

Conflict Resolution in the Workplace: What Will the Future Bring?

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Collaborative processes to resolve conflict in the workplace have permeated organizations in North America over the past thirty years. Mediation and arbitration processes made the earliest inroads in organizations, joined more recently by conflict coaching and organizational ombudstry. Concurrently, law schools and other graduate schools expanded their alternative dispute resolution (ADR) offerings and conflict resolution programs. This article charts the trends in workplace conflict management and ADR education and proposes where the field may be heading in the coming years. The authors note growing demand for workplace mediation, coaching, and ombuds offices, and they call for broader adoption of integrated conflict management systems.

Collaborative processes to manage and resolve conflict in the workplace, such as conflict coaching and mediation, have permeated organizations in North America and beyond over the past thirty years. In all three organizational sectors (for-profit, nonprofit, and governmental), leaders have experimented with internal and external mechanisms to reduce the relational and financial costs of unresolved conflict. Many larger organizations, particularly corporations, governments, and universities, have incorporated the role of organizational ombudsman to assist organizational members in choosing and pursuing one or more of the conflict management options that were becoming available. Concurrently, conflict scholars

and practitioners encouraged the development of integrated conflict management systems to combine interest-based, rights-based, and power-based conflict resolution options in one ideally seamless system (Constantino and Merchant 1996; Lipsky, Seeber, and Fincher 2003; Ury, Brett, and Goldberg 1988).¹

As organizations and communities adopted interest-based approaches to resolve and manage conflict, law schools and other graduate programs expanded their offerings to meet the perceived growing demand for practitioners. Alternative dispute resolution (ADR) courses and programs proliferated in law schools as graduate programs in conflict analysis and resolution mushroomed in most American states and Canadian provinces. According to Brian Polkinghorn (pers. comm., 2014) of the Center for Conflict Resolution at Salisbury (Maryland) University, there are now more than 115 university-based graduate programs in the United States and Canada that grant degrees in peace studies, conflict resolution, or ADR.

But as workplace conflict resolution processes and university-based conflict studies programs have ballooned over the past generation, many wonder where the field is headed next. At the October 2013 Association for Conflict Resolution (ACR) Conference in Minneapolis, practitioners gathered to “look into the crystal ball of workplace ADR.” Following the presentation, *Conflict Resolution Quarterly* editor Susan Raines proposed an article summarizing trends that are emerging in four critical areas: conflict coaching, mediation and arbitration, organizational ombudsperson, and graduate education (particularly in law schools). Three panel members—Cinnie Noble, an internationally known leader in the conflict coaching field; Richard Fincher, an experienced labor mediator and arbitrator based in Phoenix; and Sharon Press, a professor of law at Hamline University—contributed to this article. Another participant in the mini-plenary, Susan Kee-Young Park, an experienced organizational ombudsperson, was invited to be the fourth contributor. I (David Brubaker, associate professor of organizational studies at Eastern Mennonite University) compiled the article.

All four contributors are highly experienced practitioners in their respective fields. Two of them (Park and Press) work for large universities, and the other two (Noble and Fincher) are successful independent practitioners. Following are the substantive sections from these contributors addressing their respective areas of practice and how they envision their discipline intersecting with workplace conflict resolution in the foreseeable future. In the concluding section, I offer a brief summary of each

contributor's predictions about his or her discipline, followed by my own thoughts on the overall future of this field. In an era of continuous change, none of us can say with certainty how any field might evolve over the next thirty years. Instead, we have each sought to chart the trends that we observe and where they might take us in the next few years.

—David Brubaker

Trends in Conflict Management Coaching

Conflict management coaching, also known as conflict coaching, has steadily emerged as a practice within the conflict management field since the 1990s. This section explores some of the current trends—first by looking at the field of coaching and then by discussing the rise of conflict management coaching as a coaching specialty and ADR technique.

The Field of Coaching

The concept of coaching has many meanings and is used in a variety of contexts. In the ADR field, some practitioners used *coaching* to describe the interactions with parties during caucuses and premediation and the assistance provided by mentors during mediation training. These are certainly forms of coaching, but an overview of the coaching field itself will provide a larger context to describe the growth and trends of conflict management coaching.

In the 1990s, coaching as a profession began to develop in the United States and elsewhere. This was primarily due to the efforts of visionaries who saw the need for a one-on-one process to help people improve their personal and professional lives in a goal-oriented forum that inspired change and action. The International Coach Federation (www.coachfederation.org), the largest international coaching organization, defines *coaching* as “partnering with clients in a thought-provoking and creative process that inspires them to maximize their personal and professional potential.”

There are many types of coaching in various categories—life, business, and organizational. Specialties are vast, and people obtain coaching in areas ranging from weight loss to leadership. As one of many specialties, conflict management coaching is taking hold not only in the ADR field but also in the larger field of coaching, where trained coaches have been helping people optimize their ability to engage in conflict for many years. The development of standards for training, accreditation requirements,

codes of conduct and ethics, core competencies, and other initiatives of professional coaching organizations has served to establish the credibility of coaching worldwide, contributing to the growth and acceptance of conflict management coaching.

Conflict management coaching is defined as a one-on-one process in which a trained coach helps individuals gain increased competence and confidence to manage and engage in their interpersonal conflicts and disputes. It is a future-focused and results-oriented process that concentrates on assisting clients to reach their specific conflict management objectives.

From no Internet presence in 1999 to the thousands of references now, it is evident that a number of conflict management coaching processes are being designed and taught, in addition to the models published in book form (Bulman 2012; Jones and Brinkert 2008; Noble 2011). The numbers of presentations at conferences and articles on this concept have risen exponentially in the past five years. Increasingly, master's and certificate programs on conflict management in Canada, the United States, and Australia are including conflict management coaching in the curriculum. It is clear that conflict coaching has found its way into the toolboxes of mediators and other ADR practitioners, consultants, and coaches.

