Correctional Service
Canada

Service correctionnel
Canada

▶ # SUCCESSFUL
INTERCULTURAL MEDIATION

PRACTICAL GUIDE FOR PROFESSIONALS
AND TRAINERS

BY

MARCEL KABUNDI, DONAT-TSHIBASU BILOMBA
AND AMANDINE MENIRI

Canada

"Canada's future depends on maintaining and strengthening its capacity to bring together peoples with many differences—even grievances—and building a peaceful society where no one's identity or cultural heritage should have to be compromised." [1]

1   Canada. Department of Canadian Heritage, "Canadian Diversity: Respecting our Differences", *Canadian Heritage*, July 7, 2006, < http://www.pch.gc.ca/progs/multi/respect_e.cfm >. Consulted July 21, 2007.

MARCEL KABUNDI, M.SC.CRIM; LL.M.
Director

DONAT-TSHIBASU BILOMBA, B.A. (HON.)
Senior Project Officer

AMANDINE MENIRI
Intern, Project Officer

Ethnocultural Services Section
Offender Programs and Reintegration Branch
Correctional Programs and Operations
Correctional Service Canada
340 Laurier Avenue West
Ottawa (Ontario) Canada K1A 0P9
Toll free: 1(888) 273-3802   Fax: (613) 996-0428
E-mail: kabundimk@csc-scc.gc.ca   Website: http://www.csc-scc.gc.ca/ethnoculture

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Réussir la Médiation Interculturelle

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▷ ACKNOWLEDGEMENTS

▷ NOTICE TO THE READER

This practical handbook is not an encyclopaedia on conflict management or a legal document. This tool is a complement to other publications on informal conflict resolution in various intercultural contexts. It can be used as a reference manual for the training of mediators or for the personal development of professionals and students.

FOREWORD

The objective of this manual is to help Correctional Service staff understand the importance of mediation and how they can bring about an informal and peaceful resolution to a conflict between two or more parties.

Research indicates that cultural differences have an impact on cognition and affect. Stereotypes, prejudices and lack of contacts between individuals can contribute to difficult cross-cultural relationships and conflicts. Stephan & Stephan (2001) argue that anxiety, uncertainty, feelings of injustice, prejudice, and other negative affective reactions to cross-cultural contact can create problems during cross-cultural encounters[2]. Conflicts can be caused by other sources as well. There exist numerous different disputes resolution methods. But this manual deals with one of them, namely Intercultural Mediation.

The process of mediation has many advantages. It offers an alternative to formal methods such as the court system and contributes to the resolution of disputes at all levels of society. As a tool for resolving disputes and establishing peace between disputants, mediation has the capacity to promote communication and cooperation; is less expensive than litigation; helps to improve relations between the conflicting parties; is usually quicker and more efficient than the trial process; and allows individuals to tailor solutions that best meet their needs.

Mediation is something practiced daily at all levels of society between people and organizations from the family level up to the international level.

2   Stephan, W.G., & Stephan, C. W. "Cognition and Affect in Cross-Cultural Relations" in Handbook of international and intercultural Communication (Editors) William B. Gudykunst and Bella Mody. 2nd Edition. 2001. p.138

Managed properly, mediation contributes to a positive and supportive work environment as well as individual and group performance. In the long-term it stimulates innovation and forward thinking. To sum it up, mediation is something more accessible and understandable to the layperson, less adversarial, inexpensive, less time-consuming, and more likely to produce an outcome that matches the interests of the disputants.[3]

The practical thing about mediation is that it is a flexible exercise. The procedures of this exercise can vary from mediator to mediator and tend to depend on the kind of dispute being addressed. The time allotted to the discussion can also vary and there may be one mediation session or several meetings.[4]

The kinds of cross-cultural disputes that tend to arise, for example, in the prison setting are generally connected to various issues. In consideration of the context, mediation can be used to resolve a dispute between two individuals from different cultural backgrounds. I am convinced that you will find this manual very helpful.

