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# Resolving Disputes Within the Church

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# Introduction

## Corney & Lind Lawyers Pty Ltd

➤ Mid size law firm – 18 lawyers + 38 staff

➤ Our focus areas

Schools & Education

Not for Profit & Charity

Commercial

Employment & Discrimination

Personal Injury

Commercial & Construction Litigation

Migration & Visas

Family Law

Criminal & Traffic

Estate & Elder Law

➤ Our lawyers travel to you if needed

➤ Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care and integrity

➤ Based right next to the CBD opposite the RBWH transport hub

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# About Your Speakers



**James Tan**



**Jessica Lipsett**



# Common issues leading to splits or disputes within the Church

1. Differences in direction.
2. Disagreements about the use of funds.
3. Breakdown in understanding of the separate functions of the parts of the body (governance / management / members). Symptoms include:
  1. Feeling disempowered.
  2. Failing to meet Governance Standards.
  3. Diminished focus on mission.
  4. High conflict meetings.



# Role of the Board = Governance not Management

- Governance is about oversight - strategy, delegated authority to Managers, accountability of Managers.
- Responsibility to adhere to Governance Standards:
  1. Not-for-profit and charitable purpose;
  2. Accountability to members;
  3. Compliance with Australian laws;
  4. Suitability of Responsible Persons (governors – Board/Church Council/Elders);
  5. Duties of Responsible Persons:
    - To act with reasonable care and diligence;
    - To act honestly and in the best interests of the charity;
    - Not to misuse their position or information they gain from their position;
    - To disclosure conflicts of interest;
    - To ensure that the financial affairs of the charity are managed responsibly;
    - Not to allow the charity to operate while insolvent.

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# Senior Pastor & Governors - Relationship

- Senior Pastor - akin to the CEO. The extent of the delegated authority from the Board to the Senior Pastor may vary from church to church.
- A Board cannot abdicate their “governance” role to the Senior Pastor.
- However, the delegated authority can be significant; with all “day to day decision making” delegated to the CEO. Often this is achieved by a “limitations policy” rather than a “scope of authority” policy.
- A “limitations policy” is a full day to day decision making authority but for this list...



"Technically, you do qualify for five weeks of vacation, but your request for 35 Sundays off has to go under review."



# Importance of ‘Members’

## 1. Identifying your members – who are they?

- Check your governing documents.
- Do you have a formal application process?
- Do you have a membership registry?

## 2. What rights do your members have?

- Check your governing documents.
- What decisions are your members entitled to vote on?
- Do you schedule appropriate meetings?



# Effective Dispute Resolution – The Heart (*The Biblical View*)

## *The Call to Reconciliation – Matthew 18:15-20*

*<sup>15</sup> “If your brother or sister sins, go and point out their fault, just between the two of you. If they listen to you, you have won them over. <sup>16</sup> But if they will not listen, take one or two others along, so that ‘every matter may be established by the testimony of two or three witnesses.’ <sup>17</sup> If they still refuse to listen, tell it to the church; and if they refuse to listen even to the church, treat them as you would a pagan or a tax collector.*

*<sup>18</sup> “Truly I tell you, whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven.*

*<sup>19</sup> “Again, truly I tell you that if two of you on earth agree about anything they ask for, it will be done for them by my Father in heaven. <sup>20</sup> For where two or three gather in my name, there am I with them.”*





# Effective Dispute Resolution – The Heart (*The Biblical View*)

## *The Call to Avoid Court - 1 Corinthians 6:1 to 7*

*If any of you has a dispute with another, do you dare to take it before the ungodly for judgment instead of before the Lord's people? <sup>2</sup> Or do you not know that the Lord's people will judge the world? And if you are to judge the world, are you not competent to judge trivial cases? <sup>3</sup> Do you not know that we will judge angels? How much more the things of this life! <sup>4</sup> Therefore, if you have disputes about such matters, do you ask for a ruling from those whose way of life is scorned in the church? <sup>5</sup> I say this to shame you. Is it possible that there is nobody among you wise enough to judge a dispute between believers? <sup>6</sup> But instead, one brother takes another to court—and this in front of unbelievers!*