Trends in One-on-One Coaching

Contrary to most ADR processes and literature that focus on conflict once it is manifested (Gawerc 2013; Lewicki, Weis, and Lewin 1992; C. H. Mayer and Louw 2012; Rahim 2010), conflict management coaching may be used in a range of contexts—before, during, or after a dispute emerges. Furthermore, this process is not only about resolving disputes, the thrust of many practices in the ADR field. Rather, it may be used when people want to self-manage a conflict or a potentially problematic situation and resolution may not be the main objective. Conflict management coaching may also be used to prevent unnecessary conflict, that is, to preempt an escalation of apparent discord. Being more effective at managing and engaging in conflict in general, not just regarding one dispute, is also a goal for many clients. These and other applications of conflict management coaching are increasing as this technique becomes better known and used more often in the ADR field.

Based on my experience and from regular communications with leadership coaches, one of the fastest-growing trends in conflict management coaching is for leaders in organizations for which “coping with internal and external problems forms the foundation of managerial work, and these

problems almost always consist of some form of human conflict” (Kilburg 2000, 217).

In this regard, one of the goals of many leaders is to strengthen their conflict competence, a term that Runde and Flanagan (2012) described in their book, *Becoming a Conflict Competent Leader: How You and Your Organization Can Manage Conflict Effectively*: “Conflict competence is the ability to develop and use cognitive, emotional, and behavioral skills that enhance productive outcomes of conflict while reducing the likelihood of escalation of harm” (Runde and Flanagan 2012, 8). Other commentators and scholars have similarly acknowledged the importance of leaders engaging effectively in conflict (Cloke and Goldsmith 2003; Gerzon 2006; Heifetz, Grashow, and Linsky 2009; Kuttner 2011).

It is likely not necessary to justify and provide reasons for leaders to participate in conflict management coaching. Many recognize the importance themselves. For instance, according to a recent article referencing statistics from a Stanford University/Miles Group survey (Center for Leadership Development and Research 2013), conflict resolution is reported as a major area of development for which CEOs express the need for coaching. One of the reasons given is that “a CEO who can manage and channel conflict in a constructive way can get to the root of issues, apply rigor to the team’s thinking, and, ultimately drive the best outcomes. So cultivating this skill can be a powerful tool to help the entire organization” (Gavett 2013, 1). Another article regarding the same research indicated that nearly 43 percent of CEOs surveyed rated conflict management skills the highest area of concern: “When you are in the CEO role, most things that come to your desk only get there because there is a difficult decision to be made—which often has some level of conflict associated with it” (Center for Leadership Development and Research 2013).

Trends in Premediation Coaching

Another trend regarding conflict management coaching is the growth of premediation coaching. Generally premediation meetings for many mediators have included process information and some preliminary preparatory discussions. There was a time when mediators meeting with parties prior to engaging in mediation was not considered appropriate due to concerns about bias, violating confidentiality, and related concerns (Blades 1984; Moore 2003). Other commentators support private meetings, though often within the context of the mediation process—in caucus (Billikopf-Encina 2002; Moore 1987; Odidison 2004).

Increasingly, however, mediators are using coaching techniques to assist the parties to prepare more intentionally for mediation. There are variations on how this happens. It may, for instance, involve up to three private sessions in which the mediator helps each party focus on the desired outcome, identify their concerns, and consider how they will convey and respond to difficult messages. Sessions may also be for the parties to set intentions on how they will interact and align their words and decisions with the outcomes they want.

Coaching in this context—by the mediator—has limitations that individual coaches for each party do not present. Separate coaches are not at risk for perceived bias, which may occur if the mediator is concerned about retaining impartiality while conducting this hybrid role.

While it is not always feasible or cost-efficient for each party to have his or her own coach, such an approach is being used in some organizations. When the parties have their own coaches, in addition to assisting in the ways referred to, they are able to go beyond preliminary preparations. That is, the coaches can conduct in-depth rehearsals of anticipated discussions that the party is concerned about and help them more fully explore the conflict and its impact.

Coaches who provide premediation coaching may also provide ongoing postmediation coaching to assist the party to process any aftermath of the conflict. This may, for instance, occur when clients choose to focus on skills they want to develop, based on their experience in the mediated dispute. Postmediation coaching is not yet widely used but may become more common as the field continues to grow.

Trends within Integrated or Informal Conflict Management Systems and ADR Programs

Since the early 2000s, conflict management coaching has emerged as one of the options in the spectrum of services provided in integrated or informal conflict management systems (ICMS) and ADR programs. For example, in 2001, the Department of Defence/Civilian Forces was the first federal government agency in Canada to include conflict management coaching in its dispute resolution program. Most other Canadian federal government agencies followed suit in the ensuing years as part of legislated requirements for what became termed informal conflict management systems. In 2004, the U.S. Transportation Security Administration (a division of Homeland Security) developed a peer conflict management coaching program as part of its ICMS, and in 2013 the U.S. Air Force instituted a

conflict management coaching program. The Department of Defence and the Queensland Police Service in Australia have added conflict management coaching to their program services in the past ten years.

These and other agencies and organizations in Canada, the United States, and Australia have trained and are continuing to train internal conflict management practitioners and others to provide coaching to staff. External conflict management coaches are also retained when it may not be viable or appropriate to use internal staff.

Conflict management coaching holds a unique place as an early intervention in the informal self-help category of the spectrum of options of any organizational systems design. Providing staff with the opportunity to consider and proceed on their own initiative with the help of a trained coach adds a new dimension to a systems approach. Whether using the taxonomy of interest, rights, or power to describe processes along the spectrum, conflict management coaching has increasingly become an integral part of organizational dispute systems. Beyond an initial self-help option, it may be used anywhere along the continuum, alone or in tandem with other processes.

This trend will likely continue to grow in North America and other parts of the world as ADR communities, coaches, and organizations learn more about how coaching and its applications fit within the design of an internal system for managing conflict.

Summary Trends in Conflict Management Coaching

The trends referred to here only scratch the surface of what is happening with coaching in the conflict management field and what the future is likely to bring. The applications are growing exponentially, and we will see the development of standards of practice and training along the way.