Larry Motiuk, Ph.D.
Director General
Offender Programs and Reintegration Branch

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3   Hensler, Deborah R. "A Glass Half Full, a Glass Half Empty: The Use of Alternative Dispute Resolution" in *Mass Personal Injury Litigation*. RP-446; and the Texas Law Review, v. 73, no. 7, June 1995, pp. 1587-1626.

4   Zutter, Deborah Lynn. *Preparing for Mediation: A Dispute Resolution Guide*. Toronto: Trafford Publishing, 2005, p 129.

PREFACE

Psychoanalysis has made us aware of the idea that a conflict, even if it manifests itself on the outside, ends up internalized to become a conflict within. Kurt Lewin[5] turned his attention from the inner sphere to focus on the social context out of which certain conflicts arise. He states that the group individuals belong to is the basis on which they build their perceptions, feelings and actions. To understand and resolve a conflict between protagonists whose cultural frames of reference differ, it is important to bear in mind their personal space, reference group and affiliations. All this sets the stage for an analysis of intercultural mediation.

When conflicts arise in a correctional environment, a thorough understanding of the terms of the relationship must be reached by contextualizing these terms and asking the right questions:
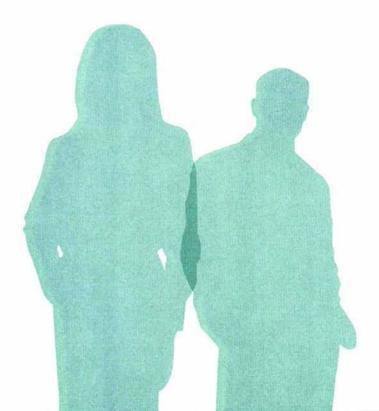
> Do the individuals involved in the conflict share a cultural proximity?
> Are they influenced by an invisible audience?
> Can the cultural differences be traced back to the root of the conflict?
> Is this a minority/majority conflict between the individuals?
> Can an individual in a conflict subscribe to different cultural values as a result of their migratory past?
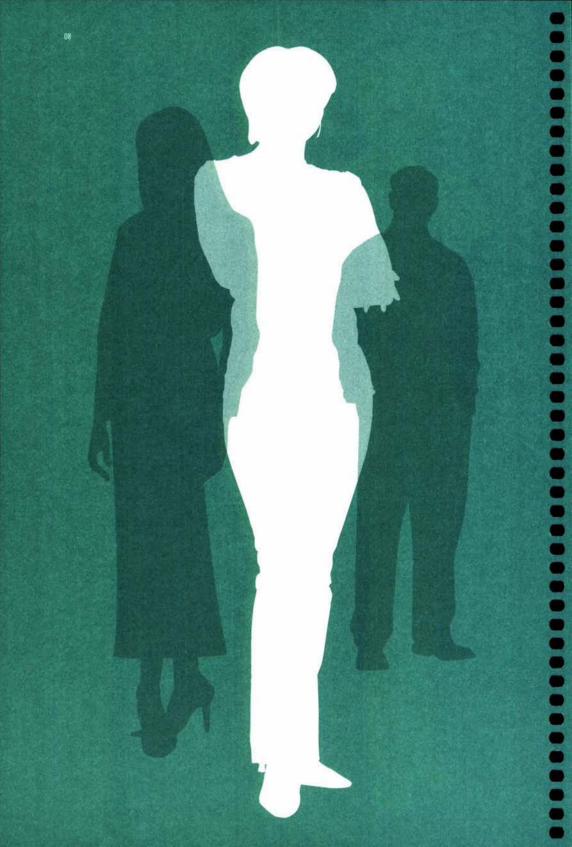
To resolve intercultural conflicts, the authors of the text are justified in proposing alternative dispute resolution models as a means to a solution. Human rela-

5   Lewin, Kurt. *Resolving Social Conflicts*. New York: Harper and Row Publishers, 1948. (cf. Book summary by: Conflict Research Consortium Staff. Beyond Intractability.org. A free knowledge Base on More Constructive Approaches to Destructive Conflict. University of Colorado USA 2003-2007).

tionships have much to gain from crisis prevention that is not based on reprisals. Just as there are self-defence mechanisms to defuse a psychological conflict, so there are collective mechanisms to help resolve an intercultural conflict. Intercultural mediation is one such device. As it requires tact, this form of intervention is most certainly best suited for professionals. A multi-ethnic context calls for multi-faceted skills.

