Culture Change at Canada Revenue Agency: Implementing Alternate Dispute Resolution

I am in conflict. What do I do?

It was late afternoon when Lisa entered the cozy cafeteria of their Canada Revenue Agency branch and among the few workers of the second shift immediately spotted Cathy who used to work in their branch, but moved to the regional office two years ago. Lisa had always enjoyed chatting to Cathy.

"Hey, Lisa," Cathy had noticed her already, "it's so good to see you before leaving."

"Came to visit?"

"Yes, I had a meeting here."

After some catching up, Cathy noticed Lisa's face had clouded over.

"Anything wrong?"

"Well," Lisa hesitated, "I feel my supervisor is simply picking on me. I know our area is being downsized, and some people have to move to another work area,… but why me?"

"Do you think he chose you on purpose?"

"That's what I think. We have already had issues in the past already. I questioned some of his decisions, and he took it personally. He started reprimanding me whenever the slightest opportunity arose. And now he has a perfect chance to get rid of me. It is hard to have this tension between us, but I do not want to move either. I do not like that job. There are other people who would not mind to move. But our opinions have never been asked."

"I see, you are between a rock and a hard place…"

"And what is even worse," Lisa went on, "I cannot leave all this behind me when I go home. I was snappy with my husband yesterday and raised my voice when the kid did not put his toys in place…I cannot go on like this…I have to do something. After all, I have the right to be protected against harassment. I am thinking of filing a grievance."

"Lisa, but think…even if you win, your boss is reprimanded, and you keep your present job, do you think the tension will disappear?"

"Most probably not. I wish I could resolve this without spoiling our relationship even more, but it is not likely that all of a sudden he will change his mind."

Cathy was silent for a while.

The names used in the introductory scenario are imaginary and do not represent any of the organizational members. Also, the use of the masculine gender later in the case will be used to identify both women and men.

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“Lisa, I myself have never been in a situation like yours, but I remember a colleague in my new workplace once dealt with something very similar. He used the so called “alternate dispute resolution” process. I vaguely remember that once we all were informed about the existence of such a process, but since I never needed it, I even do not remember where to start. But I will talk to him. We are on good terms, that’s why he shared this with me. I cannot give you his name, you know, this is a very personal matter, something you wouldn’t put on the bulletin board… I will find out and let you know. I promise.”
It was time for Cathy to leave. Not completely confident though that she had a solution yet, Lisa felt she should wait with her grievance for a couple of days.

Next afternoon, Lisa received a phone call. It was Chris, Cathy’s co-worker.
“Lisa, I have no problem sharing my experience with you. Everything worked out so well for me that I would be glad if I could also encourage others to resolve their conflicts, or seeming conflicts as it turned out to be in my case, in a non-confrontational way. When you file a grievance, you never know how many months or even years the process will take… and you have to keep on working together with that person hating each other’s guts. And even when the conflict is formally resolved, the bad feelings are still there. Then all those talks about trust and good working relationship sound like a joke…”
“I cannot agree with you more, Chris. But how did this process work for you if you do not mind sharing?”
“Not at all. I used to have a good relationship with my supervisor. He was supportive of me in every way. But then I felt something happened. I was bypassed when it came to new interesting assignments, I did not get as much encouragement and feedback any more, and finally my performance review got mediocre without an apparent reason although it used to be pretty favourable before. I felt it was not fair. Of course, I had the option to require the reconsideration of my performance review or even file a complaint, but first and foremost I wanted to figure out what had gone wrong. At that point I felt somewhat uncomfortable to face my supervisor. It so happened that exactly at that time, somebody who introduced himself as an ADR advisor, attended our team meeting and told us about the so called “alternate dispute resolution” or ADR. We were told to stop by his office in case we had a difficult situation either with our superiors or co-workers. I realized that my case might be a good candidate for this process, and went to talk to him. He offered to invite a qualified mediator who would facilitate the discussion between my supervisor and myself. I thought it was a good idea. Then he contacted my supervisor and asked him if he would agree to talk to me about the situation. Apparently he had agreed, because in a couple of days I received a phone call from a mediator whom I did not know in person, and we discussed my case. Probably the mediator had talked to my supervisor as well. Then we scheduled the meeting in a week’s time.”
“Chris, did it take place in your office building?”
“Yes, but on a different floor than our work area.”
“And who participated in the meeting?”
“Just the two of us and two mediators. I was asked if I also wanted the union representative to be there, but I thought I would try to resolve the issue myself first.”
“So you sat down with your supervisor and started talking?”