In the meantime and in summary, these are four of the common trends:

- One-on-one coaching for people who want to manage their conflicts independently or under circumstances when the other party does not attend or want to participate in mediation
- One-on-one coaching for leaders and others who want to develop stronger competence to engage in conflict more effectively
- Premediation coaching to prepare parties to participate in mediation with increased confidence and skill

- As an option for staff to access within ICMS early on as a self-help mechanism and at other places along the continuum of conflict
–Cinnie Noble

Workplace Dispute Resolution: Exploring Trends in Mediation and Arbitration

This section reflects on the past, comments on the present, and suggests trends for the future of workplace mediation and arbitration.

External Observations about ADR Trends

In recent years, numerous articles have been written on the future of ADR in the United States (Leathes 2012; Lipsky, Seeber, and Fincher 2003; B. Mayer 2004; Philips 2012; Stipanowich and Lamare 2011). On the positive side, as one critic observes, “There is much good in ADR, including training curriculums, business schools that finally teach negotiations, practitioner skills, government use of ADR, and growing acceptance of collaborative law” (Leathes, 2012, 2). Other observers acknowledge the establishment of academic programs for ADR, the emergence of multiple mediation styles, broad acceptance of ADR by the judiciary, and general societal acceptance of resolving disputes out of court. The job satisfaction of a mediator is ranked as very high (Raines, Pokhrel, and Poitras 2013).

On the negative side, one critic observes a lack of national leadership, the absence of a national credentialing system, inadequate diversity of neutrals, narrowing practice fields, and a continuing lack of funding to research process outcomes (Leathes 2012). Other observers criticize an overreliance on volunteers, the loss of innovation by neutrals, and increased gaming of the system by advocates. Others criticize academic programs for selling a product (mediation) for which there is no job market (Raines et al. 2013).

At the extreme, some critics fear the collapse of ADR because of its increased predictability and being co-opted as a docket clearing process by the courts (Leathes 2012). B. Mayer (2004) argues that the enemy of ADR is our self-limitation, that is, the restricted role by which we have defined ourselves. Recent academic research on the use of ADR by corporate counsel reveals an increasing dissatisfaction with commercial arbitration (Stipanowich and Lamare 2011). One critic laments, “Sadly, I do not think much has changed in business mediation since 1998. There are still a group of progressive corporate leaders, still a group of corporate adherents (those

that say they are always ready to mediate ‘except not in this particular case’) . . . still a small group of practitioners who earn a living at it, and still a vast group of practitioners who don’t. . . . There is far more money to be made from people wanting to be mediators, then from people wanting mediations” (Philips 2012, 1).

Workplace Mediation

Mediation refers to the consensual process of resolving a dispute with the support of a third-party whose value stems from enhancing communication, encouraging reflection, and reality testing. There is no imposed decision. Today the majority of employment cases are mediated, often more than once. Premediation briefs from law firms are 98 percent argument and 2 percent options for settlement. Regrettably, parties agree to mediation to end the contentious and costly litigation, not to own the outcome in a creative and satisfying manner. Emotional relief is obtained, but only from dread of the BATNA (best alternative to a negotiated agreement), that is, the American judicial system.

Any examination of workplace mediation must distinguish between two vastly different applications: the mediation of interpersonal or team issues without lawyers versus the mediation of litigated (law-based) matters with lawyers.

Mediation of Interpersonal or Team Issues. Disputes concerning interpersonal or team issues commonly arise from personality conflicts, personal recognition, or disagreements about budgets, staffing, or strategy. These disputes do not involve statutory (discrimination) claims. Interpersonal disputes generally involve two people, often the supervisor and subordinate. In contrast, team disputes involve several people conflicted with some issue of group performance. Lawyers do not participate as advocates. Typically these disputes have been festering for several years and only recently have risen to the point of an obvious breakdown in organizational effectiveness. Parties are reluctant to mediate, in part due to a lack of familiarity with the process and a preference to deny the problem exists or requires attention. Importantly, the purpose of mediation is not always to settle, but rather to clarify expectations and reset relationships (Cloke and Goldsmith 2000). Without a statutory claim, such as age or race discrimination, the mediation is not always voluntary but is rather required by management. Typically there is an assumption of a continuing relationship between the parties.

The future of interpersonal mediation in the workplace is exciting. As the perceived value of retaining key staff increases, employers will give greater attention to supporting dispute resolution among staff. As employers move from an individual to a team performance model, greater emphasis will be given to assessing and mediating team conflicts (Noble 2011). I predict a silent revolution of mediations for interpersonal and team disputes and a significant increase in demand for these issues. Mediators may be considered more as organizational consultants. I predict these disputes will allow for more than one day of mediation, returning to the core values of self-determination and time for true reflection. Finally, I predict a second silent revolution in the use of conflict coaching and conflict style diagnostics to resolve interpersonal and team disputes.

Mediation of Litigated Matters. Disputes concerning statutory claims (discrimination, breach of contract, or workplace torts) are the engine of workplace ADR because everyone is getting paid and is willing to mediate to avoid trial. Lawyers are involved in their resolution. The process is often caucus driven, with the mediator shuttling between the parties with offers. Parties are not reluctant to mediate for several reasons: the advocates are encouraging mediation, the courts demand resolution, and the judicial system is too costly and broken to accommodate most litigation. Finally, there is not an expectation of a continuing relationship (in the private sector) between the parties. The employee is not returning to work, no matter the result.

The current state of mediation of statutory claims is mixed. In-house counsel desires mediators with specific industry expertise and a proven track record of settlement. The process has moved completely from the facilitative to the evaluative model. Mediation has become a settlement conference, often by retired judges with no mediation training or process model. The core values and premise of self-determination are gone: what is left is settlement under pressure. The process has effectively disenfranchised nonlawyers. Ten years ago, the mediator would stay in the caucus room during the party discussion of their options; today the mediator is “excused.” The system involves lawyers’ gaming the process: nothing said to the mediator is now considered to be reliable.