Emerson Douyon, Ph.D.
Chair
National Ethnocultural Advisory Committee

LESSON 1
GENERAL CONCEPTS

▶ 1.1 CONCEPT DEFINITIONS

A. WHAT IS A CONFLICT?

"Conflict is a state of discord caused by the opposition of interests, values, acts or procedures. It is a disagreement, when ideas clash. There may be a disagreement without conflict" (Wikipedia). According to the Canadian Public Service Agency, a "conflict can be broadly defined as the reality or perception of differing points of view". (http://www.psagency-agencefp.gc.ca/gui/icms01-eng.asp).

A conflict arises when two or more parties are in a disagreement or state of opposition caused by a lack of effective communication, resulting in an incompatibility in values, ideas, interests, goals and perceptions. The lack of effective communication often causes each party involved to begin to see the other as an obstacle in their effort to attain a desired goal. In effect, when people from different cultural backgrounds fail to communicate their values in an effective manner, this brings about misunderstanding and leads to conflict. A conflict can arise between two groups of individuals. This leads Stella Ting-Toomey, researcher, to conclude that, "Conflict is an intense disagreement process between two interdependent parties over incompatible goals and the inter-ference each perceives from the other in her or his effort to achieve those goals." [6]

TYPES OF CONFLICT

There are different types of conflict that can be classified according to their nature, cause, scope and consequences.

The Canadian Public Service Agency recognizes that there exist five types of conflicts outlined in the following manner:

i. Intercultural Conflict

Value conflicts "involve different belief systems or fundamental principles that appear to be beyond compromise. They may not be amenable to resolution through consensual conflict management processes. They are principally caused by differen-ces in respective worldviews (attitudes, beliefs, principles underlying one's choices and judgments). This kind of conflict is considered to be a cultural conflict". [7]

6   Ting-Toomey, S. *Communicating Across Cultures*. New York: The Guilford Press, 1999, pp 194-230.
7   Canada. Canada Public Service Agency. *Informal Conflict Management System*. < http://www.psagency-agencefp.gc.ca/gui/icms01-eng.asp >. Consulted July 11, 2008.

In general, every cultural group is ethnocentric from the start. This is to say that based on their historical experiences and environment, every group has a unique worldview which is considered to be their centre of everything. All other views are scaled or rated with reference to it.[8] An intercultural conflict arises when worldviews or values collide and each individual or group begins to see the other as an obstacle to fulfilling their goals.

Intercultural conflict is a generic term for a conflict situation between people from different backgrounds. Cultural conflict is a more specific notion that has been identified as one of the factors which explains criminal behaviour among immigrants and their descendants.

"...The social sciences consider criminal behaviour to be the manifestation of a cultural conflict and a deviance from existing cultural norms in the society ".[9]

As we said earlier, deviance is a relative notion that is shaped and defined by a specific social and cultural context. What is acceptable in one culture may not necessarily be acceptable in another culture.

Cultural conflict is a conflict between contradictory cultural codes that prescribe different or contradictory standards of conduct. The criminal behaviour of immigrants would stem from this conflict between different or contradictory standards of conduct.[10]

This type of conflict frequently occurs among first or second generation immigrant youth (born abroad from immigrant parents, born in Canada from immigrant parents). There are three types of conflict: intergenerational, cultural, and identity-related. The rejection they face forces them to seek the real ethnic identity that they do not have (M. Kabundi, 2004). They are in between (the culture of the host country and the culture of the country of origin) without actually belonging to either since they feel rejected by the host society and, at the same time, no longer understand the culture of their parents or feel there is contradiction or disconnect between the values promoted by the culture of the host society and those learned at home.

