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# Designing Integrated Conflict Management Systems: Guidelines for Practitioners and Decision Makers in Organizations

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# Designing Integrated Conflict Management Systems: Guidelines for Practitioners and Decision Makers in Organizations

## **Abstract**

A committee of the ADR (alternative dispute resolution) in the Workplace Initiative of the Society of Professionals in Dispute Resolution (SPIDR) prepared this document for employers, managers, labor representatives, employees, civil and human rights organizations, and others who interact with organizations. In this document we explain why organizations should consider developing integrated conflict management systems to prevent and resolve conflict, and we provide practical guidelines for designing and implementing such systems. The principles identified in this document can also be used to manage external conflict with customers, clients, and the public. Indeed, we recommend that organizations focus simultaneously on preventing and managing both internal and external conflict. SPIDR recognizes that an integrated conflict management system will work only if designed with input from users and decision makers at all levels of the organization. Each system must be tailored to fit the organization's needs, circumstances, and culture. In developing these systems, experimentation is both necessary and healthy. We hope that this document will provide guidance, encourage experimentation, and contribute to the evolving understanding of how best to design and implement these systems.

## **Keywords**

ICR, dispute, resolution, SPIDR, conflict, management, practitioners, guidelines

## **Disciplines**

Human Resources Management

## **Comments**

No.4 in the series - Cornell Studies in Conflict and Dispute Resolution

A Report Prepared by the Society of Professionals in Dispute Resolution ADR in the Workplace Initiative.  
Committee Members:

Ann Gosline, Co-Chair; Lamont Stallworth, Co-Chair; Myrna C. Adams; Notman Brand; Cynthia J. Hallberlin; Carole Schneider Houk; David B. Lipsky; Jennifer Lynch; Nancy E. Peace; Mary Rowe; Anne Thomas


## **Suggested Citation**

Society of Professionals in Dispute Resolution. (2001). Designing integrated conflict management systems: Guidelines for practitioners and decision makers in organizations (Cornell Studies in Conflict and Dispute Resolution. No. 4). Ithaca, NY: Cornell/PERC Institute on Conflict Resolution and Washington, DC: Association for Conflict Resolution.  
<http://digitalcommons.ilr.cornell.edu/icr/2>

No. 4 in the series

Cornell Studies in Conflict and  
Dispute Resolution

CORNELL

 School of Industrial and Labor Relations

# Designing Integrated Conflict Management Systems

*Guidelines for  
Practitioners and Decision  
Makers in Organizations*

A Report Prepared by  
The Society of Professionals in Dispute Resolution

ADR in the Workplace Initiative


*Committee Members:*

Ann Gosline, Co-Chair; Lamont Stallworth, Co-Chair;  
Myrna C. Adams; Norman Brand; Cynthia J. Hallberlin;  
Carole Schneider Houk; David B. Lipsky; Jennifer Lynch;  
Nancy E. Peace; Mary Rowe; Anne Thomas

*A publication of*

**SPIDR**  
SOCIETY OF  
PROFESSIONALS  
IN DISPUTE  
RESOLUTION

*in cooperation with*

**ICR**  
  
**INSTITUTE ON  
CONFLICT  
RESOLUTION**

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THE SCHOOL OF INDUSTRIAL  
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THE FOUNDATION FOR  
PREVENTION AND EARLY  
RESOLUTION OF CONFLICT

No. 4 in the series

**Cornell Studies in Conflict and Dispute Resolution**

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Ithaca, NY 14853-3901

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## Preface

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ADR in the Workplace was an initiative of the Society of Professionals in Dispute Resolution (SPIDR). Begun in 1996 under the leadership of SPIDR presidents Christina Sickles Merchant and S. Glenn Sigurdson, the work of the initiative was organized into three tracks: Track I, ADR in the Employment Sector; Track II, ADR in the Organized Workforce; and Track III, International Structures and the Role of Workplace ADR Globally. The goal of the initiative, overall and within each track, was to foster better-informed consumers and more skilled providers of workplace ADR services.

The Track I Committee, co-chaired by Ann A. Gosline and Lamont Stallworth, produced two reports. The first report set out guidelines for mediation programs sponsored by governmental agencies charged with enforcing workplace rights. The Committee received comments on drafts of these guidelines from a broad cross-section of the dispute resolution community, including representatives of the United States Equal Employment Opportunity Commission and other U.S. and Canadian enforcement agencies. The Track I Committee completed its "Guidelines for Voluntary Mediation Programs Instituted by Agencies Charged with Enforcing Workplace Rights" in 1997. The SPIDR Board of Directors adopted these Guidelines on January 24, 1998. These guidelines can be found at [www.acresolution.org](http://www.acresolution.org).

The second report, which is herein published, contains guidelines for the design of conflict management systems within organizations. The Committee again sought comments from a broad spectrum of the dispute resolution community, including practitioners working with or within private companies, non-profit organizations, and government agencies. In this report, the Committee urges organizations to develop integrated systems with multiple access points and a variety of processes. The Committee also suggests that such systems offer disputants the opportunity to select the process with which they are the most comfortable and that they believe will most effectively meet their needs. The SPIDR Board of Directors adopted these Guidelines at its October 15, 2000 meeting.

Both reports have been widely recognized as valuable contributions to the dispute resolution field. In a 2001 article, the Honorable Janet Reno, former Attorney General of the United States, argued for the need to establish a range of options and processes to resolve disputes. Citing the Track I report, she wrote that in her opinion, "we need to build on this splendid work by committing ourselves to create an integrated conflict management system for society as a whole."

It is our hope this report will not only provide guidance to those who are creating conflict management systems, but will also serve as a first step in our continued learning about best practices in dispute resolution systems design.

Nancy E. Peace  
Past President, Society of Professionals in Dispute Resolution  
President Elect of the Association for Conflict Resolution



# 1

## Introduction

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A committee of the ADR (alternative dispute resolution) in the Workplace Initiative of the Society of Professionals in Dispute Resolution (SPIDR) prepared this document for employers, managers, labor representatives, employees, civil and human rights organizations, and others who interact with organizations. In this document we explain why organizations should consider developing integrated conflict management systems to prevent and resolve conflict, and we provide practical guidelines for designing and implementing such systems. The principles identified in this document can also be used to manage external conflict with customers, clients, and the public. Indeed, we recommend

that organizations focus simultaneously on preventing and managing both internal and external conflict.<sup>1</sup>

SPIDR recognizes that an integrated conflict management system will work only if designed with input from users and decision makers at all levels of the organization. Each system must be tailored to fit the organization's needs, circumstances, and culture. In developing these systems, experimentation is both necessary and healthy. We hope that this document will provide guidance, encourage experimentation, and contribute to the evolving understanding of how best to design and implement these systems.

# 2

## How Conflict Management Evolves within Organizations

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Generally speaking, organizations move through four phases in addressing conflict.

### 2.1. Phase 1: Absence of Defined Dispute Resolution Processes

Many organizations have no defined institutional dispute resolution processes. Disgruntled employees lack avenues to effectively resolve problems. Employers resolve problems that come to their attention by making decisions unilaterally, often based on power alone. In the absence of explicit dispute resolution processes, unhappy employees may also exercise whatever power-based approaches are available to them. Some leave. The employer loses these valuable workers and must bear the cost of recruiting and training new employees. Others continue to work, but with little enthusiasm, and sometimes with a conscious desire to sabotage the organization. Co-workers who become aware of the employee's dissatisfaction may find their own productivity negatively affected. Some disgruntled employees sue, costing the employer legal fees, time lost by supervisors and managers, and disruption of work for witnesses. In countries such as the United States, the frequency of employment lawsuits has increased dramatically. (See Appendix IV.)

### 2.2. Phase 2: Rights-Based Grievance Processes and Adjudication

Rights-based processes, such as grievance procedures, arbitration, adjudication, and appellate processes, provide the opportunity to seek a determination of whether legal or contractual rights have been violated. These processes result in a decision concerning claims over rights arising from policies, individual or collective agreements, and statutes. To receive redress in these

rights-based processes, a disputant must register a written complaint, grievance, or notice of proposed legal action with the employer. Parties to the process adhere to procedural rules. Unless the matter is settled or abandoned, the process leads to a third-party adjudicator who determines rights arising under policy, contract, regulations, and laws. Many organizations have introduced rights-based grievance procedures — some ending in adjudication processes such as peer review and arbitration — for the resolution of conflict. Today, all unionized organizations, most government agencies, and most medium and large-sized non-unionized organizations have internal rights-based grievance processes.