“Basically yes. The mediators encouraged us to express how we felt about the situation. They made sure we both had an opportunity to talk and be heard. They also made sure we did not interrupt each other or become judgmental.”
“Did the mediators themselves hint that one of you had been wrong at some point?”
”Never. They were absolutely impartial, sometimes rephrased our statements or repeated them to keep us on track, and just tried to make us talk and understand the root cause of the problem.”
“Did you?”
“We were winding the film backward so to speak, to get to the moment when I started feeling my supervisor reduced his support. You would not believe what I learned! We took turns in explaining our perceptions, and then my supervisor quoted my words that I did not even remember having ever said! Something about the futility of my assignment or along those lines. Anyway, I never meant that, but apparently had chosen wrong words. The supervisor took it to heart since that was his “pet project.” Can you imagine? We both burst into laughter with relief after finding all that out. ”
“Then all the conflict turned out to be a tempest in a tea-cup?”
“Exactly! If not for this opportunity to clarify the misunderstanding, most probably I would be looking for a new job now.”
“Wow! That sounds promising. What if the situation between my supervisor and myself is not as bad as it looks now? Sure, ADR is worth giving it a shot. Where do I start? I somehow do not remember anybody telling us about it.”
“Start with our Internal web site. You will find all the information there.”
“Chris, I am so grateful to you. I will definitely take your advice.”
“I will keep my fingers crossed for you.”

Lisa opened the Internal web site and when prompted to ask a question, typed in “I am in conflict. What do I do?” Having found the phone number of the advisor Lisa still hesitated. What if my supervisor does not agree to talk? What if the mediator takes his side? Will I be able to explain my thoughts and feelings clearly? Will he be willing to explain his reasons for moving me to the call center? What if we both feel uncomfortable and make things even worse? What if the ADR doesn’t work? Will I still be able to file a grievance? “OK,” Lisa finally thought, “what can I lose?” and picked up the phone.

Rights-based versus interest-based dispute resolution

The accelerating rate of organizational change and increasing workplace diversity creates a potential for conflict situations (Bendersky, 2003). Traditionally, conflicts have been resolved with the help of formal “rights-based” processes when complaints are referred to an internal or external authority who makes the final decision. The rights-based mechanisms include the grievance process, arbitration, decision review, independent third party review, and formal investigation (Bendersky, 2003; Let’s talk). Most often these procedures are applied to resolve violation or differences in the interpretation of an employment contract.

It often happens that workplace conflicts go beyond the domain of the employment contract (e.g., trust and relationship issues) and require less formal means of solving them. Moreover, rights-based processes tend to be confrontational and may involve retribution, especially

when the disputing parties continue working together (Final report, 1999). Therefore, an alternative approach based on everyone's needs, interests and viewpoints rather than just rights may be an option worth considering.

In the interest-based approach, the disputing parties seek to resolve the matter by themselves. They consider their mutual interests and communicate with or without the assistance of a third party such as a mediator, facilitator, or ombudsperson. In this process, the focus is on an effective two-way communication, active listening, respect, preservation of the future relationship, and ultimately reaching a mutually satisfying solution (CCRA dispute resolution policy; Let's talk). The mediator's role is not to determine which party is right or wrong, but rather to stay impartial and manage the dispute resolution process while the disputants come to their own agreement and retain control over the outcomes (Bendersky, 2003; CCRA dispute resolution policy; Wall & Lynn, 1993). The final solution may be reached faster than with the cumbersome rights-based approach, it meets the underlying interests of both parties, and it is easier to rebuild trust and working relationship afterwards.

Implementation of alternate dispute resolution (ADR) within Canada Revenue Agency (CRA)

The need to resolve workplace disputes in a time- and cost-effective manner while creating a healthy work environment became especially urgent when Revenue Canada moved to the agency status as the Canada Customs and Revenue Agency (CCRA) on November 1st, 1999. The major reason for the status change was the need to be able to do business in a less restrictive way and to reform the human resource (HR) and other management systems in order to improve service to Canadians and be known as a progressive employer (CCRA dispute resolution policy). When the government department was changed into an agency, the legislative framework also changed considerably. Still subject to the Public Service Staff Relations Act, CCRA was no longer subject to the Public Service Employment Act which meant the agency could act as a separate employer and define its own HR management policy. On December 12th, 2003, CCRA split into Canada Revenue Agency (CRA) and Canada Border Services Agency (CBSA). Since then, both agencies continued improving their HR practices separately, and the CCRA legacy was carried on by the CRA.

In 1997, two years prior to the status change, under the visionary guidance of Deputy Minister Rob Wright, "working groups" within Revenue Canada were created to explore certain HR topics (e.g., classification, staffing, etc.) and generate ideas about how their respective subject areas would look in two year's time. A part of the staffing group worked on recourse issues. Each group consisted of employees, managers and union representatives and was led by an Assistant Deputy Minister. A year later, "design teams" were created to produce specific recommendations on how to implement the working group ideas. Design teams were somewhat similar in their composition to the working groups except for lower union and employee representation, and involvement of external facilitators who shared their expertise with the teams. There was a separate design team dedicated entirely to the recourse mechanism.

At that time, other than for formal harassment complaints, the only recourse mechanism in place was the rights-based process. Since there was very little knowledge of other options, the facilitator exposed the design team to the alternative dispute resolution (ADR) process which was grounded in the interest-based approach. The team agreed that nowadays society is trying to prevent conflict escalation through informal processes before adhering to the traditional rights-based procedures. Therefore, the recourse design team strongly recommended that CCRA invest in the development of ADR while preserving employee rights to exercise the formal grievance procedure granted by employment law any time they felt it was necessary.