In the immediate future, there is no reason to anticipate a change. The judicial system will remain underresourced and procedurally broken. Mediation of the litigated case will continue as a settlement conference focused on legal evaluation. The process will involve the “slow march to

the middle,” referring to the painful process of starting with extreme and meaningless positions on the spectrum and working to a settlement. In the longer term, there is hope of change. Statutory mediations may move to a two-track model: one track focused only on settlement and a second track focused on repairing relationships.

Workplace Arbitration

Workplace arbitration refers to the private adjudication of employee disputes in union and nonunion settings. Arbitrators are jointly selected by the parties. The hearing is adversarial in nature and produces evidence (primarily through witness testimony) to resolve factual disputes. Awards are binding in nature.

There are four applications of workplace arbitration. The oldest model is labor arbitration, involving disputes arising from a collective bargaining agreement covering unionized employees. The second model involves statutory employment disputes that were negotiated in an arm's-length manner, typically involving executives. The third model involves statutory employee disputes that were not negotiated but were imposed on the employee as part of a predispute agreement to arbitrate (mandatory arbitration). The fourth model involves the arbitration of employment disputes (typically discharges) by labor arbitrators, but in a nonunion setting applying the traditional just-cause standard. This article focuses on the two most common applications: labor arbitration and mandatory employment arbitration.

Labor Arbitration. The golden age of labor arbitration, with the peak of annual case volume, passed in the 1970s (Teple 1980). Ever since, the number of labor cases has slid each decade, in parallel with the decrease in union density in the private sector. Recently state legislative actions to eliminate the rights of public sector unions (such as in Wisconsin) have contributed to the decline in case volume.

The future of labor arbitration is mixed. There is fear that young lawyers with exposure to employment litigation will enter the field as advocates and disrupt the traditional values and civility of the process. The case volume from the private sector will continue to decline. However, the case volume from the federal sector is anticipated to remain steady and not be diminished by legislative action. Similarly, the case volume from most states and cities is anticipated to remain strong. I predict the future of labor

arbitration to be more of the same. Similar to ADR in general, 25 percent of the labor arbitrators are selected for 75 percent of the work.

Mandatory (Employer-Imposed) Employment Arbitration. After successive pro-employer arbitration cases by the U.S. Supreme Court, many observers anticipated a tsunami of imposed schemes by employers. At one point, some academics believed that there were more nonunion employees covered by arbitration agreements than there were union employees covered by a labor arbitration clause (Lipsky, Seeber, and Fincher 2003). However, the prediction of a tsunami never materialized. The golden age of mandatory employment arbitration may have already passed, with case volume having peaked around 2010. There are at least three reasons for this shift. First, employers and their law firms believe the court system is more advantageous than arbitration, where some arbitrators will not grant dispositive motions and discovery is limited. Second, employers and their law firms contend that the cost of arbitration (provider and arbitrator fees) exceeds its value compared to defending in court. Third, both plaintiff and defense law firms contend they need the right to appeal decisions that they disagree with on the law or facts. The lure of mandatory arbitration has become tarnished.

In the short term, there is no reason to anticipate a change. Nonunion employers have had sufficient time to study mandatory arbitration and decide whether to impose the scheme on their employees. Concurrently defense law firms have reached opinions on the pros and cons of mandatory arbitration, and have convinced their clients which way to go on the issue. Some employers have reverted to allowing employees to sue them in court. Therefore, I see no wave of more employer-imposed schemes.

In the longer term, there are several potential trends. I predict that mandatory arbitration schemes will require mediation as a prerequisite. Today, many do not. I predict arbitration will be integrated into an integrated conflict resolution system, and not remain a separate process. I predict some arbitration schemes will provide for appellate review, such as under the new American Arbitration Association (AAA) appellate rules.

In conclusion I offer several trends in workplace ADR:

- The volume of employment disputes and litigation will increase, leading to a higher volume of cases to be resolved through ADR. Congress continues to enact antidiscrimination law. Employees are increasingly focused on protesting perceived injustice.

- Employers will gradually embrace workplace systems. *Workplace integrated conflict management systems* refers to a dispute resolution model that acknowledges that employee conflict is inevitable and should be channeled with both interest- and rights-based solutions.
- The internal costs of conflict in large organizations will become recognized as a source of productivity, with executives trained and expected to become conflict competent. Leaders will be selected, trained, and assessed on their effectiveness handling conflict (Noble 2011).
- Online workplace ADR will become a reality. The workplace (meaning jobs) will continue to be virtual (distributed across the globe), requiring an alternative to the traditional face-to-face ADR process. Technology, such as videoconferencing, web boards, and Skype, will be integrated into workplace ADR (Katsh et al. 2013).
- Commercial (including employment) arbitration will rebound in popularity. Arbitration will innovate and become less expensive and less formal. Corporations will consider the drafting of the ADR clause to be important rather than an afterthought in the contract. Transactional lawyers will become experts in dispute problem solving.
- Workplace ADR will morph into the broader rubric of organizational development, focused on creativity, innovation, and process improvement. Dispute resolution will become less of a law-related institution. Human resources will embrace ADR instead of fearing it. For example, interest-based negotiation (IBN) and conflict coaching will become the norm (Noble 2011).

—Richard Fincher

Trends in Organizational Ombudstry

Although the profession is expanding by leaps and bounds, what an ombuds² is and does is still a mystery to many. Add to that the fact that there exist different kinds of ombuds (classical, advocate, and organizational), and it is no wonder that ADR practitioners may be somewhat confused about how ombuds fit into the world of ADR service providers. So before a discussion of trends in the field of ombudstry, I begin with parameters and definitions.

The Role of the Organizational Ombuds

This section discusses trends in the practice of organizational ombuds. Classical ombuds and advocate ombuds, although sharing some similar functions with organizational ombuds, have many distinct functions and purposes and operate under different standards of practice (Howard 2010; Rowe 1995).