### 2.3. Phase 3: Interest-Based Processes

Interest-based options, such as direct negotiation, facilitation, and mediation, provide the opportunity to use problem-solving techniques to address the perceived needs of the complainant or other parties. Beginning in the 1920s, organizations introduced specific “interest-based” processes, often some form of mediation, to supplement rights-based processes. In general, these processes do not attempt to vindicate a right (legal or contractual) of a disputant, but attempt to accommodate disputants’ legitimate workplace needs. Interest-based processes enable and encourage parties who want to resolve their own conflict. When interest-based processes are used, the disputants retain more control over the outcome of their conflict. They sometimes design their own process and always contribute to developing their own solutions. Given the choice, disputants often select interest-based

processes over rights-based processes because the former are perceived as less adversarial, faster, more flexible, and less costly (both in economic and non-economic terms).

#### 2.4. Phase 4: Integrated Conflict Management Systems

The current trend is toward the introduction of “integrated conflict management systems.” An integrated conflict management system introduces a systematic approach to preventing, managing, and resolving conflict that focuses on the causes of conflict within the organization, and that:

encourages employees and managers to voice concerns and constructive dissent early;

integrates a collaborative problem-solving approach into the culture of the organization, encouraging direct negotiation between those involved in a dispute;

provides options for all types of problems for all people in the workplace;

coordinates a web of options and structures enabling problem solving across areas and functions;

aligns conflict management practices with each other and with the mission, vision, and values of the organization, thereby contributing significantly to internal culture transformation;

is understandable to all;

is flexible and user-friendly.

These systems promote a workplace that welcomes a diverse workforce by developing a culture that encourages employees and managers to address their differences constructively. Research suggests that integrated conflict management systems are increasingly being introduced in organizations.

Integrated conflict management systems go beyond the introduction of rights-based grievance procedures and interest-based mediation programs. Organizations have moved to integrated systems for several reasons. First, while grievance procedures and mediation programs are essential to effective conflict management, many

conflicts fall outside their scope. Most grievance procedures and mediation programs are available only to address conflicts that are framed as violations of policy, contract, or law. These procedures and programs are therefore not available to address many other kinds of interpersonal disputes that cause significant disruption. Moreover, many employees and managers will not use either grievance procedures or mediation programs, because they are unwilling to use processes they see as confrontational or “public” in the workplace context. In addition to providing mediation and adjudicative processes, an integrated conflict management system introduces and focuses on other tools of conflict management — referral, listening, anonymous problem identification and consultation, coaching, mentoring, informal problem-solving, direct negotiation, informal shuttle diplomacy, generic solutions, and systems change. These are the processes most employees are willing to use. These are also the processes most likely to prevent unnecessary disputes and to resolve conflict early and constructively.

Moreover, while the more formal dispute resolution processes such as grievance procedures and mediation are necessary, they are insufficient because they usually address only the symptoms of conflict, not the sources. When an organizational culture emphasizes “fixing” conflict, grievance procedures and mediation will focus on the symptom rather than the cause of conflict. For example, in a workplace with many complaints about discrimination or harassment, an employer may find that a mediation helps resolve complaints earlier than traditional grievance procedures, but that the number of new complaints does not diminish. This constant level of complaint may indicate ongoing disruptive conflict, which will continue without a systemic response. Integrated conflict management systems are designed to identify root causes of conflict and address them through systemic change.

An integrated conflict management system addresses the sources of conflict and provides a method for promoting competence in dealing with conflict throughout the organization. What this means can best be shown by a specific example. In 1995 the Royal Canadian Mounted Police introduced an integrated conflict management system. Employees and management embraced the new philosophy, and the system has enjoyed

remarkable success. In a letter to the Canadian Department of National Defense on April 9, 1998, Commissioner Philip Murray wrote:

This approach has helped to build strong relationships, improve morale, communication, productivity, increase confidence in management and provide for savings both in measurable dollars and in emotional energies, honors our traditional values and provides a fair, flexible, fast and effective way of handling employee disputes.

When implemented effectively, an integrated conflict management system decreases the highly visible costs of conflict — government

investigations, legal costs, and lost time associated with defending against charges and lawsuits. It also addresses many less visible costs of unaddressed conflict: loss of valuable employees due to transfers, stress leave, early retirement, or movement to a competitor; loss of productivity; petty sabotage, waste, and theft of intellectual property; increased health insurance claims; and loss of public confidence when organizations are accused of allowing discrimination, harassment, unsafe working conditions, fraud, or other unacceptable behaviors or conditions.

# 3

## The Five Characteristics of Integrated Conflict Management Systems

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### Introduction

Effective integrated conflict management systems share these characteristics:

1. They provide options for all types of problems and all people in the workplace, including employees, supervisors, professionals, and managers.
2. They create a culture that welcomes dissent and encourages resolution of conflict at the lowest level through direct negotiation.
3. They provide multiple access points. Employees can readily identify and access a knowledgeable person whom they trust for advice about the conflict management system.
4. They provide multiple options — both rights-based and interest-based — for addressing conflict.
5. They provide systemic support and structures that coordinate and support the multiple access points and multiple options and that integrate effective conflict management into the organization's daily operations.

**3.1. Integrated conflict management systems provide options for all types of problems and all people in the workplace, including employees, supervisors, professionals, and managers.**

An effective integrated conflict management system provides options for preventing, identifying, and resolving all types of problems, including those disputes that do not fall into a category protected by statute, contract, or specific policy (such as interpersonal disputes). Its purview includes “non-hierarchical” disputes between employees or between managers. Such an integrated system is available to all persons in the workplace — workers, managers, professionals, groups, teams involved in disputes, and those close by (“bystanders”) who are affected.

This broad scope is important for several reasons. First, it allows employees and managers to raise concerns without framing them as violations of legal rights. This encourages employees and managers to raise concerns early and in a manner that is more likely to be conducive to problem solving. Second, a broad scope encourages employees and managers to address conflict between peers and problems that are not associated with a known individual. These conflicts can become destructive of organizational goals when there is no avenue for their constructive resolution. Third, while integrated conflict management systems are often introduced because of intra-workplace concerns, very frequently organizations expand the use of these systems to external complaints, as a means for receiving, preventing, and resolving concerns of customers, clients, and members of the public.

**3.2. An effective integrated conflict management system fosters a culture that welcomes good faith dissent and encourages resolution of conflict at the lowest level through direct negotiation.**

To manage conflict effectively, an organization must accept conflict as inevitable. Many organizations discourage the constructive management of conflict by sending the message that those who raise concerns are themselves the problem. Effective integrated conflict management systems communicate the propriety of raising concerns and encourage employees and managers to address these concerns as early as possible and at the lowest possible level. An integrated conflict

management system provides an environment in which people can voice a concern or dispute without fear of retaliation. Employees, supervisors, and leaders are all trained to address conflict constructively, are supported in their efforts to do so, and are held accountable for results. Persons who are access points for the system may also serve as coaches for the disputants, helping them to resolve their dispute without proceeding to other options within the system. For example, Polaroid Corporation’s policy stresses a commitment to create an environment that recognizes disputes as a natural cultural process and communicates to employees that they can expect to air their issues with full assurance of “safe harbor” and without adverse repercussions.

**3.3. Integrated conflict management systems provide multiple access points. Employees can readily identify and access a knowledgeable person whom they trust for advice about the conflict management system.**

An integrated conflict management system allows employees to enter the system through many access points, such as supervisors, union stewards, workplace leaders, employee assistance practitioners, human resources officers, ethics officers, conflict management coordinators, ombudspersons, internal legal counsel, health care providers, religious counselors, and equal employment opportunity personnel. Employees are not bounced from one department to another. The availability of multiple access points significantly reduces barriers to entering the system and encourages employees to address problems early and constructively.

**3.4. Effective integrated conflict management systems provide multiple options for addressing conflict.**

An integrated conflict management system gives employees the opportunity to choose a problem-solving approach to conflict resolution, to seek determination and enforcement of rights, or to do both. Employees have the opportunity in appropriate cases to move between rights-based grievance procedures and interest-based processes; within existing statutory and contractual restraints, they are not required to choose prematurely between the two. For example, an employ-

ee who files a grievance may also be able to pursue mediation if all disputants agree. Effective systems minimize red tape so that employees may access multiple options and resources.

#### *3.4.1. Why are multiple options necessary?*

Rights-based processes, such as grievance procedures, arbitration, adjudication, and appellate processes, provide the opportunity to seek a determination of whether legal or contractual rights have been violated. These rights may arise from employer policy, individual or collective bargaining contracts, statute, or common law. Rights-based processes are essential to an effective integrated conflict management system because:

They provide the opportunity to seek redress for unfair treatment or violations of statutory rights, such as the right to work free of discrimination, harassment, or unsafe working conditions.

A small percentage of disputants in any organization very strongly prefer a rights-based approach.

For some issues, a rights-based approach is more appropriate. Interest-based options, such as direct negotiation and mediation, use problem-solving techniques to address the perceived needs of the complainant or other parties. Interest-based options are essential to an effective integrated conflict management system because:

They are flexible, enabling disputants to maintain more control over the process and the outcome, which results in greater satisfaction.