To support the implementation of ADR, a certain infrastructure had to be created. There was a need for a championing body to facilitate the whole process. The team recommended establishment of an Office for Dispute Management (ODM). It opened in May, 1999, just before Revenue Canada became an agency. The director had to staff the office and develop the framework for piloting the new process in a couple of locations before it was rolled out nationally. The pilot phase started the same year. The Director recollected:

> ADR was meant to bring about a huge cultural transformation. Our office did not just offer mediation services. Its mandate was to create a culture where conflicts are prevented in the first place, and if they occur, to make people feel safe about resolving their disputes by themselves no matter what hierarchical levels are involved. In this respect, we are going further than any other government department or agency which offers mediation service, but does not educate all the employees to become competent at conflict resolution themselves. Our challenge is much bigger. We have to communicate the process throughout the agency and develop adequate training programs. We have placed the information on our Internal web site, created educational videos, and disseminated pamphlets. In addition, we are trying to inform people about their conflict resolution options in staff meetings. To a great extent, we are guided by the principles of the Harvard Negotiation Model developed by Fisher and Ury, the authors of "Getting to YES." Once Fisher himself was invited to talk to the senior management and leaders. If at the beginning we focused more on interest-based negotiations skills, then now we are looking more at the prevention of conflicts.

There are two basic training products developed by the ODM. One is a one-day basic awareness session "Demystifying conflict" which is mandatory for all the staff, and the other is a three-day session "How to profit from conflict" for leaders including managers, HR and union representatives. The latter session provides a more in-depth knowledge about ADR and skills in interest-based negotiations. Participants of the first awareness session receive a package "Let's talk" with the basic information about their options of solving workplace conflicts. For those employees who feel they need a more substantial training in ADR, the office has recently developed another one-day session "Dealing with conflict" which will be offered by the ADR advisors in each location as needed. Furthermore, the office continues working on the second generation of training products for managers, for example, a course on difficult conversations such as performance reviews.

To introduce people to the ADR option early on, it is integrated in the overall employee training program for the new hires. ADR training is further supported by an educational web site "A Good Start." ADR has also been included in the three-week basic training for existing and future-to-be managers. Moreover, ADR is becoming an integral part of the workplace

practices and has been defined as one of the core competencies since CRA has moved to competency-based staffing. Consequently, ADR is linked to performance management as well. All this is meant to establish that CRA is serious about changing the way that people interact and work together, and ADR is not a flavour of the month, as many employees may have viewed it at the beginning. Senior Advisor, ADR Services, pointed out:

> We want the organization to become conflict competent, and we know this is something that may take twenty years. But we are starting to see this change already.

ADR framework within CRA

To promote ADR and facilitate its application to workplace conflicts, there is a network of 20 full-time ADR advisors who have their offices in the CRA headquarters and all the regional branches. Their role is to advise managers and employees on ADR, do presentations and briefings, and explain it in team meetings thus making the process more visible. They also provide initial training to the employees, and some of them may act as mediators. Their door is always open to those seeking help with difficult situations. Advisors help establish the suitability of mediation to the given situation and facilitate the access to mediators if necessary as well as act as a liaison with unions, management, HR advisors, or the Office of Dispute Management, as required. Although functionally advisors report to the ODM, they are on the payroll of the regional branch they are servicing.

People may seek access to dispute resolution through their manager's referral, union advice, HR suggestion, help of an ADR advisor, or personal knowledge of the process. In fact, the ADR process can even be initiated at every stage of the grievance procedure. If the dispute is resolved through ADR, employees can withdraw their grievances.

Once the parties in dispute have decided to use the mediation service, the process follows an established mediation framework:

- Pre-mediation stage
- Mediation session
- Post-mediation stage

Upon request, the Office of Dispute Management assigns one or two mediators to conduct the process. Before the mediation session, mediators usually contact both parties. Mediators learn about the situation, assess if the case qualifies for mediation, and explain the process. This orientation session is intended to make parties feel more comfortable about the mediation process. If all the parties agree to proceed, a date is set. According to the Final report (1999) on mediation services performed by an external firm, in about 60% of cases, the session took place in less than three weeks from the decision to attend mediation.

The disputing parties may invite somebody to accompany them to the mediation session. Usually those are union representatives, HR professionals, friends, colleagues, managers, or lawyers. However, the accompanying persons can only observe. They may give their active support during breaks and time-outs. The mediation session starts with all the parties present signing the Agreement to Mediate to make sure everybody understands their roles and the

terms and conditions of the process. Mediators help the disputing parties identify the issues, encourage them to tell their "stories" and to explain their positions, interests, needs, and feelings as well as the rationale behind their actions. They promote active listening and encourage the parties to focus on problems rather than the person and interests rather than the position. Furthermore, mediators guide the parties to consider their best alternative to a negotiated agreement or BATNA (according to the principles of the Harvard Negotiation Project presented in Fisher, Ury, & Patton, 1991). They help the parties brainstorm for possible resolutions, themselves staying impartial and nonjudgmental. At the end, the mediators draft the final document (Mediation Agreement) that states the outcomes of the session and the agreement reached by the parties. In addition, the mediator asks the disputants to fill out an evaluation questionnaire (optional and anonymous) which is then sent to the Office of Dispute Management. Mediators, in their turn, submit a Mediation Report indicating the duration of the session, cost involved, whether the dispute was resolved fully, partially or not at all, if there has been a formal grievance, and if it was withdrawn as a result of the mediation session.

