be expressed on an equal footing.***

As a facilitator, you must be willing to invest your own emotional capital into the process. People who still live off the land, and live in communal settings, often have a very strong sense and intuitive capacity to understand a person. This happens without necessarily needing to have a verbal exchange. Working in these contexts, your consciousness needs to be fully engaged. You need to be present. The irony is that sometimes you get *more* by doing *less*. In the example above, I was willing to concede my ceremonial position. A certain power comes with being the *government-appointed-facilitator*, but I conceded this to the aboriginal leader. This showed him that I took him seriously and the scene was set for the dialogue to unfold.

The mining company involved in this case realised they had to sit down with local people to actively build the agreement. You don't just storm in and start "negotiating." It is more than just a formal procedure. I like to think of it as a process of *building* an agreement. Finding common ground about what the quality of the conversation will be like.

The significance of this case was in the recognition that the company gave the aboriginal community. This comes back to creating an appropriate space. In this way, the parties get to a place where everyone can say "we agreed," instead of pointing fingers and saying things like "you agreed." As a facilitator, you become part of this collective *we*. Sometimes you are the doctor that uncovers an old injury. You can't just walk out during the middle of the surgery. You are in it for the long run.

**Question: *The answer to what question would have helped you be able to more effectively intervene as a third party?***

**Answer: *How can facilitators, as a community of practice, support each other in their various roles?***

In the CoP I found people that speak the same language as I do. We live in a big world, but only a handful of people speak the proper language of facilitation. Clients sometimes call me and say they want to "negotiate" and agreement. But I talk about *building* an agreement. When some people talk about negotiation, there is often an implication that some group or person will gain more than another. So the way in which we practitioners speak about our work is very important. Equally important is to connect with like-minded others who share this view of our profession and who want to cooperate to enrich it.

Being able to debrief and connect with professionals in the field is an important way of getting a more "engaged consciousness" within our community. If you are doing this type of work, you are often alone, even though other people surround you. How do you know whether you are doing a great job or whether you are really making a difference or not? You need a place where you can reflect, learn and also receive guidance. And sometimes a day in the field can really wear you out, it can take its toll on you. But having a conversation with someone who understands your context already makes it better.

Most of us know that procedure can never out-muscle substance. Sharing our collective experiences from the field can be a great way of mentoring and sharing, bringing more substance into our practice. A lot of our work is completely organic, bottom-up and can't necessarily be learned from a book. Engaging with other experienced facilitators, even in completely unstructured ways, is sometimes the best way to learn.