An organizational ombuds is a conflict resolution professional embedded in an organization to serve as a problem-solving and conflict management resource for designated constituents within and/or outside of the organization. In an academic institution the constituents served may include students and in a health care setting the constituents may include patients, but in these institutions and in most others, ombuds are often brought on board to serve the organization's workforce. In many institutions, the organizational ombuds also has the role of providing feedback to the organization on systemic issues the ombuds may identify as contributing to conflict in the organization, including issues of unfairness.

And how does the ombuds office provide its services? The delivery system is straightforward. The ombuds, in sessions with an individual visitor to the ombuds office, helps the visitor clarify his or her issues of concern and become aware of relevant policies, procedures (including time lines with respect to the formal procedures), and resources to deal with the issues. The ombuds helps the visitor develop a range of options and strategies to deal with the issues and may help the visitor develop skills to move forward with the option the visitor selects. The ombuds office can also mediate discussions between two parties and may facilitate group processes. In other words, the ombuds provides coaching, mediation, and facilitation support to constituents of an organization, with the added value to the visitor of having an ombuds familiar with the cultural byways, processes, and resources of the particular institution within which the issue occurs.

What sets the organizational ombuds apart from other offices at an institution that provide assistance or forums to resolve conflicts are the standards of practice under which ombuds services are provided. Many institutions establish the ombuds office well outside of other institutional functions so that constituents will see that it is a safe place to talk and is not a conduit of private information to administration or aligned with the particular interests of management or other constituent groups. This understanding of what an organizational ombuds office can provide in the way of independence, confidentiality, impartiality, and informality has been

most clearly articulated in the framework provided by the International Ombudsman Association's (IOA) Code of Ethics and Standards of Practice, and many job postings for organizational ombuds use the terms articulated by the association or specifically refer to the IOA standards of practice.³

The IOA perspective on how an organizational ombuds should render services is not, however, universally held. Some institutions have established ombuds offices without reference to the IOA standards of practice, based on the perceived conflict resolution needs of their particular organization. They may, for example, believe that in the interest of economy and expertise, the office should provide on-the-record conflict resolution services, including formal complaints of, say, sexual harassment, in addition to informal conflict management services. Or they may create a part-time peer ombuds model that places more emphasis on understanding substantive information in an organization's subject matter areas than on an ombuds office's functional independence.

Trends in Organizational Ombudry

So just as it made sense to start this discussion with definitions because ombudry is a new enough profession that many outside the profession do not understand what an ombuds does, it is also the case that ombudry is a young enough profession that it is itself in a process of self-definition. And this process of self-definition is a fundamental and critical trend in the profession.

Inside the IOA, there are a growing number of discussions about whether the standards of practice articulated by the association should be reformulated or if they even truly represent the current state of membership practice. For example, recent issues of the *IOA Journal* have contained articles critical of the enunciated standards of neutrality and informality (Gadlin 2011; Seebok 2011; Ulrich 2013). As stated by Howard Gadlin, a respected and independent thinker within the ranks of IOA ombuds, "I think it is time to revisit our Standards of Practice and to assess whether or not they adequately support the essential qualities of the ombudsman role" (2011, 44).

The IOA Standards of Practice, particularly as articulated in IOA's aspirational "Best Practices," can appear rigid and exacting. But there are reasons to call for strict adherence. Ombuds adherence to standards of practice may help justify recognition of an evidentiary privilege that can protect communications with an ombuds from disclosure in a judicial forum.⁴

I choose to call the trend one of self-definition rather than one toward professionalism in order to escape the freighting often present in the term *professionalism*. I believe that most ombuds, in attempting to explain their role in the organizations in which they are embedded, look for ways to characterize themselves with enough clarity to show how they can help constituents and be effective agents for change in their organizations. But one impulse contained within this trend of self-definition is the impulse to standardization and quality control. Efforts to demonstrate adherence to consistent ombuds standards, however, is in tension with a diversity of actual ombuds office practices and certain institutional requirements (e.g., mandatory reporting), and the impulse to standardize rubs many ombuds the wrong way and, in some circumstances, may not be achievable by ombuds given institutional objectives for the office.

Two issues currently under discussion by the profession also appear to fall within the trend of ombuds self-definition: certification and membership restrictions. The IOA instituted a certification process for organizational ombuds, and there is currently an effort afoot for the accreditation of organizational ombuds offices. Certification of the profession appears to support the goal of obtaining an evidentiary privilege for ombuds as well as in the estimate of some, providing quality control and professional credibility.⁵ In contrast to the impulse to recognize a tiering of ombuds qualifications, there has also been discussion in the IOA about whether IOA's "member" registration category, which excludes persons who cannot represent that they are able to practice fully to IOA standards, makes sense in light of the IOA's desire to be more inclusive and to increase its membership and international presence.

The issues of standards of practice, certification, and membership requirements will no doubt be addressed in some fashion as part of the process of ombuds self-definition. However, since a requirement for the governmental licensure of ombuds is not currently part of the picture, and since some ombuds feel no need to operate as part of a standardized system and may have different personal and institutional priorities and interests, where the process will lead is unknown. And although the trend to professional self-definition appears central to the future of ombudstry, unless standards of practice, certification, and professional membership issues are recognized as related parts of a whole, it appears to be a process destined to proceed in fits and starts.

Another trend is the growing number of graduates of conflict resolution programs entering the profession of ombudstry. Graduate training in conflict

resolution is beginning to result in an increasing number of ombuds with systematic training in conflict resolution. Many in the ombuds old guard grew up professionally in areas such as the social sciences, law, and religion, and they often acquired ad hoc training in facilitation or mediation certification programs or workshops. Whether this trend of developing conflict resolution professionals through intensive graduate curricula will change the approach and direction of ombuds office operations remains to be seen. There is certainly more information floating in the air about systems theory and fields such as neuroscience. And this new information, theory, and analysis, whether it comes in through new personnel or through conflict resolution literature and workshops, may expand the thinking of the ombudstry profession and provide a more multifaceted understanding of conflict management theory and a more nuanced practice.