The post-mediation phase or the follow-up is less defined. Although the parties have signed the Mediation Agreement, all the other notes or records most often are destroyed, upon the consent of the parties, after the session. Copies of the agreement are kept only by the disputants. Some mediators offer to follow up with the parties to ensure that the Agreement is being kept. The Final report (1999) indicates that follow-up was offered in less than 40% of the cases. It might be explained by the ADR position that the agreement is as good as the parties make it to be. Mediators have no power to enforce the agreement on anybody anyway, although sometimes parties have escalated expectations that somebody will make the agreement binding like a court decision. Nevertheless, according to the report, 66% of the disputants believed that their disputes were successfully resolved, and 10% more believed that the mediation session was positive although not all the issues were resolved.

Mediation service

Employees who have used the mediation service shared their experiences:

> We had those two mediators which were wonderful. If not for them, I do not know what would happen. They were so helpful in moving our conversation forward…. The only thing I wish they had done was giving us some feedback if they thought one of us was right or wrong… I understand their role and why they stayed impartial, but sometimes I felt their input might have helped me. If I was dead wrong about something, they might have pointed that out or suggested a different way how I could have handled the situation…

> The orientation session before the actual mediation when I explained my point of view to the mediators was a very useful exercise. Talking to them helped me sort out all the issues in my own head. I saw more clearly what the real problem was as opposed to just the symptoms that I was seeing before…Their actual work in mediating our conversation was successful due to two main reasons. First, any time you have a difficult conversation, it is nice to have someone to referee by saying, "Wait a minute, let him finish" or "Let us stick to the topic," and so on to keep it going as a productive exercise rather than finger-pointing. Second, to have someone to rephrase our remarks in a different light and help us express our opinions better was very useful, too. They did a lot of good facilitation.

> Mediation is good if it is done properly, and in our case it was. Mediators were professional. They kept things on track if we deviated into something heated… It is in the mediators' hands to get emotions out of the situation and get people talking about what happened. It was very helpful.

> On the one hand, my experience with the mediation process was positive, but on the other hand, it made me upset. It so happened that we both resolved our dispute 10 minutes prior to the mediation session. Since everything was arranged, and the mediators had arrived, we went in anyway and informed them that we had reached an agreement by ourselves and did not need proceed with the session. However, the mediators wanted to make sure that everything was fine and go through the whole process nevertheless. Since we did not have much to discuss at that point, mediators started rehashing everything and even asking "what if" questions which were unrelated to the given situation. I appreciate their effort to ultimately resolve our dispute, and the process seemed well thought out, but it was somewhat inflexible. The mediators had their steps to follow, and now they did not know how to handle this situation which apparently did not require all the pre-established steps. They were not prepared to digress.

The ultimate goal of ADR implementation within CRA is to enable all the employees to prevent disputes and if they occur, resolve them without any third party intervention. As the Director of ODM commented, their goal is to drive themselves out of business. However, four years after ODM started its work, the Director has observed an increase in requests for ADR-related third party assistance, that is, mediation, facilitation, coaching, and advice.

If disputants decide to request the mediation service, they have access to three types of mediators (Final report, 1999):

- Internal volunteer mediators who work for CRA in other capacities,
- Mediators who work in other federal government departments and agencies who are on the inventory of the "Shared Mediators Program for Cases of Harassment or Conflict in the Workplace" which is coordinated by the Department of Justice, and
- External private sector mediators.

Currently, there are 64 internal mediators providing the service to CRA members and another 25 need to observe the process to become qualified co-mediators. According to the Monitoring report, in 2002/2003, 89% of mediations were mediated by an internal mediator, as compared to 57% in the previous fiscal year (Dispute Resolution System, 2003). External mediators are used only if special expertise is necessary, the case involves senior managers, and/or internal mediators unknown to disputants cannot be found. The CCRA Mediation Market Survey conducted by an external firm in 2003 demonstrated that a slightly greater confidence was registered in internal than external mediators. The reason might be that internal mediators have to abide by the rules and procedures established by the agency and submit a Mediator Report at the end of every case. However, speaking about the external mediators:

> No data was received to confirm the degree to which external mediators are required to follow the requirements of the CRA Mediation Guidelines. Furthermore, since no Mediator

> Report was received from external mediators, it is fair to conclude that the requirements were not met (Dispute Resolution System, 2003).

Although there is no hard evidence that full-time mediators would be more professional than the agency "part-timers" (i.e., volunteers), and all the reported experiences have been favourable, the interviews with 24 mediation users made the authors of the Final report (1999) conclude:

> There exists a common perception that "part-time" mediators do not have all of the skills and experience to conduct good mediation. 60% of managers interviewed shared this belief and felt it was a perception shared throughout the organization…Generally, the managers we spoke to could not articulate the criteria and/or experience needed to be a volunteer mediator. They were of the perception that as long as the individual had good interpersonal skills and some training they could be part of the network. They would like to be assured that more stringent criteria exist.