8   Sumner, W. G. *Folkways*. Boston: Ginn, 1906, p 13.
9   Szabo, D., « Délinquance (sociologie de la) », *Encyclopaedia Universalis*, 1986.
10   Kabundi, M., « Conflit de culture », in Lopez, Gérard & Stamatios Tzitzis, (dir.), *Dictionnaire des sciences criminelles*. Paris, Dalloz, 2004, pp 155-157.

Difference also involves extreme deviation. Respect for differences does not mean granting special privileges. It justifies the other's right to dignity and equality. But the right to be different does not necessarily imply different rights.[11] We must be careful against interpreting the criminal behaviour of immigrants solely in terms of what is, after all, a theory that only provides partial explanation and might involve extremes by encouraging racial profiling and prejudice and by turning outsiders into scapegoats.

Major characteristics of intercultural conflict[12]

According to Stella Ting-Toomey, the major characteristics of intercultural conflict are the following:

Intercultural perceptions
Perceptions are filtered through our lenses of ethnocentrism and stereotypes, and perceptions colour our conflict attribution process.

Interaction
Conflict is sustained and managed via verbal and nonverbal behaviours, and verbal and nonverbal behaviours are culture-bound concepts.

Interdependence
For a conflict to arise, the behaviour of one or both parties must have consequences for the other, or otherwise the conflicting parties can easily walk away from each other.

Self-interest and mutual-interest goals
Conflict is a mixed-up and incomplete jigsaw puzzle, both parties needing something from each other in order to complete the entire picture.

Protection of intercultural images
In an intercultural or inter-group conflict situation, parties in conflict worry about protecting both individual and group-based images.

ii. **Relationship Conflict**
According to C.W. Moore, researcher, one or a combination of communications problems, emotions, stereotypes, misperceptions, and negative behaviours causes relationship conflicts.[13]

11   Kabundi M & E Douyon *Kamba* Ottawa Public Works and Government Services Canada March 2007 p 11
12   Ting-Toomey S *Communicating Across Cultures* New York The Guilford Press 1999 pp 194-230
13   Moore C W *The mediation process Practical strategies for resolving conflict* (2nd) San Francisco Jossey-Bass Publishers 1996 pp 60-61

iii. Structural Conflicts

They are caused by a number of factors, including: inequalities in power, authority, resources, control, ownership; reinforcement and perpetuation of negative attitudes, perceptions, behaviours, stereotypes, and/or factors that negatively impact the organization.

iv. Data Conflict

Data conflicts are typically over facts, information, knowledge, etc. and may be caused by a combination of the following: misinformation, lack of information, differing perspectives on relevancy, interpretation and procedural assessments.

v. Conflict of Interest

May be caused by actual or perceived discrepancies of one or a combination of substantive, procedural or psychological interests. In simple terms, a conflict of interest stems from the interference of private, personal or commercial interests, or interferes with the independence or objectivity undermining the personal integrity of the author. According to Suzanne Landry,[14] Legal Counsel at Correctional Service Canada, there exists three types of conflicts of interest:

(1) Actual or real conflict of interest in which an individual's judgement is influenced. The advice by an advisory committee member is given for the purpose of obtaining a personal benefit, monetary or other advantage for him/her self or for family/ friends, business partner, etc.

(2) Apparent or the perception of a conflict of interest where a reasonable person would think that the individual's judgement is likely to be compromised. It would be reasonable to conclude that advice was given to benefit member, member's family/friend, business partner.

(3) Potential conflict of interest is a situation that may develop into an actual or apparent conflict of interest. For example, the daughter of an advisory committee member marries the director of an advocacy group, etc.

B. WHAT IS A CRISIS?

Conflict can be positive when it leads to change, but it can also be negative and can worsen and lead to crisis, so it is important to identify and implement the methods necessary to resolve it as quickly as possible.