Perhaps the biggest trend in ombudstry is the fact that the profession itself is trending. More organizational ombuds jobs appear to be opening at a wide variety of institutions.⁶ Government has seen the value of organizational ombuds to serve both internal and external constituencies (Gadlin and Levine 2008). Health care providers are becoming increasingly aware that ombuds are a useful component of an effort to address the challenges of a decidedly hierarchical system with many different professional cultures, as well as dealing with patient concerns. Ombuds have developed a substantial history and growing presence in academe,⁷ and a number of corporations have responded to whistle-blowing regulations and litigation by establishing ombuds offices.

Organizations are recognizing that not only do ombuds offices provide constituents a safe place to discuss their concerns, assisting in creating an environment to support employee engagement and retention, but that they also serve to reduce the risks and costs associated with employee stress, injury, and litigation. It appears that institutions are also recognizing the economy of bringing conflict management resources in-house rather than by contracting mediation, facilitation, and coaching services ad hoc as needed. And many organizations believe that there are significant benefits in bringing on board someone who can develop an intimate familiarity with the institution's structure and cultural byways. This move to employ full-time ombuds rather than to deal with conflict within the organization through contract hire of other conflict resolution professionals may in some measure account for the fact that while membership in ACR appears to have stagnated in recent years, membership in IOA is decidedly on the rise.

Conclusion

Organizational ombudstry, a relatively new profession with a growing foothold, is in a process of self-definition that has fueled an internal trend to review standards of practice, certification and accreditation issues, and membership requirements. It is a dynamic profession, enjoying a trending influx of conflict resolution program graduates as well as new information, theory, and analysis relevant to the practice of ombudstry. And the profession of ombudstry is in itself a trend as institutions begin to see the effectiveness as well as practical and economic value of having a range of informal conflict resolution services embedded in the institution. Organizational ombudstry is a trend that has the potential to change the face of ADR. It is a trend to watch.

—Susan Kee-Young Park

Conflict Resolution in Workplace Disputes: Legal Training Trends

Responsibility for conflict resolution activities in organizations and the workplace is handled by a range of professionals, many of them licensed attorneys or legally trained. These professionals are involved in developing policies and working on both the preventative and reactive side of conflict in the workplace. While this has been true for quite some time, only recently have law schools begun to embrace a major shift in legal education.

One reason law schools have been open to this reexamination is that law school enrollment for 2013 is approximately 50 percent lower than in 2004. Facing this declining market, law schools have tremendous incentive to make significant changes in curriculum and in pedagogy from the “scientific” case method pioneered late in 1800s by Dean Christopher Columbus Langdell at Harvard Law School. This pedagogical model emphasizes student learning to “think like lawyers” primarily through reading and being questioned about appellate cases.

In recent years, there have been two major reports on legal education: the 1992 Report of the American Bar Association Task Force on Law Schools and the Profession: Narrowing the Gap entitled *Legal Education and Professional Development—An Educational Continuum* (MacCrate 1992) and the 2007 Carnegie Foundation for the Advancement of Teaching Report entitled *Educating Lawyers: Preparation for the Profession of Law* (Sullivan et al. 2007). The MacCrate report (1992) was critical of law schools for

only partially addressing the full range of skills and values necessary for lawyers to be competent and for employing inadequate pedagogy. Among the ten “fundamental skills and values that every lawyer should acquire before assuming responsibility for the handling of a legal matter” were problem solving, communication, negotiation, litigation, and alternative dispute resolution procedures.

At the time of the MacCrate report, it was understood that law schools did not teach students to be lawyers, only to “think like one.” It was assumed that law school graduates would learn the practice of law when they joined a law firm or clerked for a judge. For years, the disconnection between legal education and legal practice coexisted with little incentive for change. While there had been some changes between the MacCrate and Carnegie reports, the authors of the Carnegie report raised similar critiques about legal education.

On the positive side, the Carnegie report concluded that law schools were doing a good job imparting “a distinctive habit of thinking that forms the basis for their students’ development as legal professionals” (p. 186). However, for the most part, law schools were not training students on how to use their legal thinking in practice. The report noted that law schools rely heavily on a pedagogy that “emphasizes the priority of analytical thinking.” While there are certain benefits to this style of teaching, there are “unintended consequences,” including “a lack of attention to practice and the weakness of concern with professional responsibility” (Sullivan et al. 2007, 188). The report endorsed a strategy of integration, that is, combining the cognitive, practical and ethical-social aspects of the curriculum. Despite the report’s call to action, only small changes were implemented in most law schools.

The Great Recession has had a profound impact on legal practice. Large law firms saw huge constrictions. In addition to employers hiring fewer law graduates, they also became less willing to mentor new employees as they learned the legal profession as young associates. Because there were more lawyers available to work than there were jobs for them to do, firms found they no longer needed to mentor new lawyers. The current expectation is that employers want to hire “practice-ready” lawyers. The best way to ensure that a student is practice ready is for that student to engage in a range of skills classes beginning with simulations and continuing through clinical experiences and externships.

An additional reason for change was a declining pool of applicants desiring to attend law schools. The number of people taking the law school

admissions exam in October 2013 was down 45 percent from its high point in 2009. Fewer test takers translates into fewer applicants, fewer admitted students, and smaller student bodies. In addition, current law school applicants look for the best value when choosing a school: low debt loads and increased opportunities to be employed on graduation. On the positive side, smaller class sizes allow schools to provide more personalized instruction and offer more of the skills courses that students desire to be employable and require smaller faculty-to-student ratios. On the downside, law schools have had to look for ways to lower expenses, which in some cases has meant a reduction in faculty through early retirement or other means.

Of course, the idea that skills can and should be taught in a law school class is not new for ADR educators. The pedagogical framework for ADR courses has traditionally been skills based, requiring students to try on the role of negotiator, mediator, arbitrator, and advocate within these different settings. Between 1992 and 2002, ADR classes (including general courses as well as mediation and negotiation classes) increased dramatically (Lande and Sternlight 2010).