They can be used at the lowest level and when the conflict first surfaces, resulting in faster, more cost-effective solutions, often with less damage to workplace relationships.

They can boost morale by providing the potential for healing and strengthening workplace relationships between employees, and for helping bystanders whose morale or working conditions may have been damaged by the dispute.

They allow for creative solutions not available through rights-based processes.

Disputants may be more satisfied with the result and the process, which leads to more voluntary compliance with the settlement.

They can be used by disputants who are unwilling to use rights-based processes.

They provide redress for issues that do not fit into a “grievable” or actionable category.

Traditional grievance procedures require an employee to label a concern as a violation of some right. Some employees turn to rights-based processes for lack of another option, when their issue is not actionable under a statute or grievance mechanism. In such cases, a quick and direct interest-based process may be the ideal mechanism both to bring a “non-actionable” dispute to the surface and to resolve it.

They reduce the burden on the rights-based processes by deflecting many disputes to a more appropriate process. This allows rights-based systems to function more effectively for those who seek resolution through them.

They provide ways for employees to come forward with information about problems such as safety hazards, drug and alcohol use, threats to national security, conflict of interest, waste, fraud, theft, harassment, potential violence, or even equipment repair needs, without fear that they will be swept, against their will, into an investigation or adversarial process.

They provide a mechanism for employees who simply wish to suggest a change of policy, procedure, or structure in the organization, to recommend re-orientation of a team project, or to start an orderly process for dealing with a policy, group, or department that is seen to be a problem.

They foster skills that enhance teamwork and other effective workplace interactions, and reinforce positive organizational values.

They help reduce turf battles, accommodate the many different philosophies that operate in an organizational setting, and promote respect for diversity.

Critically, multiple options provide avenues for bringing to the surface underground issues that destroy morale and reduce productivity. Some employees will not come forward with a problem because they fear they will be thought disloyal, will be considered a complainer, will become involved in a confrontation, will lose their privacy and dignity, or will face reprisal. Others will not use rights-based processes because of the psychological - and, potentially, economic — costs of seeking redress. Others do not trust those in the supervisory chain of command. The way persons address conflict is affected by ethnic and cultural background, educational level, gender dynamics, and individual temperament. Multiple options provide the greatest opportunity to resolve concerns early

and easily, before they escalate into more destructive, time-consuming, and costly disputes.

### *3.4.2. Examples of multiple options*

What follows is a list of options that should be available to all in the workplace in an integrated conflict management system. Some may seem obvious, but all need to be explicitly recognized.

#### *3.4.2.1. Interest-based options:*

Some interest-based options deal mainly with identifying and reporting problem behavior, rather than addressing it. Others provide confidential third-party assistance to disputants to help them settle problems on their own. And some interest-based options provide for third-party intervention, usually informal in character, to help resolve problems in ways that do not directly involve the complainant.

**Availability of someone to listen:** A person may simply need to talk and have the manager, union steward, employee leader, ombudsperson, or other resource person listen actively and supportively to help “sort out” the problem and reduce tension.

**Provision of information:** An employee may need to know what information or which records are by law available to address a specific problem. Or, an employee may need to provide a manager, ombudsperson, or “800” line with information about a safety problem, a theft, harassment, potential violence, any other compliance problem, or simply equipment repair needs.

**Help in reframing issues and developing options:** A manager, union steward, employee leader, ombudsperson, or other resource person may be able to help a caller or complainant develop acceptable new options for dealing with a perceived problem.

**Referral:** Many disputants and complainants need more than a single resource. They need a helping network. This is an important reason for an integrated conflict management system. A resource person can help a complainant choose from a menu of resources by explaining how each one could work to address the specific problem.

**Assistance in using a direct approach (coaching):** A union steward, ombudsperson, resource person, manager, employee leader, or

teammate may help someone deal directly with the perceived source of a problem by explaining useful “first person” techniques, such as neutral framing of a problem. The direct approach can then be pursued by the person alone or with a colleague, and in person, on paper, or both.

**Availability of someone to “look into” the problem informally:** Most problems, especially if they are caught early, do not require a formal investigation. There are two different potential outcomes, depending on who looks into a problem. When an organizational ombudsperson looks into a problem informally, that action typically does not result in a case record. The ombudsperson is usually not obliged to act on the information obtained. (Exceptions are cases of imminent risk of serious harm where there appear to be no other immediate responsible options.) By contrast, line managers and staff people, such as administrative officers and human resource managers, may look into a problem informally, but also may be obliged to make management decisions as a result. A union steward may look into a problem and let the employee decide whether to take further action.

**Shuttle diplomacy:** A complainant may ask a third party to be a shuttle diplomat, who will go back and forth between A and B or bring A and B together informally to resolve the problem. The third party could be a supervisor, a union steward, or an employee leader in a non-unionized setting, a human resource officer, an organizational ombudsperson, or some other staff member. Alternatively, a complainant might choose to ask a teammate, uninvolved colleague, senior mentor, or other appropriate person to intervene. The intervener helps eliminate elements of confrontation from the discussion and keeps it focused on the perceived problem.

**Mediation:** This is the only formal, interest-based option. In mediation, an impartial third party, with neither decision-making authority nor the power to impose a resolution, works with the disputants to help them reach a mutually acceptable resolution to all or some of the issues in dispute. Some employers offer mediation by internal mediators, some offer mediation by external mediators, and some provide both options.

**Generic approaches:** Complainants, to dispel a problem linked to some individual without explicitly drawing attention either to that indi-

vidual or to themselves, may choose to suggest a generic approach aimed at changing a process in the workplace, or at alerting possible offenders to the need to stop their inappropriate behavior. For example, an ombudsperson might be given permission to approach a department head about a problem without using any names. As a result, the department head might choose to distribute and discuss copies of the appropriate employer policy, encourage safety or harassment training, or re-explain legally correct billing behavior, in such a way as to stop the alleged inappropriate behavior. Sometimes department heads convene facilitated meetings to address issues. Generic approaches offer the advantage that they typically do not affect the privacy or other rights of anyone in the organization.

Input into systems change: Employees and managers may simply wish to suggest a change of policy, procedure, or structure in an organization, to recommend re-orientation of a team project, or to start an orderly process for dealing with a policy, group, or department that is seen to be a problem. There should be a risk-free way to make these suggestions that assures that the person is heard. This option is especially important for problems that are new to the organization.

Access to training: Employees and managers should have access to training that teaches the skills of team work, conflict management, and communication using interest-based language.

#### *3.4.2.2. Rights-based options:*

These are methods for resolving disputes based on the rights of the parties involved. The rights may come from a collective bargaining agreement or other employment contract, employer policy, statute, or common law.

Investigation: Union contracts have grievance procedures that generally provide for an investigation, followed by various steps in which the evidence is shared by the union and employer with the hope of resolving the dispute. Some contracts call for "joint fact finding," in which the union and management engage in a cooperative effort to ascertain the factual basis of a problem. For non-union employees and managers, a supervisor, department head, personnel officer, internal or external fact-finder, or compliance officer may investigate the complaint. Internal investigators should be trained in investigative

techniques. An outside fact-finder may be chosen, in part, because of the expertise the fact-finder brings to the investigation.

Adjudication: The same categories of persons who can investigate a claim can also adjudicate it. Fair process in rights-based disputes, however, precludes having the same person both investigate and adjudicate the claim. Persons who have investigated a claim and reached certain conclusions may be so invested in those conclusions that it is impossible for them to hear contradictory evidence, or change their conclusions. Internal adjudicators, such as peer review panels, should be trained in the process of adjudication.

Appeals/final adjudication: Union contracts almost universally provide for final and binding arbitration of contract rights by an external neutral arbitrator. In a non-union setting, a peer review panel, a senior manager, the CEO, or an outside arbitrator may handle an appeal or final adjudication. Final appeal should be to someone outside the line of supervision. The organization must establish some standard for review that is used by the panel or person hearing the appeal. External to the organization there also exist, of course, administrative agencies and the judicial system to which employees may have recourse.

#### *3.4.3. Two examples of evolving multi-access, multi-option systems*

The World Bank has adopted a Conflict Resolution System-Network (CRS), which has a special focus on informal non-adversarial problem-solving mechanisms, reserving various options for adjudication as a last resort. CRS is a multi-option, multi-access system comprised of seven neutral and complementary mechanisms, integrated through linkages and cross-referrals. Informal mechanisms are the Ombuds Office, the Senior Advisor, the Office for Gender Equality, the Senior Officer for Racial Equality, and the Mediation Office. Formal avenues of redress include the Professional Ethics Office, the Appeals Committee, and the Administrative Tribunal. Other avenues of recourse include Human Resources Counselors, Anti-Harassment Advisors, the Staff Association, and Staff Counseling Services. The Conflict Resolution System-Network offers staff various channels to address their complaints as well as a choice of people from diverse cultural backgrounds, and



both male and female professionals, who can provide support and information. This ensures that staff can readily find constructive options — and also back up options — if any one route fails. CRS is designed to be inclusive and effective for all staff regardless of levels, locations, gender, nationality, race, ethnicity, culture, and sexual orientation.