The Assistant Director of Mediation Services cast more light on how mediators are selected and prepared for their mission:

> Our volunteer mediators are people who have other jobs in the organization, be it a front-line clerk, a tax collector, a record keeper, a director or even an assistant commissioner. However, to be accredited as mediators, they need to have a certain level of basic education and some experience. We cannot provide all the necessary training; therefore, they must have at least 75 hours of mediation or dispute resolution training provided by an external program. Our mediators have certificates, for example, from the Justice Institute in British Columbia, the Canadian Institute for Conflict Resolution, Carleton University, or the Canadian International Institute for Applied Negotiation, and that is their own responsibility. Another important prerequisite is an approval from their immediate supervisor that they can take the time off work as needed as well as an approval from the assistant commissioner of their region that they can participate in the mediator network.
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> Once the candidates have all the prerequisites, we at the Office of Dispute Management, put them through assessment process which includes a one hour role-play. Two experienced mediators play the disputants, and the candidate conducts a mock mediation. One of our senior mediators and myself observe the candidate's ability to hear what people are saying and what the hidden message is, to read the body language, to rephrase and reframe the disputants' utterances, and to manage emotionally charged situations. We find an hour is enough to demonstrate whether they have strength in those areas or whether they need further development. We provide each candidate with the assessment criteria in advance and after the assessment we provide them with a written feedback that includes identified strengths as well as areas for improvement. We indicate whether they are able to be a lead mediator right away, need to co-mediate with an experienced mediator first or start with the observation of some sessions and then co-mediate. Certainly, if new challenges surface once an individual is a member of the network, and we identify a need for further development, we provide the necessary training including workshops and conferences
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> We are trying to involve experienced accredited mediators from the respective regions in the assessment process so that the new mediators get familiar with their colleagues and become part of the local networks. We are so geographically dispersed that we need to develop regional pockets of expertise and support.

A senior mediator who supports the mediator network, added:

> Mediators are assessed against two basic categories of skills: process skills and interpersonal skills. However, having a certificate, some previous experience and training are not sufficient to become an accredited mediator. They have to demonstrate the presence of these skills and receive the assessment at our Office of Dispute Management. We are even more serious about the assessment than any external consultants that we used earlier. After all it is our own office that's at stake and our credibility… As a result of the initial assessment we accredit maybe one out of 25 candidates outright. However, almost all eventually become accredited after completing the required number of co-mediations with an accredited mediator and demonstrating that they have acquired the skills they were lacking initially. But a rare few that are assessed as requiring observations before co-mediating have yet to make the grade.

The volunteer mediators carry out their mission over and above their regular work. When asked about the mediator workloads, a senior mediator commented that all their mediators are very good performers in their jobs, and more often than not complete the same work as others and still find time for mediation. Not in vain their supervisors and the assistant commissioner are asked to give their approval for these people to participate in the mediator network. If the supervisor has serious concerns in this respect, the ODM will not consider those people for the assessment. The obstacle that sometimes needs to be overcome is the lack of knowledge and understanding on the part of the managers about why they need to sign any approvals at all and what good will come out of the mediation network.

Apparently people who have volunteered to mediate disputes have a strong motivation. Why otherwise would they bother taking any courses in their free time and travel to different locations to catch up with their own work afterwards? The mediator network coordinator who himself is an experienced mediator shared his conviction:

> I think that there probably isn't any other work that is more gratifying than helping people get on with their lives… You feel you're really in a privileged place… Very special kind of work.

The dispute resolution process involves a high degree of confidentiality. Therefore, mediators are never asked to mediate cases in their own area if there is the slightest chance that people might know them. Mediators must be seen as third party neutrals rather than clerks, managers or directors. But don't people want to know who their mediators are?

The Assistant Director of Mediation Services:

> Mediators have to be honest about their day jobs, but it is really up to them to share this information or not when they first contact the parties. They have to explain clearly what their role is. They are not there to judge or give the solution, or to impart their wisdom as superiors. It is critical that the parties feel comfortable with the mediator as a person. If either of the parties feels uncomfortable, we offer another mediator. We proceed with the process only upon a mutual consent to do so.

Opinions of some of the disputants who have used the mediation service:

> I did not know the background of the mediators, and knowing it would not make any difference. For me, the most important thing was that they were neutral. I would not want anybody whom I know. Then my privacy would be more vulnerable.
>
> It was better that I did not know the mediators. If I knew them professionally, I would question their neutrality.
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> I myself am a first-line supervisor, and I had a dispute with my subordinate. People who came to mediate us were several steps above me in the organizational structure. To me, it was an advantage. Although they made it very clear that they were not here in the capacity of managers or directors, I couldn't help feeling that they understood things from a larger organizational perspective than a rank and file employee would. It made me feel good about getting my point of view across better. If the mediator was of my own level or below, I do not think that would have changed my trust level. Maybe it would have changed my confidence a little bit…

A union representative who has taken some training in mediation has a few insights into the neutrality issue:

> If I was a mediator, could I as a union person be perceived as neutral? During the training I realized that the hardest parts about mediation are trying to be unbiased and not to suggest solutions.