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14   Landry, S. *Conflict of interest* Presentation given to the National Ethnocultural Advisory Committee Ottawa, October 17 2007

Generally speaking, crisis refers to a process: the transition from one state to another. The notion of crisis is based on the idea of discontinuity or rupture; as with conflict, it also involves the idea of change.

It can also be the situation when the crisis precedes the conflict. The conflict may be revealed in terms of a pre existing crisis.

Conflict may also grow out of a crisis, just as crisis may ultimately turn into conflict when it results from an inability to resolve the conflict, depending on whether we consider it to be a state or a process.

At the societal level, crisis is usually defined as a situation of anomie in which the individual or group no longer knows which rules of conduct apply (Wikepedia).

C. WHAT IS STEREOTYPING?

Stereotypes are beliefs about the personal characteristics of a group of people. They are partly influenced by the changing relationships between the groups. Nobody escapes stereotyping; we all have clichés about others, about what is foreign to us, but we must learn to manage them and move beyond them. Everyone tends to categorize and generalize, as this is a human trait: the brain classifies information so that it can process it more effectively. But by doing this, we are simplifying and making a judgement, which can be dangerous and demeaning. We tend to explain what people do by what they are (essentialism).

Although culture is shared by members of the same society, it is not always manifested in the same way. It proposes the ideal for behaviour.

We must distinguish between the characteristics of an individual and those of the group to which he or she belongs, since the group is not homogenous and since a single individual cannot represent the entire group. Although members of a group share some referents, values or attitudes, each person has somewhat different social experiences. The individual is not reduced to the general characteristics of his or her group.

There are no cultural codes that are shared by all the members of a cultural group. With any attempt to establish a set of cultural traits, even if it is with the intention of understanding the other, there is a risk of stereotyping.[15]

15   Canada   Correctional Service Canada   *Unit 11   Mediation and Conflict management   Women-Centred Training Program* Facilitator Manual Ottawa   Service Correctionnel du Canada Vol 2 March 2001

D. WHAT IS PREJUDICE?

Stereotypes stem from prejudices. These are preconceived notions characterized by a lack of reflection and examination. Prejudice passes subjective reasons off as objective, and often caricatures and stigmatizes. Here again, we are not necessarily aware of our prejudices, but they are partly responsible for discriminatory practices such as racial profiling or racism, and are based on ethnocentrism.

E. WHAT IS ETHNOCENTRISM?

Ethnocentrism, associated with direct or indirect contact between cultures, is a pheno-menon that is manifested in different ways and to different degrees. Generally speaking, it is an inability to see the world and people outside of our own categories of thought, e.g., outside of the prism of our culture. This concept was developed by analogy to the concept of egocentrism, an attitude whereby everything is considered in relation to the self. Other people are evaluated based on our own criteria and our own logic, so we make a judgment, usually negative, thinking in terms of inferiority/superiority, believing that others are wrong, that they have strange practices and silly rules. In this regard, Montaigne, a French writer said, *"Each person calls barbarism whatever is not his or her own practice"*.[16]

However, the question is not about truth or knowing who is right or wrong; it is a differ-ence in perspective. Ethnocentrism is therefore *"an inability to put oneself in another's place or have other views of the world"*.[17] Ethnocentrism, like prejudice, is ultimately a universal, somewhat "natural," and very human problem that we are unaware of most of the time.

We must therefore try to put ourselves in other people's shoes, by being aware that we do not have the absolute truth (universalism), that each culture has its own logic and its own perspectives that are just as valid as those of any other culture.

We must remember that not everything concerning human behaviour is always natural or innate, but on the contrary, cultural and acquired, even if this nature/culture contrast is a Western concept that has no place in many other cultures that do not view these as separate, for example, in some animist African societies or most Aboriginal societies in the world.