Since 1973, MIT has been developing a multi-access, multi-option conflict management system. The institution is working to integrate the system. The MIT system has much the same “boilerplate” policies for all members of the organization and accepts any kind of concern or problem. The idea of “multiple access points and multiple options” comes explicitly from the idea of engineering “redundancy” (that is, if a system is important there must be check and balance, fail-safe, and backup built into the system). The idea of offering as many options as possible to the person who has a concern derives explicitly from the understanding that different people and different cultures learn and raise problems in different ways. The idea of an integrated web of formal and informal options, and steady-state organizational learning about the causes of conflict, came originally from various principles of scientific discovery and engineering design. MIT policies encourage all members of the university community to raise concerns as early as possible and as directly as they feel able, and explicitly encourages collaborative problem solving wherever appropriate. These principles reflect both the engineering ethos at MIT — in which the ability to find faults in any system and fix them as soon as possible is important — and the commitment in the institution’s educational and research mission to discovery, continuous improvement, and service. MIT’s website provides extensive discussion of options and a matrix of resource people with descriptions of their functions. The system provides some training for prevention of unnecessary problems. It defends the principles of free speech and dissent.

**3.5. Integrated conflict management systems provide systemic support and structures that coordinate and support the multiple access points and multiple options and that integrate effective conflict management into the organization’s daily operations.**

To develop an effective integrated system, an organization must provide necessary systemic support and structures that coordinate access to multiple options and promote competence in dealing with conflict throughout the organization. These structures nurture systemic change. They make interest-based language and behavior an everyday practice and change the way employees deal with both dissent and conflict. By integrating these structures and options, the organization moves towards “conflict competency.”<sup>2</sup> To successfully implement an integrated conflict management system, an organization must develop support throughout its infrastructure. People at all levels of the organization must believe and communicate the same message: that conflict can and should be actively managed through one of the many channels of the integrated conflict management system. The following is a list of supporting strategies, processes, and structures necessary to achieve this goal.<sup>3</sup>

*3.5.1. Sincere and visible championship by senior management and workplace/union leaders.*

They communicate and implement the goals of the integrated conflict management system, often led by one person who is the acknowledged “keeper of the flame.”<sup>4</sup> At least one senior person must be a visionary who champions the cause of creating a conflict-competent culture through developing and maintaining an integrated conflict management system. The champion’s passion inspires others to act. It is this ability to connect others to a vision that often drives the success of a program. Champions are trailblazers, who build an integrated conflict management system piece by piece — never losing sight of the difficulty of creating change. They are able to “grow” programs that work, abandon programs that are struggling, and, perhaps most important, identify areas of new opportunity. Champions must be great innovators and good marketers of their ideas, for without effective communication, the “flame” dies.

Positive organizational change is extremely difficult to achieve without support from senior management and employee/union leaders. It is critical that they show an ongoing commitment to refocusing the workforce on resolving conflicts and communication issues, rather than simply on winning disputes.

*3.5.2. A "continuous" oversight body composed of representatives from all key stakeholder groups.*

Managing the system requires dedicated resources and constant communication among all critical stakeholders.<sup>5</sup> Regular meetings of the oversight body are necessary to increase coordination and communication.

*3.5.3. A person or persons functioning in the role of internal independent confidential neutral(s).*

Employees need access to an internal person with whom they can speak confidentially, to help them develop options. It is essential that anyone functioning in this capacity be designated as an independent, impartial neutral, for organizational policies to protect the confidentiality of employees with whom he or she speaks, and that this person does not keep case records of contacts in the workplace, or accept notice for any party or the employer. An internal independent confidential neutral does not act as an advocate or representative for either employees or management, and does not perform the functions of a collective bargaining representative or the decision making of management. Persons in this role should report to the CEO or COO.

*3.5.4. A central coordinating point (office or group).*

This group spurs the development and implementation of the system, administers some of its resources, and monitors internal and external best practices. It ensures coordination between access points and works with the oversight body to ensure that the system is responsive to information it produces and to changing circumstances. This office or group also responds to emergencies, urgent need to change, and emerging issues, in coordination with the continuous oversight body. The office or group should report to the CEO or COO.

The challenge in this area is managing turf battles between departments over ownership of a particular dispute resolution process. No integrated conflict management system can work unless it is part of the organization's strategic focus. Therefore, many different departments and stakeholders must work collaboratively and deliver the same message in support of the inte-

grated conflict management system. Upper managers often must actively encourage different departments to work in a collaborative fashion and to share both the responsibility for and the success of any system.

*3.5.5. System evaluation and monitoring mechanisms.*

Feedback loops ensure that there are connections between conflicts, resolutions, identification of the need for systemic change, and assessment of trends. Harmonious communication requires that those in direct charge of each function know of, talk with, and refer to those in charge of other functions, and that some accessible people know the entire system and any changes that take place in it. To ensure that a system is working, an organization must define its goals and devise a simple system of metrics that measures the achievement of these goals. The measurement must be analyzed and shared on a regular basis with critical stakeholders. This feedback loop ensures that the system does not become stagnant and can be modified when problems arise. Evaluation is key to a system's success, as it informs the organization of the strengths and weaknesses of its design, thereby allowing the opportunity for continual improvement. (See Appendix III for a discussion of critical elements in designing an evaluation and monitoring system.)

*3.5.6. "Critical mass" training, "just-in-time" on-the-spot training for individuals as needed, and education of managers, supervisors, union personnel, and human services personnel.*

Various skills, including problem solving, direct negotiation, coaching, mediation, recognition and appreciation of diversity, and harassment prevention, need to be taught to participants. This training is a tool for cultural change and fosters individual responsibility and accountability at all levels. It should include discussion that makes clear the acceptability of dissent, and the unacceptability of retaliation in response to dissent. Four different groups need training about raising questions, disagreeing, and complaining: potential complainants and dissenters, potential respondents, potential bystanders, and supervisors.

### *3.5.7. Alignment.*

The organization must ensure that its mission, vision, values, and published policies are aligned with the philosophy of conflict competency and that its human resource strategy supports the integrated conflict management system. The organization may conclude that it must review its mission and re-articulate its values in order to create new policies to support the integrated conflict management system. Additionally, all parts of the conflict management system — rights-based as well as interest-based — should be linked and aligned in a manner that enables users to fully understand and access all parts, and move comfortably between them.

### *3.5.8. Institutionalization of incentives.*

Incentives help ensure that policies are followed. Performance management and evaluation systems should reward continual as well as exceptional conflict management, resolutions that preserve or enhance existing relationships, and collaborative and creative problem solving. Participation in integrated conflict management system processes should be considered in performance appraisal. For example, conflict competency was introduced as a core competency at the Canada Customs and Revenue Agency in 1999. Finally, recognition should be given to those employees who help manage conflict effectively.

### *3.5.9. Communication strategy.*

An interest-based communication strategy should be developed through discussions with workplace stakeholders and carefully implemented from the start of the process. All communication should stress a consistent message.

### *3.5.10. Costs.*

Costs should be allocated so as to give managers and employees incentives to deal with conflict early and effectively. For example, departments in which disputes arise either should bear the costs of processing those disputes — such as settlement, arbitration, and litigation expenses — or, at a minimum, should be made aware of those costs as they arise. This drives home the cost of failing to resolve conflict effectively and at the lowest level.

### *3.5.11. Resources.*

Sufficient financial and human resources must be allocated to the system. While an organization must allocate funds and resources to develop and implement an effective, integrated system, the organization can expect that costs of maintaining the system will be matched or exceeded by savings resulting from conflict prevention and early and effective dispute resolution.

# 4

## **Design Elements Essential to a Fair System**

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There is no ideal integrated conflict management system that will fit all organizations. Each organization must design a system tailored to its specific needs and culture. Each organization will, however, face certain design decisions that are central to the fairness of the system. The principles below are critical to the fairness of processes within a system and to the system as a whole.

## 4.1. General Design Considerations

### 4.1.1. *Voluntariness*

Disputants should be informed of the key features of conflict management processes, and then should be given the right to make an informed decision concerning participation. (See 4.2.1, below).