ADR and the unions

In a highly unionized environment like CRA, unions are among the most involved stakeholders when it comes to the recourse mechanism. When the ADR process was introduced, the agency employees were represented by three unions. While two of them have come to support the ADR initiative, one still does not support it. When some of the non-supportive union representatives wanted to joint the mediator network, they had to give up their union duties in order to not go against their union. One manager, who ultimately settled his dispute with a subordinate through ADR, remembered that the union was very reluctant to give up the rights-based procedure. The roots of the divide can be traced back to the mid-1990s before the first work groups started developing the vision of the upcoming agency. The Assistant Director of Mediation Services remembered:

> In 1995, the Department of Justice came forward with an offer to all departments and agencies to provide training in mediation for formal harassment complaints. The offer came on too short a notice for an organization the size of CCRA to determine whom to send. When the next, and final offer came in a year's time, a decision was made to put out a call letter to employees who were interested in such training and possessed certain related abilities such as strong communication skills. I believe the end result was that the unions may not have been consulted or may not have agreed with the selection process when the call letter was sent out. There may have been a lack of understanding as to what impact this interest based process would have on employees' recourse rights within the grievance process as well as lack of clarity around the union's potential role. The union which was against the initiative, advised their members not to apply. The other two unions were neither for nor against.

Selection of trainees did not end the misunderstandings between unions and the department with respect to the ADR design and implementation at its early stages. A representative of unions which later came to support the process, remembered:

> When the working groups were formed in 1997, union representatives were part of them in a number of different areas, but when it became clear that the recommendations being made by these working groups were not based on the information which had been gathered, the majority of the union representatives withdrew from the process. The design teams that were formed later had very few union and employee representatives and some had none.

Representatives of the supportive unions shared their views on ADR:

> What CRA has done is they formalized a process that I believe all the unions have been using informally for as long as I have represented members. CRA just introduced training for all the staff…. I fully support ADR because why wouldn't I if it gives our members one more avenue to resolve their issues… With ADR, you are not trying to establish blame. Both sides can save face and come up with a solution that works for everybody. Saving face is so important… Nobody wants to accept the blame.
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> Our union was involved in ADR for a number of years. We thought it was far better for us to be at the table and involved so that our voices were heard rather than having no opportunity to influence the process.

Nevertheless, a representative of one of the supportive unions did not deny that for unions and their members, ADR was hard to accept because they were so used to the rights-based process that gave them a certain feeling of security because of the ability to access third party decisions. With ADR, there was a feeling that they were loosing rights. Especially in instances when they noticed management was trying to force ADR to avoid grievances. A representative of the other supportive union added that ADR was introduced at a bad time, when the organization was undergoing a lot of other changes (the largest of them – moving to the agency status); therefore, people felt overwhelmed and did not want any other initiatives.

The president of the non-supportive union was sure that ADR implementation was not acceptable to them, even though the very concept was appealing:

> First of all, we do not need any formal ADR. It is common sense, and we do it all the time. Second, the employer's process is flawed. We were not consulted when the program started. We were not there at the start, so we are not there at the end. It was a one-way street. Right, we were invited to attend, but there is a difference between attending and participating. It is one of those management initiatives that starts and then stops. It started some years ago with the cuddly courses, and then stopped for eight to nine months. We figured out it was another flavour of the month. But more important, it is about differentiation in power, and unless you make it an equal issue on the power structure, it does not work. When we had the Atlantic Union Management Initiative (AUMI) before ADR came on board, both management and unions worked together, and there was a lot more trust and respect. Now the ADR process is not hand in hand. Unions and management are not equal partners. When we accompany our clients to the mediation session and we are told that the union person cannot contribute but

only observe, then we are not partners. ADR is a management-driven initiative, but AUMI was joint-driven. Big difference.

But having said that, my position is that I do not care where we get help as long as it helps somebody. We had a very bad sexual harassment case here, and I agreed to have the ADR mediators so that the parties in conflict could at least work in the same building before the grievance was processed. It took almost eight months or so to get the mediators to come which was too long. To start with, the mediator called my client out of the blue, and the individual even did not know what ADR was all about. As a result, there was some miscommunication between them. We had to request another mediator, and everything was delayed. I had to calm everybody down, explain the process and go right back to the start. We did not have an ADR advisor on site at that point. Only recently we have one person who is travelling 60 miles between two locations and arrives here only when needed. If you do not know a person to call, then the whole ADR process slows down.

When the mediators finally arrived, they did a hell of a job. Those were four days of hard work, and the wound started slowly healing, at least some communication started between the parties. I am more than happy to have ADR coming in if it happens to help at least a little bit…But after four days, the mediators left…and there was nothing. It was a shame we could not keep going for another week. The process was left half-way, the conflict was not resolved, and nobody contacted us afterwards to follow up… Obviously they could not spend a month here, there is cost involved, but when you are not sure what is next….it identifies a flaw in the system. It was a good start, we might be able to help those two individuals…The rights-based does not work well in cases like this.