16 Montaigne, M., *Les Essais*, "Des Cannibales", Livre I, chap. 31, 1595. Available online : < http://www.bribes.org/trismegiste/es1ch30.htm >.
17 Kabundi, M. & E. Douyon, *Op. cit.* p 13.

Society and culture shape the norms (formal or informal) and values that influence our view of the world, how we think, etc. Since every culture has its own norms and values, it makes sense that an individual from a different culture and/or social class would have his or her own ways of perceiving reality, using his or her own categories and frames of reference and assessment criteria, which partly determine our behaviour and attitudes. *We never perceive the world as it really is, but we perceive it as we have been taught.*[18]

Ethnocentrism can manifest itself in our daily lives, but in its most extreme forms, it can also lead to serious ideological extremes, along with a political desire to dominate. One example of this would be colonization and all the repercussions this has had and continues to have today—an act which was initially justified by the "humanitarian" objective of "civilization" (Europe's civilization initiative). In addition to the social discrimination, ethnic segregation and the problems of violence that may result, this also involves ethnocide (destroying the culture of a people, e.g., the conversion and assimilation of North American Aboriginal people by European colonists), and is associated with racism and genocides, e.g., the crimes committed by the Nazis.

It is sometimes difficult to distinguish between behaviour, racist ideologies and ethnocentric attitudes, since there are varying degrees. But although there are different degrees within these two phenomena, the difference between racism and ethnocentrism does not have to do with degree or intensity; they are different in nature.

They are different in nature because ethnocentrism is based on cultural differences with regard to superiority and inferiority (hierarchical organization), whereas racist ideology and discriminatory practices are based on the supposed biological differences that are also organized according to hierarchy.

The two characteristics of racist ideology and behaviour are the establishment of a dominant relationship and the justification of this domination through biological differences that would determine behaviour. This means that it uses people's physical characteristics like skin colour, to explain people's personality, character, attitudes, etc. Prejudice or ignorance on their own do not result in racist or discriminatory behaviour.

13   Wolff Benjamin "Petite introduction a la dimension cachee" *Cultures en mouvement* 3 septembre 2005 Consulted August 10 2007 <http://wbenjamin.canalblog.com/archives/2005/09/03//81554 html >

However, we must not fall into the trap of denying the existence of ethnocultural differences with the intention of being impartial and putting everyone on equal footing. *We must not place the cultures of inmates or prison staff in parentheses, but instead we must generate a dialogue between these cultures.*[19] Neither must we place too much importance on thinking that an individual's problems are related to his or her membership in an ethnocultural group. Care must be taken to not interpret all disputes in terms of culture, since this might make us overlook psychological and social factors that also influence behaviour.

In addition, we must take into account the specific context of the dispute, namely the prison environment, a context of authority, even if it is difficult to measure and distinguish between the impact of this particular context and the impact of the cultural difference. What are their respective roles in a conflict?

When the institution interacts with the offender, culture is the first consideration. We try to change the learned behaviours. If it is relatively easy to change the individual, it is more challenging to alter the other person's ethnic or cultural identity. In a way, it is asking him to reject himself.[20]

Finally, ethnocentrism often leads to a misunderstanding of the values and thereby turns into serious miscommunications and conflicts (*Stephan, W G., & Stephan, C. W, 2001*).

F. WHAT IS A PRISON AND WHAT IS A PENITENTIARY?

In Canada, the term *penitentiary* is generally used when talking about an institution under federal jurisdiction (for sentences of two years or more), whereas *prison* applies to institutions under provincial or territorial jurisdiction (sentence under two years). Accordingly, we would refer to a federal penitentiary and a provincial prison. However, an inmate under federal jurisdiction is sometimes incarcerated in a provincial institution (Under a long-term supervision order).