In most law schools, the early expansion of ADR courses was developed separately from the traditional doctrinal curriculum and seen by students (and doctrinal faculty) as distinct from the work of “real” lawyers (McAdoo, Press, and Griffin 2012). An exception to this was the Missouri Plan developed by Len Riskin (1998), which intentionally integrated dispute resolution into all standard first-year law courses. The Missouri Plan included the development of teaching materials and law school course books that incorporated dispute resolution skills (such as interviewing and counseling, negotiation, mediation, and arbitration) into traditional first-year courses such as on contracts, civil procedure, criminal law, property, and torts. This model proved to be unsustainable for a variety of reasons, including that it requires that the law school faculty have a strong proponent on the faculty with the ability and permission to focus exclusively on this integration and that the pedagogies for teaching dispute resolution skills are often not comfortable for doctrinal professors (McAdoo et al. 2012). With this backdrop, what follows are five trends for ADR in legal education that I see developing. All of these have direct connections to organizational workplace conflicts.

Trend 1: Recognition of the importance of the skill of problem solving by law faculty. Many law schools have revised their curriculum to introduce law

students to the concepts of problem solving rather than teaching about ADR. For example, at Hamline University School of Law (HUSL) where I teach, all first-year students are required to complete a course entitled Practice, Problem-Solving and Professionalism. The introduction to the syllabus for this course highlights this shift: “Whatever career choices you make after law school, you will be a problem solver. . . . Lawyers solve problems—including non-legal problems—for clients, for the legal system, and for society as a whole.” Rather than focus curricular choices on teaching mediation, arbitration, and other dispute resolution processes as distinct from or an alternative to the practice of law, there is an increasing understanding that the skill of problem solving is at the core of what lawyers do and therefore it is an important concept for all law students to learn.

Trend 2: Recognition of the importance of the skill of problem-solving by law students. Increasingly law students understand the shifts that have taken place in the legal marketplace. With jobs transitioning from large law firms to JD (juris doctor degree)-preferred or nontraditional jobs, students now recognize that being adaptable is a critical skill. A growth area in an otherwise flat or job-shrinking market is in compliance work, especially in the health care arena. In these positions, compliance officers work with doctors, nurses, and administrators to meet federal and state guidelines. To be successful, compliance officers often need to identify the underlying interests of each of the constituencies in order to help them understand why they should comply and that doing so actually serves an individual’s interest.

Understanding by students of the importance of problem solving has led to increasing demand for courses like negotiation and mediation. This trend also can be seen by the increased acceptance of experiential learning in law schools. Many schools are considering increasing the skills requirements for graduation and offering students increasing opportunities to take simulation courses, participate in clinics with actual clients, and earn credits for externships. In fact, the American Bar Association, which accredits law schools, is considering proposals that would increase the minimum amount of skills instruction required from its current interpretation of requiring students to “take one or more courses having substantial professional skills components” (American Bar Association 2013) to requiring at least six or fifteen credits of skills education (Filler 2013).

Trend 3: Recognition of the importance of mediation advocacy as a skill. For many years, mediation courses in law schools looked very much like typical mediation training programs. They were entirely focused on teaching law students how to be mediators. Some of the students then went on to serve as mediators in a clinic setting in small claims or housing court while in law school, but many had no opportunity to serve as a mediator until years had elapsed. At that point, they most likely took another mediation training course. The more recent trend in law school is to include a portion on mediation advocacy in traditional mediation courses or to offer a separate course on mediation advocacy. Although most law students will have a limited opportunity to serve as a mediator immediately, many (if not most) will represent clients or otherwise serve in an advocacy role in a mediation given the prevalence of court-ordered or court-encouraged mediation programs around the country.

Trend 4: Increased development of creative course offerings. Given shrinking enrollment, law schools have become increasingly creative in designing course offerings to attract more students. It is quite common for students to find a range of ADR-type courses available in short classes over the summer or in a January term. In addition, students can study a variety of dispute resolution topics in American Bar Association–approved programs in other countries. For example, students can earn a certificate in global arbitration offered in collaboration with Queen Mary University in London (HUSL); learn negotiation, mediation, and arbitration courses as part of an International Summer School on ADR in collaboration with the University of Berlin (Tulane University); or complete a course entitled Conflict Resolution from Religious Traditions in Jerusalem in collaboration with Hebrew University (HUSL).

In addition to attractive locations and access to special expertise in study-abroad programs, law schools are experimenting with distance-learning environments for ADR courses. While students recognize the value of study-abroad programs given increasing globalization, it is counterbalanced for some by an even greater sensitivity to accumulating debt. An example of meeting those countervailing needs is a six-credit International Business Negotiation Certificate Program that offers an international experience that students can complete without leaving the country. Students complete two credits in-residence (in either the United States or in Hong Kong) and then complete the next four credits in a distance format where they interact with each other in a variety of formats, including conducting

negotiations in the way that international negotiations really take place by requiring students to navigate technology, time zones, language, and cultural differences.

Trend 5: Offering alternatives to the JD degree. Many law schools understand that the need for legal services can and will be met in the future in less expensive ways. This means that there will be an increasing unbundling of legal services so that one needs to pay for a lawyer only for those things for which licensure as an attorney is necessary. A new market is opening for individuals who understand the law but do not necessarily want to be lawyers. For example, heads of human resource departments, CEOs, school administrators, and a whole range of personnel in the health care industry will be better consumers of legal services if they understand the law and how lawyers think. In recognition of this new market, law schools are expanding the degrees they offer to include options such as a masters in the study of law in which master's students study alongside law students for some core courses, in addition to taking some courses designed especially for them.

The legal profession, and by extension law schools, is not known for swiftness in making changes. After all, the law is steeped in the tradition of *stare decisis*—looking to the past to decide the future. But one need only to look at the major changes that have taken place in relation to court-connected ADR to know that it is possible for major shifts to happen even in the legal system. Spurred on by changes in the economy, law schools have needed to rethink many of the underlying premises, and the results are striking. While ADR professors have always been on the front end of these trends, it is clear that momentum is gathering, and I expect that we are on the cusp of some major changes in legal academies as these five trends continue to shake up the system.

—Sharon Press

Conclusion: What Will the Future Bring?