*<sup>7</sup> The very fact that you have lawsuits among you means you have been completely defeated already. Why not rather be wronged? Why not rather be cheated?*



# Effective Dispute Resolution – The Art (*The Lawyer's View*)

Effective	Ineffective
•Compromise from both parties.	•Power imbalance or negotiating imbalance
•Finality – from the current dispute and future disputes	•Exposes the parties to additional future risks
•Cost-effective	•Expensive
•Reconciliation – a possible future working relationship	•Permanently damages the ongoing relationship of the parties.



# Appropriately Escalating Issues

<u>Critical and Urgent</u>	<u>Critical and Not Urgent</u>
<ul style="list-style-type: none"><li>• Severe breach of legal requirements – misuse of church funds or tax concessions.</li><li>• Sexual abuse, bullying, criminal or other highly inappropriate conduct.</li><li>• Harm involving external parties (social media reputational damage, etc)</li></ul>	<ul style="list-style-type: none"><li>• Failure to comply with best practice in relation to good governance (in isolated circumstances).</li></ul>
<u>Not Critical and Urgent</u>	<u>Not Critical and Not Urgent</u>
<ul style="list-style-type: none"><li>• Disagreements between leadership team.</li></ul>	<ul style="list-style-type: none"><li>• Style of worship</li><li>• Management tasks</li></ul>



# Assessing the Response Needed

1. Do we have a policy on this dispute?
2. What is the harm?
3. Who are the persons involved in the dispute?
4. What do our minutes and resolutions say?
5. Who are the right advisors?
6. Does this need to go public?
7. When is the earliest I can resolve this dispute?



## A Roadmap

1. Prayer – God’s will be done, and a surrender to Him.
2. Encouragement – Parties to view the dispute as an opportunity to glorify God and grow His Kingdom
3. Humility – Encouragement to reflect on self-contributions to conflict
4. Walking away? – Is it God’s desire for parties to walk away from this conflict?
5. Urgent Injunctions? – Are the urgent legal protections needed to prevent irreparable harm?
6. Direct Approach? – Matthew 18:15
7. Mediation? – Matthew 18:16
8. Arbitration? – Matthew 18:17; 1 Corinthians 6:1-5
9. Litigation? - Motives, God’s desire, impact on witness
10. Forgiveness and Reconciliation – How is the strategy effecting this?

## In-House vs Mediation vs Court

In-House	Mediation	Arbitration	Court
An internal resolution handled within the Church	An external resolution with the parties' representatives and an independent third party assisting the parties to reach a compromise	An external resolution where the parties bring their case to a decision maker – preferably a Christian	An external resolution with parties and their solicitors / barristers / witnesses going before a judge in court.
Free	Some Cost	Some cost	Very Costly
Quick	Not as quick	Not as quick	Very Slow
May fail to appropriately address disputes with legal or commercial implications.	May allow for personal issues to be ventilated and dealt with alongside legal and commercial concerns.	Allows for a decision to be made in a dispute, without the reputational damage a public proceeding in the Court would have.	May be useful in resolving with finality significant legal and commercial concerns – but likely to only escalate personal and emotional conflicts



# What does an Effective Mediation look like?

1. The right mediator - i.e. Christian / Trained Mediator / Lawyer / Ex-Judge
2. The right people
3. Venue
4. Exchange of position papers
5. Intake session
6. Readiness to Compromise
7. Documenting the Agreement.



# Conclusion - The “*Spirit*” of Dispute Resolution

## *Micah 6:8*

He has shown you, O mortal, what is good.

And what does the LORD require of you?

To act justly and to love mercy

and to walk humbly with your God.

## *Some objectives for dispute resolution*

- *Justice* – a fair and equitable outcome for all parties.
- *Mercy* – reconciliation and restoration and compromise for all parties.
- *Humility* – appropriate acknowledgment of hurts.



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