### 4.1.2. *Protection of privacy and confidentiality*

The Employer should protect the privacy of all disputants and assure confidentiality of the conflict management processes to the fullest extent allowed by law. Those serving in a neutral capacity, including ombudspersons, mediators, and intake personnel, should not be asked or permitted to reveal confidential communications, or to comment or make recommendations outside the conflict management process. Disputants should be informed when limited disclosure will be necessary to authorize or implement the settlement agreement. Permission may be requested for limited disclosure for research and evaluation, within constraints of the ethical obligations of neutrals. An explicit confidentiality agreement is useful to advise participants of their rights under organizational policy and relevant law.

### 4.1.3. *Impartiality of neutrals*

Those who function as ombudspersons, mediators, and arbitrators should not have a stake (economic, political, or otherwise) in the outcome of disputes they handle, nor should they generally be involved in the investigation, administrative processing, or litigation of these disputes. The neutrality of outside mediators and arbitrators can be enhanced by providing contractual immunity from suit and indemnification.

### 4.1.4. *Qualifications and training*

The employer should ensure that ombudspersons, mediators, and arbitrators are qualified and that they follow the professional guidelines applicable to the process in which they serve. Employers are responsible for the continued training of any in-house neutrals.

### 4.1.5. *Diversity and accessibility*

Any system should be designed and administered so that it is perceived as legitimate, inviting, and accessible to all employees and managers. The methods and language used to inform the workforce of its rights and options should reinforce the principle of inclusion. Inclusion also means that persons with disabilities are provided with appropriate accommodations to ensure access to options within the system. In order for an integrated conflict management system to succeed, it must have diversity in the corps of neutrals, including mediators and arbitrators. Where this is not currently the case, corrective measures should be taken.

### 4.1.6. *Prohibition of reprisal and retaliation*

Policies should specifically prohibit any form of reprisal or retaliation for bringing — in good faith — a concern or complaint to the integrated conflict management system; for serving as a witness, a neutral, or an accompanying person; or for representing a person in the integrated conflict management system.

### 4.1.7. *Collective bargaining agreements and rights*

The design, implementation, and operation of an integrated conflict management system must not undermine the contractual and legal rights of exclusive bargaining representatives. The outcome of conflict management processes must not conflict with the collective bargaining agreement, except upon agreement by the union and management.

### 4.1.8. *Non-preclusion of statutory and workplace rights*

The design and operation of the system must not undermine statutory or constitutional workplace rights of the disputants. Participation in an interest-based process should not diminish access to rights-based processes. Submitting a dispute to an adjudicative process should not preclude access to the public justice system or governmental agencies, except where the disputants knowingly and voluntarily agree otherwise.

## 4.2. Design Considerations Specific to Interest-Based Processes

### 4.2.1. *Voluntariness*

Participation by a complainant in any interest-based process should always be voluntary. Participation by other disputants should be voluntary in any interest-based process involving a peer-to-peer conflict or other disputes among persons not in a supervisory relationship.

While we strongly believe that the value of mediation is maximized when participation by all disputants is voluntary, organizations sometimes mandate participation by a supervisor when an employee requests mediation over a dispute involving the supervisor. This involuntary participation may be a necessary stage until the organization becomes conflict-competent.

Disputants should be informed that in any interest-based process, settlement is strictly voluntary and they may withdraw after commencement of the process without retaliation and without prejudicing their legal rights.

### 4.2.2. *Accompaniment and representation in mediation*

In some workplace cultures, a mediation option will be credible only if complainants are given the opportunity to be accompanied by the person of their choice. On occasion, that person may be a lawyer. As a practical matter, however, employers have found that employees will seldom bring lawyers once the mediation option becomes established.

In some workplaces, employers provide an internal mediation option and ask disputants not to bring lawyers to the mediation session itself. These mediation options will be trusted and have credibility only if: 1) no participants are allowed to bring lawyers and 2) disputants are given time to confer with a lawyer or other advisor of their choice before executing an agreement affecting legal claims.

### 4.2.3. *Opportunity to request information*

A complainant who requests mediation of a formal complaint concerning a statutory or contractual claim should be informed of the right to request information relevant to the claim and, if

not satisfied with this information, the right to withdraw from mediation without prejudice to the statutory or contractual claim.

### 4.2.4. *Disclosure*

Mediators must disclose prior relationships that could give a disputant reasonable cause to question their impartiality. The disputants should also be required to disclose any prior relationships with the mediator. Standards of practice for organizational ombudspersons forbid disclosing specific prior contacts within the organization. Therefore, before agreeing to act as mediators, ombudspersons must issue a blanket disclaimer stating that they may have had prior contact with any or all disputants. Neutrals in a conflict management process should decline to serve if they have reason to believe they cannot be impartial in a particular dispute.

### 4.2.5. *Selection of a mediator*

Disputants should be provided with information about the mediator that they consider sufficient for deciding whether to accept the services of that mediator. Disputants should have the right to decline the services of a particular mediator and the opportunity to consider others.

## 4.3. Design Considerations Specific to Internal Decision-Making Processes

Virtually all collective bargaining processes provide for a grievance process and adjudication of collective bargaining rights by an independent arbitrator. In some non-union workplaces, individual employment contracts or employer policy provide for independent, external arbitration. In some non-union workplaces, however, there is no provision for arbitration by an independent arbitrator. Rather, the final internal decision is made by a high level company representative or group, or by a peer review panel.

All processes providing for final internal decision making should satisfy principles of fairness. In addition to the elements described in 4.1 (when relevant), internal decision-making processes should provide for reasonable timelines, an impartial investigation, notice to the alleged offender, a reasonable opportunity to

respond, an opportunity to request information relevant to the issues, an opportunity to offer information, the right to assistance and/or accompaniment when presenting one's position, and impartial and rational decision making.

#### **4.4. Design Considerations Specific to Arbitration**

##### *4.4.1. Arbitration of contract claims and claims arising under employer policy*

Virtually all union contracts include grievance procedures that culminate in arbitration by an independent arbitrator. Some individual employment contracts and employer policies also provide for arbitration of contract or policy claims by an independent arbitrator. Arbitration processes must be fair and must be conducted by a neutral acceptable to both parties. Elements of fair process include:

##### *4.4.1.1. Selection of an arbitrator*

Arbitrators should be selected by both parties, or should be selected by a process agreed upon by both. Disputants should be provided with information they consider sufficient to decide whether to select an arbitrator. (In this and following sections we use the term "arbitrator" to apply to neutral arbitrators. Some procedures provide for arbitration panels chaired by a neutral arbitrator and including partisan arbitrators representing party interests.)

##### *4.4.1.2. Disclosure*

Arbitrators must disclose prior relationships that could reasonably cause a disputant to question their impartiality. The disputants should also be required to disclose any prior relationships with the arbitrator. Arbitrators should decline to serve if they have any reason to believe they cannot be impartial in a particular dispute.

##### *4.4.1.3. Representation*

The disputants should be allowed to be represented by the person of their choice, including legal counsel.

##### *4.4.1.4. Right to information*

Any complainant who participates in binding arbitration should be afforded pre-hearing access to information relevant to the claim. The arbitrator should decide any disputes over relevance.

##### *4.4.1.5 Right to call witnesses, and to present evidence and argument*

The disputants should have the opportunity to call witnesses and present evidence and argument. The arbitrator should decide questions of admissibility and relevance.

##### *4.4.2. Design considerations specific to arbitration of statutory or common law claims*

Participation by a complainant in binding arbitration of any statutory or common law right should be knowing and voluntary. SPIDR has taken the position that employees should not be required to participate in binding arbitration of statutory claims as a condition of employment.

In addition to meeting the provisions of 4.4.1, above, procedures should comply with the "Due Process Protocol" and the National Academy of Arbitrators' "Guidelines on Arbitration of Statutory Claims under Employer-Promulgated Systems."<sup>6</sup>

## Appendix I

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### Does your organization need a system?

The four causal factors that act as catalysts for the design of an integrated conflict management system are culture, cost, crisis, and compliance.

If any of the following causal factors exist, your organization is an excellent candidate for an integrated conflict management system.

#### Culture:

Efforts to effect a cultural transformation have stalled or failed; the organization's internal culture is out of alignment with its mission and core values; the organization's culture is out of alignment with its external services.

At the core of the definition of culture is "the way people treat each other." Some organizations implement integrated conflict management systems to effect significant organizational change, which will lead to a sought-after internal cultural transformation. These systems are especially valuable for organizations whose chief product or service is provided to outside people: customers (industry), clients (the professions), citizens (governments), patients (health care), students (education). While organizations strive to adopt innovations to achieve their core business objectives, all too often they lag behind in adopting internal processes that are consistent with these innovations. For example, a police service provides innovative community policing in a collaborative problem-solving manner. Problems arise when front line employees discern that the internal command/control structure does not treat them, when in conflict, in the same way they are expected to treat the public. Properly designed and implemented, an integrated conflict management system introduces a new philosophy of conflict management — a new way of doing business that emphasizes discussion, communication, and participation in problem solving that is much more in alignment with expected front line behavior. It leads to success at the front line and in the organization.