Challenges of the ADR implementation

Initial implementation is almost complete throughout the Agency, i.e. in over 80% of local sites in the region and 60% of the HQ branches. 77% of employee focus group participants were aware of the ADR components while union representatives and managers appeared to be even better informed (Dispute Resolution System, 2003). Nevertheless, the conclusion of the Mediation Market Survey was that a vast majority of respondents had no actual or meaningful knowledge of mediation as a process. To a certain degree, the focus group results confirmed this (Dispute Resolution System, 2003):

> …employees are still not clear on the roles of the various service providers in the area of conflict management. Only 53% of respondents to the focus group survey were somewhat or completely aware of the differences in the various roles in the area of conflict management. Only 59% of the respondents knew who their ADR advisor was.

In the interviews, several employees, managers and union representatives expressed a need for more information about the ADR process since people do not hear about it in their daily work. It was acknowledged that the process needs a more purposeful promotion so that everybody knows about their options. Although unions are encouraged to offer the ADR option before they proceed with grievances, it does not seem to always be the case. It is possible that unions are sometimes uncertain about the right choice between the rights-based and interest-based approaches. There is more ADR awareness in locations where the process has been made very visible due to the ongoing efforts of the ADR advisors who attend meetings and constantly educate people. However, there are locations which do not have an

advisor on a full-time basis. Also the mandatory one-day information session often turns out to be insufficient to maintain the awareness.

Even in cases when awareness of the ADR option is high, some people who have been through mediation admitted that they felt very stressed due to the lack of prior coaching in behaviours to exhibit during the session. People would like to practice ADR skills in a safe environment to make sure they feel more competent when faced with real disputes. Practice might include role-playing or problem solving exercises with real CRA cases. In addition, people would like to hear success stories to be more convinced that ADR is good for them. Knowing about the positive impact of the interest-based approach, those who fear to face difficult interpersonal situations might see that disputes are not necessarily destructive and can be turned into win-win outcomes. The old paradigm of thinking is still strong that problems and conflicts are shameful; therefore, they should be swept under the rug.

Several interviewees expressed a wish to have the managers behaving more like role models with respect to openness to communication and dispute resolution. If interest-based approach to disputes is not encouraged at upper levels, employees are intimidated to initiate it, especially in situations of unequal power base. However, one union representing supervisors is concerned that employees have the right to file a grievance even if the supervisor offers to resolve the situation through discussion, while the supervisor cannot insist on the alternative dispute resolution, and has to go with the employee's choice. Since supervisors' performance measures include the core competency to apply ADR, they can be put at a disadvantage because they might not have a chance to exercise these skills at their own will.

ADR implementation to a large extent depends on the trust level in the organization. In preparation of the Monitoring report for 2002/2003, when asked about employee willingness to apply the ADR principles, 88% surveyed felt comfortable engaging in an interest based discussion with another employee, 84% with their immediate manager, 70% with their middle-level manager and only 58% with their senior manager (Dispute resolution system, 2003). The Director of the ODM, commented on the trust issue:

> In practice, however, this process requires much more trust than might exist among the co-workers or even more so between managers and their staff. There might be fear of reprisal. Employees might not feel safe to go to their boss and express their disagreement with something.

However, a manager with an experience in ADR is more positive about the trust level within CRA:

> Today there is a lot more trust in the ranks, in the management, and the whole organization than twenty, or even five years ago. Now different levels of managers are very accessible, and an employee and the supervisor can resolve their issues in an informal way by talking and without going to the next level of authority. If employees do not trust their supervisors, they won't talk to them about their concerns out of fear that the supervisor might retaliate in some way, say, give hard work or put the employee on a bad shift that is hard to complain about. Furthermore, if I as a supervisor trust my own manager, I will be guided by my integrity and talk to my employees informally about any issue they may have. However, if I do not trust my manager, I will be documenting everything to death and ensuring all the evidence and witnesses to defend myself. The bottom-line is that when there is trust, there is

> no need for ADR advisors and mediators. People are applying the ADR principles automatically.

A huge challenge and a threat to the existence of the new recourse mechanism are budgetary constraints. The funding for the program is not indeterminate. Since the advisors are paid from the operating budget of each branch, but they report back to the ODM office in Ottawa, the branch management may not be aware of the value advisors add. Because of the confidentiality of the process, branch management does not know if the money has been spent wisely and they can decide to stop financing the advisors, who are key to the whole mechanism. Furthermore, each branch is covering the cost of the mediators they have used; therefore, they try to book mediators for a limited time. There have been instances when disputes were left half-way or were too rushed placing the parties under pressure and ending up with poorly thought-out agreements.

Does ADR pay off?

Intuitively ADR makes a lot of sense. Legal procedures to settle disputes are costly and time consuming. Moreover, their confrontational nature affects the trust and relationships among the disputing parties as a result of which people will not work well together, and workplace productivity will deteriorate (Final report, 1999). In contrast, ADR offers a quicker resolution of disputes and requires less dollars, thus more direct time can be spent on the job. Furthermore, ADR cures the source of the conflict, not just its symptoms; therefore, there is a high probability that the conflict will not reoccur. What is also important, with ADR the confidentiality and privacy of both parties are preserved, whereas in case of grievances, investigators are collecting evidence from witnesses and the case is made public. Consequently, it can be expected that ADR will improve morale, absenteeism, and turnover, and health claims will decrease (Dispute resolution system, 2003).