In common language, these words are often used interchangeably. The word penitentiary is, originally, a Québecois expression that is used as a synonym of *prison*. It is also interesting to note that, etymologically and historically, the word *penitentiary* also has another meaning. In the Roman Catholic Church, the penitentiary was a priest appointed by the Pope or a bishop who had the authority to hear confessions. The term *penitence*

19   Motiuk. L   Preface. in Kabundi M & E Douyon. *Karibu* Ottawa Public Works and Government Services Canada March 2007. p 5

20   Kabundi. M & E Douyon. *Op cit* p 29

refers to one of the seven sacraments for the forgiveness of sins. It occurs through repentance (or contrition, i.e., sincere regret for mistakes committed) and confession. By extension, it also refers to the punishment that the priest gives to atone for the sins.

According to philosopher Michel Foucault, there are four types of societies throughout history that can be distinguished based on their treatment of "undesirables": societies that exile, those that correct (like restorative justice), those that torture and/or kill, and societies that incarcerate. The idea of prison and incarceration is quite recent (19th century): *incarceration therefore remains a specific and thoroughly modern method* meaning that, even if incarceration has been used for centuries, it was never an institution in the legal or penal system.[21]

"In the early days, we incorporated the anguish of incarceration and the discomfort of detention into a quasi-therapeutic objective, consistent with a logic based on penitence and Christian redemption: suffer to atone for one's sins. Philanthropists wanted to use this tool to turn criminals into new men, a redemptive prison".[22]

Like the penitentiary, the role of the prison and its use has evolved throughout history and across societies. Today, the term is used to designate both the place where offenders are incarcerated after being found guilty by the courts, and the sentence that offenders receive as punishment. In the past, prison was more of a transition area where people were detained while awaiting another sentence (exile, execution, etc.) or where they were placed in order to keep them away from the rest of society based on a rationale of exclusion (madmen, orphans, tramps, prostitutes, etc.).

G. WHAT IS RESTORATIVE JUSTICE?

According to Correctional Service Canada's definition, restorative Justice is *"a philosophy and approach that views these matters as principally harm done to people and relationships. It strives to provide support and safe opportunities for voluntary participation between those affected (victims, offenders, community) to encourage accountability, reparation, safety and movement towards understanding, feelings of satisfaction, healing and closure."[23]*

The principle of restorative justice is based on the premise that crime is not merely a violation of law but also a violation of people, victims and communities (Howard

21 Boullant, F., *Michel Foucault et les prisons*, Paris, Puf, 2003. p 75
22 Combessie, P. *Sociologie de la prison*, Paris. La Decouverte, 2004
23 Canada. Correctional Service Canada. *International Perspectives on Restorative Corrections. A Review of the Literature* Ottawa. Correctional Service Canada. November 3, 2006. http://www.csc.scc.gc.ca/text/portals/rj/litreview_e shtml. Consulted August 21, 2007

Zehr (1990).[24] It follows a logic whereby wrongs committed are righted by holding the offender to account, thereby helping the victim "turn the page."

This practice engages all parties concerned by the offence, by enabling victims and the community to become involved in the penal process.

Restorative justice also relieves pressure on the prison system, which is not effective in every case and may be unsuitable. It results in better offender reintegration by reducing the chance of recidivism.

Restorative justice may take a number of forms. Victim-offender mediation, also an alternative conflict resolution procedure, is one such form, based on practices borrowed from so-called traditional societies or on Aboriginal practices, for example.

Victim-offender mediation in the context of victim assistance services appeared first in Canada, New Zealand and Australia and its practices are gradually developing in other countries and on the international level. For example, in 2002, the United Nations Economic and Social Council adopted the *Declaration of Basic Principles for the Use of Restorative Justice in Criminal Matters*.

Since it can be introduced at different stages of the criminal process, restorative justice within the prison system is sometimes referred to as restorative detention and may, in some cases, be offered as an alternative to imprisonment, or in order to reduce the period in custody. It corresponds to one of the four types of societies described by Foucault as "restorative societies", referred to earlier.

According to Combessie,[25] offenders are asked to meet with their victim(s), hear their grievances, explain their action and ask for forgiveness, especially in cases where violence was involved. The development of this form of mediation has tended to reduce imprisonment for offences considered benign, while helping to reduce tensions between victim and aggressor. The proposed alternatives are intended to encourage and strengthen informal, less severe forms of control, problem management methods, and organized meetings between offenders and victims, always for the purpose of playing down the situation, establishing redress, providing explanations and achieving understanding.