#### Costs:

The organization is incurring heavy costs from its current disputes and from its current dispute resolution processes (or lack of them). Direct costs include costs of litigating cases externally and processing them internally. Indirect costs include loss of personnel through sick leave or early retirement, loss of personnel to competitors, the costs of new employee recruitment, loss of productivity and opportunity, bad publicity, petty sabotage, waste, theft of intellectual property, increased insurance claims and fees, and customer dissatisfaction or customer loss.

Employers who offer an integrated conflict management system may have a competitive labor market advantage and find it easier to recruit and retain the employees they desire.

The majority of employers that have instituted conflict management systems have been motivated by the desire to reduce the costs and delays associated with conventional litigation. As Bingham and Chachere have noted in their review of relevant research:

The most commonly stated reasons given by organizations to explain the adoption of ADR (alternative dispute resolution) are the increased volume of employment claims; lower cost in time, risk, and money relative to more formal dispute resolution processes...; the speed with which ADR can resolve them; changes in the regulatory environment which encouraged (directly and indirectly) workplace ADR; a focus on disputants' underlying interests rather than on the validity of their positions; an effort to maintain and/or enhance productivity (through enhanced long-term working relationships via reduced absenteeism and turnover and increased morale and organizational loyalty); greater degree of confidentiality available from ADR; the expertise of the neutrals superior to that of a jury; and union avoidance.<sup>7</sup>

The parties in a conventional court proceeding often invest considerable money and energy in the process, from the time of the initial filings, through interrogatories and depositions,

to the time of the trial itself. In 90 percent of all cases, they negotiate a settlement “on the courthouse steps” or in the judge’s chambers. The costs of litigation include, of course, not only the awards or settlements themselves but also the “transaction costs,” including the costs of inside and outside legal counsel, expert witnesses, document collection, and discovery. The transaction costs of litigation are often two or three times greater than the settlements themselves. Moreover, this calculation does not include forfeited time and emotional energy. Quickly reducing these “opportunity costs” may be the largest benefit of instituting an integrated conflict management system.

#### **Crisis:**

“Closing the barn door...” The organization faces a single debilitating crisis or an avalanche of problems of a certain type.

Some organizations realize, upon weathering a devastating crisis, that steps should be taken to introduce an integrated conflict management system to give them the tools to prevent similar damage when another such event occurs. For example, a university was faced with a sexual harassment claim that became national “front page news” and threw the administration, faculty, and student body into turmoil. The matter was ultimately settled through mediation. Among the costs to the university were potentially permanent damage to its reputation, hundreds of thousands of dollars in costs and settlements, and the resignation of its president.

Other organizations, foreseeing an avalanche of problems of a certain kind (such as public complaints or class actions, or equal employment opportunity actions), decide to initiate an integrated conflict management system in advance of receiving the claims. Still other organizations take preventive measures to maintain a healthy work environment as part of their change management strategy. They may be concerned about employee retention in highly competitive employment markets, rapid internal growth, mergers, or acquisitions.

#### **Compliance:**

There is a new legislative imperative or mandated policy requiring the organization to retool its current practices.

Sometimes an organization is obliged to introduce a dispute resolution process, as when legislative or policy amendments dictate that the organization must provide mediation of certain disputes. Frequently there is trouble with buy-in when the introduction of a dispute resolution process has been imposed from outside the organization. These organizations will generally start by introducing the minimum required activity. They may learn from experience, however, that by developing an integrated conflict management system, they can respond to the needs of the organization.



## Appendix II

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### 1. Phases and Components of the Design and Implementation of an Integrated Conflict Management System

Once an organization has committed itself to developing an integrated conflict management system, it must develop a strategy for design and implementation. We present here a coherent model that develops in five phases, during which 10 interdependent components are introduced. In practice, as the model is developed, the strategy must have the flexibility to adapt to necessary changes, and progress will be achieved in increments.

The five phases are:

1. Assessment and Inquiry
2. Planning and Start-up;
3. System Design;
4. Implementation;
5. Transition: Institutionalization of the System within the Organization.

An organization introduces the ten components successively, then oversees their concurrent operation. As the system design progresses, each of these components is planned and then implemented. Each component represents a key element for success.

The ten components are:

#### *Phase 1: Assessment and Inquiry*

Component 1: Assessing the need and will for change

Determine the necessity for change and whether there is a will to change. It is important to treat this step as its own phase in order to give it the emphasis it needs and to avoid perceptions of arrogance that can arise when a program is put in place without due consultation and assessment. This phase helps to set goals, and lays the foundation for evaluation. The development of a will

to change on the part of key stakeholders such as senior managers and union or employee leaders does not always follow from a necessity for change. Developing buy-in can require extensive efforts, and data about what is happening help with that process. The four causal factors described in Appendix I will provide a good focus for this analysis. It is at this time that the organization can develop its goals and articulate the need, if any, for cultural transformation.

#### *Phase 2: Planning and Start-up*

Component 2: Project management

Nominate an individual to be principally responsible for the development and implementation of a system. Ideally, this person is supported by an organization-wide advisory committee of key stakeholders (including senior management, union or employee leaders, and others representing a cross-section of functional areas and diverse groups) who provide both sound advice and sincere and visible championship. Budgets, resources, and roles are planned and approved. Stakeholders are consulted in order to identify the distinct requirements of the organization and to develop processes and guiding principles for all components. This sets the tone of the undertaking as one that “models the model”; that is, “an interest-based, participatory design of an interest-based system.” The project manager will evolve into the critical central coordinating officer and the “keeper of the flame.”

Component 3: Best practices

Identify and report on important innovations in conflict management system design and processes having relevance to the organization. Those responsible for this task identify, examine, and are respectful of existing best practices within the organization as well. This activity is ongoing.

### *Phase 3: System Design*

#### Component 4: System design

Develop early communication, get early training under way, foster sincere and visible championship by union/workplace leaders and management, and score early successes in high visibility cases. All of these actions enhance and reinforce buy-in. Ideally, the system is designed by stakeholders, launched through pilot projects, assessed, and then followed by organization-wide rollout.

#### Component 5: Alignment initiatives

**Internal alignment:** Take steps to ensure that conflict management systems grow out of and are aligned with the mission, vision, and values of the organization. If the published mission, vision, and values do not refer to the value and importance of employees, the organization may need to run a parallel exercise to incorporate these concepts. Internal documentation must be examined to see if new policies need to be written, or existing policies aligned with the new philosophy. All parts of the conflict management system — rights-based as well as interest-based — should be linked and aligned in a manner that enables users to fully understand and access all parts, and move comfortably between them.

**External alignment:** Examine whether the system needs to extend outside the organization (for example, to customer or public complaints).

#### Component 6: Evaluation

Conduct evaluative research (which was designed in the planning stage), and prepare reports on each component to assist managers in evaluating and adapting the components. Consistent with the participatory nature of the design process, feedback is provided to all participants and to all employees.

### *Phase 4: Implementation*

#### Component 7: Communications

Develop a strategic approach for effective communications, employing an interest-based tone consistent with the initiative. The task includes not only creating the usual communication tools

(such as a launching announcement, updates, newsletters, brochures, posters, and other printed materials, in addition to Internet and intranet sites), but much more as well, as management and labor leaders persistently and visibly promote the system.

#### Component 8: “Critical mass” training

Provide training to all persons whose roles involve managing conflict or advising about it — managers, union representatives, labor leaders in non-unionized settings, human resources personnel, employee assistance personnel, and legal department staff. Training should cover interest-based negotiation, coaching, mediation, and communication skills.

#### Component 9: Select case mediation

Through the nascent integrated conflict management system, offer highly specialized conflict resolution services for deadlocked cases, delicate high profile cases, or other cases that need immediate attention.

#### Phase 5: Institutionalization of the System within the Organization

Continue monitoring and, as necessary, adjusting the system as it becomes an accepted part of day-to-day activities and acts as a significant contributor to positive organizational change.

#### Component 10: Transition activities

Through regular review and re-commitment, assess the above components and adapt them to meet current needs. Among the decisions that need to be made on an ongoing basis are those pertaining to the roles of the project management office, the advisory committee, and other agencies and positions that have been introduced.

### **2. How Will You Know When You Have Arrived at a Fully Integrated Conflict Management System?**

The system will always be in flux, developing and maturing, adjusting and adapting to organizational changes and needs. A good system will

have built into it ongoing “sensors” of feedback and evaluation to keep it in a change-ready state. More specifically:

The system should provide all of the functions and options described above, in a flexible manner that enables the employee to own the process and select the route to resolution.

All functions, options, structures, and processes are effectively coordinated and work in harmony; users understand the system, find easy entry points, and are satisfied with the experience.