Those who claim they can envision the future by gazing into crystal balls tend to see a cloudy reflection. Thus, the contributors to this article have chosen to identify current trends in their respective areas of practice that they believe will continue to shape workplace conflict resolution.

Cinnie Noble observed that “one of the fastest-growing trends in conflict management coaching appears to be for leaders in organizations—a main objective being to strengthen their conflict competence.” Successful organizational interventions correlate with the ability of organizational leaders to manage themselves and their conflicts well—and effective conflict coaches contribute significantly to successful outcomes.

Richard Fincher proposed that while “the future of interpersonal mediation in the workplace is exciting,” mediation of litigated matters has become a completely evaluative process. Fincher also offers a provocative vision for the future: “Workplace ADR will morph into the broader rubric of organizational development, focused on creativity, innovation, and process improvement.”

Susan Kee-Young Park suggested that her profession is in a time of self-definition—including certification of members with accompanying pressure to also provide accreditation of organizational ombuds offices. Park also claims that the ombuds profession itself is trending. As she concludes, “Organizational ombudstry is a trend that has the potential to change the face of ADR.”

Sharon Press proposed that one emerging trend is for law school graduates to be viewed as problem solvers rather than only as advocates in the legal arena; thus, collaborative problem-solving skills and processes such as mediation and facilitation are increasingly required. While trends in workplace conflict education programs outside of law schools are beyond the scope of this article, several conflict resolution degree programs also offer organizational conflict as a specialization or concentration within the broader master’s degree.

In her section on conflict coaching, Noble observes that “conflict management coaching has been added as one of the options in the spectrum of services provided in integrated or informal conflict management systems.” Fincher also proposes that “employers will gradually embrace workplace systems.” Within the ombuds profession, organizational ombudspersons are increasingly serving as coordinators of in-house conflict management systems. Yet despite the ambitious hopes of the architects of integrated conflict management systems, diffusion of such programs has not been widespread.

As important as systems are, organizational members do not relate to a system; they relate to a person. Whether that individual is a coach, a mediator, an arbitrator, or an ombudsperson, his or her ability to be present to those experiencing conflict and to assist them in finding their way

through it will remain the key variable in successful workplace conflict resolution. As you ponder developments in each of these areas—coaching, mediation, arbitration, ombudstry—I invite you to imagine what a truly integrated and appropriate conflict management system might look like in the organization of which you are part. I also encourage you to consider what kind of preparation (education and mentoring) those who desire to enter these rapidly changing fields might require.

Considered collectively, there are three meta-trends within workplace conflict resolution which deserve attention.

- *From intervention to prevention.* Most organizational leaders now accept that unresolved conflict is costly—even if they do not always know how to respond to that reality. The two fastest-growing areas of practice in workplace conflict management, coaching and ombudstry, reflect the desire of leaders to deal more proactively with conflict in their organizations. If we as providers increasingly frame our work as preventing destructive conflict by coaching healthier approaches and providing early and accessible options, we are more likely to experience growth as a field.
- *From ad hoc to appropriate.* While truly integrated conflict management systems are still a relative rarity in North American organizations, increasing numbers of organizations are implementing appropriate conflict management systems that fit their size and culture. Organizational research strongly supports the importance of taking culture and context seriously in designing conflict management systems, and the principles developed to support implementation of ICMS models reflect that reality (Society of Professionals in Dispute Resolution 2001).
- *From resolving conflict to managing change.* Each area of practice that we addressed in this article is focused primarily on managing change. A conflict coach supports his or her client to realize desired changes in personal conflict behavior. A mediator, at least one working with a transformative perspective, encourages an atmosphere of recognition and empowerment—thus shifting the conflict dynamic. An ombudsperson strives to help each visitor understand his or her multiple options and pursue the appropriate ones while also being attentive to broader patterns in the organization that may need to change.

Every workplace practitioner, in other words, is in the business of managing change. While clients and visitors may come to us because they want to resolve a conflict, they know at an even deeper level that something needs to change. If we can shift our primary focus from resolving conflict *for* the client to managing change *with* the client, we are more likely both to contribute to sustainable transformation and to receive future referrals.

So what is the future for workplace conflict resolution? It is beginning to look a lot like personal, relational, and organizational development. We may need to change our name (as well as our frames) to fully incorporate this reality. But the future of our work with organizations and workplaces lies in our ability to navigate change—not just the inevitable conflict that accompanies significant change.

—David Brubaker

Notes

1. An integrated conflict management system represents an organization's deliberate effort to provide multiple options for preventing, managing, and resolving conflict by offering appropriate internal and external resources. Ideally such systems combine structural options (e.g., coaching, mediation, arbitration) with leadership efforts to encourage a conflict culture that invites disagreement and encourages healthy conflict management.
2. An organizational ombuds is sometimes identified as an ombuds, ombud, ombudsman, or ombudsperson. The debate over which term should be used is beyond the scope of this article. This section uses *ombuds* and refers to the work of ombuds as “organizational ombudsry.”
3. The IOA represents that it is the largest international association of professional organizational ombudsmen practitioners in the world and has over eight hundred members from the United States and internationally. <http://www.ombudsassociation.org/about-us/mission-vision-and-values/ioa-best-practices-standards-practice>.
4. A statutory ombuds evidentiary privilege does not currently exist in any jurisdiction in the United States. Howard (2010) provides a thorough discussion concerning ombuds confidentiality and privilege issues.
5. It is interesting to note that several recent postings for ombuds jobs have asked for IOA certification as a minimum requirement.
6. In his “Year in Review” for 2011 and for 2012 and “Top Ten Stories of 2013” on The Ombuds Blog (<http://ombuds-blog.blogspot.com/search?q=year+in+review>), Tom Kosakowski identified over thirty new organizational ombuds offices that opened in each reported year.

7. The Ombuds Blog (<http://ombuds-blog.blogspot.com/p/higher-ed.html>) provides a Directory of Ombuds Offices for Colleges and Universities. A review of the list revealed over 280 academic institutions in the United States with active ombuds websites.

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