The Director of the ODM has noticed that responses to the Public Servant Survey pertaining to trust issues improved in 2002 as compared to 1999. He believes this might have happened because of the ADR process, the usage of which has increased. However, the Monitoring report shows that the number of grievances in fiscal year 2002/2003 has increased as compared to the previous year (Dispute resolution system, 2003). Especially it can be said about cases that involve disagreements with respect to the classification, staff relations issues at all organizational levels, and harassment complaints. The Director knows that it is difficult to attach a direct dollar value to ADR:

> How to measure the impact of ADR is a real challenge. What is the true economic return on investment? Logically it can be expected that ADR reduces the cost of dealing with formal grievances. It is also expected that it may have a positive impact on absenteeism and turnover, but ADR might not be the only factor that influences these outcomes… As of now, the number of grievances has not decreased. We have not determined yet why people are more inclined to use their rights as opposed to ADR. My feeling is that those are different types of issues that people bring up through ADR and grievances… ADR has been used basically to resolve relational and communication disputes, but not more systemic issues or disputes based on misinterpretation of the collective agreement. It could also be that ADR raises people's awareness of harassment, for example, and they file more grievances because they do not feel safe with the interest-based resolution.

A manager asked about the benefits of ADR, that he has observed in his area, said:

> In this region, there used to be an unusually high number of harassment complaints in the past compared to the rest of the public service. The complaints have gone down now. In the past two years we had just a couple that I am aware of. I am absolutely sure that this is thanks to ADR. It is much easier now to kick the door and go to the manager and tell him how one feels about something… People start understanding that it does not need to be a must-win situation but rather a win-win situation when you air things out and learn why you are not getting everything your way… With the old grievance process, it was also written in the policy that the first step should be a discussion before one proceeds any further. However, people paid lip service to it. People came in, talked about something while holding their harassment complaints behind their backs already… With ADR this is not happening. People put all their dirty baggage on the table, and get to the bottom of the issue.

Is ADR here to stay?

The goal of the ODM and all those who are working hard to make ADR happen is to prove to everybody in the organization that the new recourse mechanism is not a flavour of the month and is here to stay. Opinions differ on whether ADR has become a part of CRA culture yet. A manager shared his view:

> Has ADR become a part of CRA culture? I believe it has. Everybody knows what it is and it is the first thing that comes to people's minds in a subconscious way when things get heated… ADR is not a rocket science. In fact, it is common sense, and in our area, people start applying these principles in the day-to-day work with or without advisors…Has ADR been that deeply ingrained in people's minds that we do not need any advisors and mediators any more? No, we still need them…

Quite a few people believe that the culture has started changing, but there is still a long way to go. One of the design team members assessed the current situation:

> We need to change the culture so that employees have open doors where they can feel comfortable coming in and expressing anything they disagree with….The most enthusiastic areas of acceptance are the regions. They said they were going to train everybody and they did. Actually we have a lot of resistance in the headquarters.

CRA has gone through the phases of initial implementation of the program in the regions and then in the headquarter branch and setting up the network of ADR advisors. Now it has reached the third phase of sustainability. The program needs to be integrated into all the other programs so that it gets ingrained into the organizational texture. The director of the ODM believes that the critical mass of 80% of those who support the ADR approach will be achieved and then ADR will become internalized. However, that does not mean that the office will become redundant.

ADR is meant to help all – whether they are executives, managers, clerks, or whole teams as conflicts happen along vertical as well as horizontal lines as a result of misperceptions and lack of understanding and communication. ADR advisors are keeping the momentum up.

Their doors are open to those who need mediation service and those who need advice on how to resolve disputes or to conduct difficult conversations on their own. In addition, there is an 800-number people can call anonymously. Consequently, the positive perception of ADR in the organization (as seen from the results of the Monitoring report) as it works on a win-win premise for both parties may suggest that people will not want to fall back on a solely rights-based approach to dispute resolution. Another strong incentive to keep the ADR program going is the requirement to have alternative dispute resolution in place in the whole public service. A senior advisor, ADR Services, believes that the requirement to have an ADR program helps to justify its continued funding within CRA.

Where do we go from here?

It is stated in the Monitoring report that the transition within CRA has clearly begun (Dispute resolution Systems, 2003):

> The Agency is moving towards becoming a conflict competent organization; an organization that systematically seeks to prevent disputes and considers an interest-based approach to resolve disputes; an organization that values dialogue, transparency and trust; and an organization that is recognized by our colleagues within government as one which is on the leading edge in the field of conflict resolution.

To maintain the good reputation within the public service and continue building a healthy workplace within CRA, the ODM has to overcome the challenges stemming from budgetary constraints and even more so from the old paradigm of thinking. Having studied the Mediation Market Survey and consulted with Human Resources, unions and employee groups, the ODM started working on a national mediation strategy. Furthermore, in the process of approval is an Agency-wide Union Management Initiative which elaborates on a similar initiative introduced in the Atlantic region in the early 1990s and which also incorporates the ADR process. The new initiative will have a broader stakeholder base, and it will serve as a framework for more productive cooperation between management and unions in the future. Nevertheless, the question remains – how to keep the momentum going?

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