The evaluation and monitoring system is operating to identify opportunities for systemic improvement.

The system is so fully integrated into the culture of the organization that interpersonal interactions move from “rights” and positions to “interest-based” problem solving as the default approach. Employees’ second-nature response to conflict is to communicate and attempt low-level early resolution, not escalate.

The system is trusted and used by all types of persons in the workplace (employees, managers, and professionals) for all types of problems; conflict is not stigmatized but rather accepted as part of everyday work life.

## Appendix III

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### Critical Elements in Designing an Evaluation and Monitoring Program

#### 1. Introduction

A comprehensive monitoring and evaluation program is a critical component of an integrated conflict management system. Monitoring and evaluation can uncover sources of conflict that may only become apparent when patterns of disputes are evaluated. Proper monitoring allows organizations to identify root causes of conflict, emerging new problems, and problems arising from imperfect policies. Without monitoring and evaluation, it is impossible to ascertain whether an integrated conflict management system is effective. Every organization must determine whether its system is making a difference. To answer this fundamental query, the system’s impact must be measured, analyzed, and communicated to critical stakeholders. This section will provide guidance on the critical components in designing a comprehensive evaluation program, an overview of how to conduct an evaluation, and advice on communicating the results.

#### 2. Obtaining Buy-In

Optimally, an evaluation plan should be part of the design of the integrated conflict management system. All critical stakeholders should take part in developing the evaluation program. Assistance from outside neutral sources, such as partnering with an academic institution or an external arm’s-length consultant, is extremely helpful. Partners can help an organization design an evaluation program that ensures that user confidentiality is protected and participation is non-coercive.

#### 3. Defining the System’s Goals

Knowing what to measure and evaluate comes from defining the system’s goals. The best way to establish goals is to first understand how the organization currently manages conflict. This can be done by analyzing existing sources of complaint data, such as employee opinion surveys, grievance filing data, employee assistance program reports, Equal Employment Opportunity complaint filings, employee retention records, hotline reports, and litigation risk assessments. Interviews and targeted questions

on employee surveys can also be quite valuable.

Indeed, anonymous questionnaires may show that many members of the organization have had complaints but have not accessed the existing system to voice them. A key measure of later success is whether you have increased the number of aggrieved disputants who feel comfortable entering the system. This assessment will inform the critical stakeholders of the organization's conflict profile and provide a framework for determining what goals the organization needs to establish. For example, this conflict audit may reveal that a majority of women feel there is a pervasive problem with sexual harassment in the workplace. Employment discrimination complaint filing data, however, may establish that relatively few sexual harassment complaints have been filed. If so, an organizational goal may be to increase sexual harassment education, or set up an 800 number to help employees seek assistance anonymously.

Another organization may learn that employees readily file complaints on an array of issues, but report dissatisfaction with the time it takes to receive a response to their complaints. In this organization, the goal might be to develop faster and more responsive complaint handling.

#### 4. Conducting an Evaluation

All evaluation is limited by the human and financial resources that an organization can provide. Obviously, large, well-funded institutions will be able to dedicate more resources to this endeavor. Every organization can evaluate its system, however, if only on a limited basis. This section includes information on conducting a wide variety of studies, some of which may not be feasible for every organization. Evaluation of an integrated conflict management system can differ depending on the stage of implementation, the age of the system, and the particular questions a policy maker needs to resolve.

There are three basic types of evaluation: 1) process, 2) outcome, and 3) quality assurance. Process evaluation tracks whether a system has been implemented as designed. For example, tracking integrated conflict management system usage by employees (participation rates) and evaluating the effectiveness of training are two typical process evaluation inquiries. More commonly, policy makers expect the evaluation to

focus on the outcomes or impact of the system. One obvious dimension to measure in a high complaint organization is the rate of complaint filings compared to previous years. On the other hand, an organization may be looking to increase the number of complaints elicited because there is evidence of great but unvoiced discontent. There are also evaluations that examine the quality of the implementation. Participants' satisfaction can be surveyed to determine their views regarding the fairness of the process, the neutral (if there is one), and the outcome. A comprehensive evaluation program would include all three types of inquiries.

No matter what the approach, the disputants' participation in any monitoring and evaluation must be strictly voluntary and confidential. If the organization is collaborating with an individual who intends to publish the research, there may be requirements that an internal review board approve the data collection protocol. Data must be collected in a way that protects the identity of the disputants and dispute resolution professional, and must be reported in the aggregate. Collecting certain kinds of data is precluded by the Standards of Practice for Organizational Ombudspeople. Any personal interviews must be strictly voluntary and any anecdotal information must be reported in a way that preserves the anonymity of the cooperating disputant or dispute resolution professional.

#### 5. Evaluation Indicators

To conduct a meaningful evaluation of process, outcome, or quality, one must identify an indicator that is expected to change. Evaluation indicators (which researchers refer to as dependent variables) should be linked to the organization's goals. For instance, common indicators may include settlement rates (goal: increase resolution of claims), case flow-rates (goal: resolve more cases informally, allowing fewer to become formal complaints), time on the docket or time to settlement (goal: reduce processing time by 50%), satisfaction with the process, neutral, or outcome (sometimes called micro-justice), transaction cost savings (goal: reduce litigation costs or increase employee retention), and change in the relationships (goal: improve workplace climate).

## 6. Comparison Collection

Once indicators are identified, evaluation requires dimensions of comparison (which researchers refer to as independent variables). Typical dimensions of comparison are the nature of intervention (comparing mediation to arbitration, or directive to transformative mediation); pilot sites and control sites (with or without dispute resolution intervention); conditions before and after implementation of a complete integrated conflict management system or an expanded program within an integrated conflict management system; different party roles within a program (for example, complainant and respondent, employee and supervisor); and change over time with repeated measurements. Areas that are less common dimensions of comparison are procedural safeguards as a due process protocol (with and without), the right to counsel (with or without), participant demographics, and demographics of the neutral.

## 7. Data Collection

The next step in evaluation design is deciding how to collect data. Obviously, for data to be useful, they must be accurate. To collect and store accurate data, you need relatively simple devices (Excel or Access computer programs, for example), committed people to manage the data input, and oversight to determine the integrity of the data. Data collection must be among the job duties of designated individuals, who should be rewarded for accurate collection.

Different sources of data include mail surveys (from the neutral, participants, or both), telephone surveys or interviews, in-person interviews, and archival data contained in case files or databases within the organization. Anecdotal data can and should be encouraged, as they put a human face on quantitative data. These “peace” stories describe in human terms the impact of an effective system on individual lives. In the collection of data, confidentiality must be protected and emphasized.

## 8. Analysis

Finally, the data must be analyzed. There are two basic ways to analyze data. The most common approach is through descriptive statistics, which include percentages and frequencies. Analytical statistics provide measurements to explain the significant differences in the chosen dimension of comparison. The analysis must be broken down into easily defined results that make sense to the stakeholders.

## 9. Communicating the Results

Once the analysis is complete, it must be disseminated to the “continuous” oversight body (see 3.5.2.) in an understandable format and on a periodic basis (monthly, quarterly, or biannually). The analysis should be used to tell users, managers, and neutrals how well the system is working. Sharing the results creates a feedback mechanism that can then be used to continuously modify and improve the existing system. The very survival of an integrated conflict management system is linked directly to an organization’s ability to understand and value the system’s benefits and effectiveness. If an organization is not given information regarding the benefits resulting from the integrated conflict management system, the system will be in jeopardy when the leadership changes, or when the organization experiences revenue shortfalls.

## Appendix IV

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### Some Highlights of the Evolution of Conflict Management Systems in the United States

In the United States the use of arbitration and mediation to resolve labor-management disputes originated in the second half of the nineteenth century and became an integral part of the American industrial relations system after World War II.<sup>8</sup> Almost all collective bargaining agreements in the United States incorporate a grievance procedure for handling disputes. The grievance procedure is negotiated by the parties and almost always provides for arbitration to resolve grievances that have not been settled earlier in the procedure.

A large majority of U.S. workers — and, of course, managers and most professionals — are not covered by bargaining contracts. In the past thirty years, the use of a wide variety of conflict management processes has spread beyond unionized workplaces, throughout large and small organizations. Some organizations make internal use of formal conflict resolution, including formal grievance procedures,<sup>9</sup> mediation, fact-finding, early neutral evaluation, peer review, and review by an off-line committee.<sup>10</sup>

Other organizations have introduced additional, less formal approaches to manage conflict, including peer counseling, discussions by “work issues” groups, shuttle diplomacy by human services personnel, and on-the-spot training. Some organizations have worked to train nearly all employees to settle concerns directly at the lowest level, and also to train team coaches who encourage direct negotiation of problems. These internal processes and approaches are used singly or in various combinations, depending on an organization’s preferences, objectives, and policies.

Some organizations have also introduced formal external dispute resolution procedures, such as mediation and arbitration by external neutrals. These external processes are typically used for just a few cases a year. Informal internal conflict management options used in the nonunion sector carry a much higher case load. These options include organizational

ombudspersons, who employ a wide range of techniques, and who typically serve 1% to 5% of the organization per year, with an average case load of 300-400 cases per person.

There have been a number of reasons for the dramatic growth in the use of internal and external conflict management procedures. One reason for the rise in the use of mediation and arbitration has been to reduce, or substitute for, the use of public administrative or judicial processes for employment cases that leave the organization for outside settlement. A principal cause of this rise in the United States, many observers believe, is the perceived “litigation explosion” that began in the 1960s and, some contend, continues to this day.

Between 1960 and 1995, the United States Congress passed at least two dozen major statutes regulating employment conditions, including the Civil Rights Act of 1964, the Occupational Safety and Health Act in 1970, the Employee Retirement Income Security Act in 1974, the Americans with Disabilities Act in 1990, the Civil Rights Act of 1991, and the Family and Medical Leave Act of 1993. These and other statutes gave rise to new areas of litigation, ranging from sexual harassment and accommodation of the disabled to age and race discrimination. More and more dimensions of the employment relationship were brought under the scrutiny of regulatory agencies and the courts. Courts and administrative agencies became burdened with backlogs of cases. An estimated 30 million civil cases are now on the dockets of federal, state, and local courts, a number that has grown dramatically in recent years. Over the past two decades, the number of employment-related suits filed in federal courts grew by 400 percent (Commission on the Future of Worker-Management Relations, Report and Recommendations, pp. 25-33). During the 1990s, the number of civil cases in U.S. federal courts involving charges of discrimination nearly tripled. Plaintiffs who won their employment discrimination suits received a median award of \$200,000 in 1996; one in nine received an award of \$1 million or more (U.S.

Department of Justice, Bureau of Justice Statistics, January 2000). In sum, the litigation explosion clogged the dockets of federal and state courts, leading to longer delays and higher costs associated with using traditional means of dispute resolution. Many organizations have adopted arbitration and mediation because they believe it is a means for circumventing the expensive, time-consuming features of conventional litigation.<sup>11</sup>

Many other factors are contributing to the development of a wide range of informal and formal conflict management options to resolve disputes within an organization. Complaints by employees against supervisors, and traditional labor-management problems, are now only one important part of all the problems that arise within modern organizations. Peer disputes, complaints of poor service by some other part of an organization, concerns of managers about their employees, fights among and within professional groups and cross-functional teams within the organization, complaints by temporary and sub-contracted professionals, misunderstandings on the intra-net, and issues leading to whistle-blowing (often conflicts of interest or matters of national security) are just a few of the concerns that have required the introduction of new conflict management options and a systems approach. Management goals are changing as well. The need to keep very valuable employees, professionals, and managers and to manage productive teams has helped change traditional views about hierarchical management. Managers and professionals — and CEOs — are among the “workers” now pushing for conflict management options. Organizations today are much more willing to listen to new ideas and even some dissent.

In addition, issues in the workplace now include complex new problems like intellectual property and conflict of interest disputes, fear-of-violence complaints, harassment complaints which occur among members of the same minority group, and other matters that may not lend themselves to traditional grievance procedures. The varieties of new disputes have led to the introduction of more sophisticated informal and formal internal conflict management options. Government regulations have also fostered internal conflict management in sensitive arenas — such as waste, fraud, and abuse — as organizations have tried to prevent any incentive for external whistle-blowing under the Federal Sentencing Guidelines. In an effort to prevent illegal and unacceptable behavior, and also to maintain management control, many companies have established “zero barrier” dispute resolution options to persuade people to come forward early and in-house when they perceive a serious problem at work.<sup>12</sup>

Also, very importantly, the face of the workplace has changed in North America, leading to emphasis on cross-cultural and cross-generational negotiation and conflict management, and sensitivity to those (including many women, many minorities, and many new young employees) who do not trust the available formal options or do not like any kind of formal grievance procedures. The face of the workplace has changed in multi-national companies as well, requiring mechanisms that work well across the globe.<sup>13</sup>

## Appendix V

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## End Notes

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1. Although the focus of this report is workplace conflict, the principles have equal applicability to all other places where people convene regularly for a purpose and have continuing relationships, such as community, charitable, volunteer, and religious organizations. Moreover, these principles apply to addressing conflict in the many workplaces in which employees work closely with people who are not employees. A notable example is educational institutions, in which much of the innovative work in this field has been developed to apply to all constituencies, especially students.
2. From Lynch, Jennifer, *Listening and Learning: An Analysis of Conflict Management Practices at Correctional Service Canada* (Ottawa: Government of Canada, 1998).
3. Although small and mid-size organizations can implement many aspects of an integrated conflict management system, they may not have the resources to create the necessary structures. For example, the employer may not be able to design training programs, provide a full-time independent in-house neutral, or develop a monitoring and evaluation program. There are consultants and consulting organizations that support a number of different employers by providing an outside organizational ombudsperson, training programs, coordination of functions, and access to mediators and arbitrators.
4. Alan F. Westin and Alfred G. Feliu, *Resolving Employment Disputes without Litigation* (Washington, D.C.: Bureau of National Affairs, 1988).
5. Stakeholders will include different people at different times, such as senior managers in both the administrative and operational sides of the organization; individuals from training, human resources, communications, and employee assistance programs; senior labor leaders and employees representing diverse groups and interests; external advisors; customers or clients; and even spouses of employees. We define a “stakeholder” as anyone who would not like to be “taken by surprise” (from Dr. Mary Rowe).
6. “A Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relation,” in *Proceedings of the 48th Annual Meeting: National Academy of Arbitrators* (Washington, D.C.: BNA Books, 1996), p. 298, and “Guidelines on Arbitration of Statutory Claims under Employer-Promulgated Systems,” in *Proceedings of the 50th Annual Meeting of the National Academy of Arbitrators* (Washington, D.C.: BNA Books, 1998), p. 313.
7. Bingham and Chachere, “Dispute Resolution in Employment: The Need for Research,” pp. 98-99.
8. Traditionally, in the U.S. system of industrial relations a sharp distinction is made between disputes over “interests” and disputes over “rights.” Interest disputes are ones arising over the formation of collective bargaining agreements; disputes arising from the application, interpretation, or enforcement of collective bargaining agreements are rights disputes (for a recent discussion, see Kheel, *The Keys to Conflict Resolution*, pp. 83-84). Negotiations between employers and unions are the principal means of resolving — or avoiding — interest disputes. If the parties reach an impasse in the negotiation of a new collective bargaining agreement, typically mediation is used to help them resolve their dispute. Arbitration is almost never used in the United States to resolve interest disputes in labor-management relations. (In a handful of states, interest arbitration is used to settle police and firefighter disputes, but it is almost never used in private sector interest disputes.)

9. A few of these mirror those found in collective bargaining contracts. However, most nonunion procedures do not culminate in arbitration. Rather, management reserves the right to make the final decision (Lipsky and Seeber, "Resolving Workplace Disputes," pp. 9-10), and typically there are also other differences from union procedures.

10. A 1997 survey of Fortune 1000 corporations found that about one-third of these companies had introduced grievance procedures for their nonunion employees. In their review of research on ADR, Bingham and Chachere conclude that "about half of 'large' private employers have established some sort of formal dispute resolution procedure for their nonunion employees" (Bingham and Chachere, "Dispute Resolution in Employment," p. 99).

11. The U.S. Supreme Court appeared inclined to favor the use of external arbitration in disputes over statutory claims in one major, oft-cited case. In *Gilmer v. Interstate/Johnson Lane Corp.*, decided in 1991, the Court allowed imposed arbitration of an Age Discrimination in Employment Act claim as a substitute for statutorily enforced rights. After *Gilmer*, a growing number of American employers required their employees, as a condition for their hiring, to agree to use arbitration rather than the courts to resolve statutory complaints. This form of imposed pre-dispute arbitration has since proven to be very controversial. A federal commission appointed by the Clinton administration and headed by former Secretary of Labor John Dunlop condemned its use (Commission on the Future of Worker-Management Relations, Report and Recommendations, pp. 25-33). Defenders argue that such agreements, if properly designed, afford both employers and employees the advantage of a fast, fair, and inexpensive means for resolving complaints.

12. Many organizations have learned that "zero tolerance" policies by themselves do not work very well, and that they are far more effective when joined with "zero barriers" dispute resolution options. Rowe and Bendersky, "Workplace Justice, Zero Tolerance and Zero Barriers."

13. Rowe, "Dispute Resolution in the Non-Union Environment," pp. 79-106.

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