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24   Ibid
25   Combessie P, *Op cit* See footnote 23

H. WHAT IS PRISON SUBCULTURE?

We use the expression subculture to describe a culture that is specific to subgroups of people within a society who share some of the cultural characteristics of the society, but also some different cultural characteristics that are unique to this particular group and that are not found in other social groups in society.[26]

Crime exists in all cultures; *"crime is normal"*.[27] (Durkheim, 1895). However, crime, delinquency and deviance are relative concepts, meaning that they take on their meaning and are considered as such depending on the social and cultural context where they occur. They vary depending on the culture and on the era. Crime or criminal behaviour is defined in reference to a society's legal frameworks since law is developed in terms of the society's main interests and is amended as circumstances change. Law is, therefore, the product of a specific era and population.

Crime only has meaning in relation to a specific society and culture.[28]

Every culture embodies a coherent set of norms and values that prescribes certain behaviours and forbids others, that promotes certain behaviours and prohibits others, that rewards certain actions and condemns others. The culture of a specific group encourages crime when it permits or, worse, prescribes an act of violence that is prohibited under federal law.[29]

From group to group and within each group, the crimes may be similar, but each person, by virtue of his 'cultural patterns,' has his own way of seeing himself in terms of his delinquent behaviour.[30]

We cannot assume that Black offenders will behave like White or Asian offenders, even though they are all offenders. The difference lies in culture, not race.[31]

Every culture—set of values and norms that persists over time and constitutes the frame of reference for individual and social behaviour—is organized around a core group of values that persists over time and is passed from generation to generation in the form of tradition.[32]

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26 Verdure C   La culture reflet d un monde polymorphe   May 25 2003 *Futura sciences* <http //www futura-sciences com/fr/doc/t/philosophie/d la-culture-reflet-dun-monde-polymorphe 227/c3/221/p1/ > Consulted August 10, 2007

27 Durkheim, E *Les regles de la methode sociologique*. Paris Edition F Alcan 1895

28 Szabo D *Op cit* See footnote 9

29 Sellin T. *Culture conflict and crime* N Y Social Science Research Council 1938

30 Motiuk I   Preface in Kabundi M & E Douyon *Op cit* Voir note 20
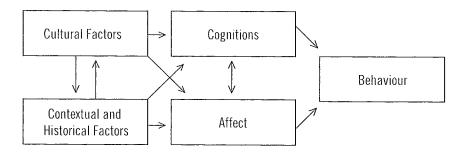
31 Kabundi M & E Douyon *Op cit* p 26

32 Szabo D *Op cit* See footnote 9

Every social behaviour follows certain standards, which are expressed in relatively specific rules. The standard then expresses a value.[33]

Social control refers to social mechanisms that regulate individual and group behaviour, in terms of "punishment" and "reward" (Wikipedia).

Stephan & Stephan (2001) argue, in the adapted illustration below, that there is interaction between cultural and contextual factors and between them and our cognitions, affect and behaviour. These factors influence the worldview of individuals within the culture, creating a vision that is typically taken for granted and that usually goes unexamined and unchallenged. Differing worldviews are the root cause of most cross-cultural miscommunications and misunderstandings.

Source: Illustration adapted from Stephan & Stephan, 2001. p. 128.

However, there may be a difference between norms and values. For example, an individual may share the same values espoused by the majority of society, e.g., the American dream, but not everyone uses the same methods to realize these values. For example, some use illegal means. This is why there is social control. Society exercises two types of control over individuals. The first type, formal control, includes laws and official regulations (explicit norms), and is exercised by specialized institutions (justice, police forces). The second type is informal control, which encompasses implicit norms (agreements, unwritten rules, etc.) that are internalized by individuals as they are socialized. These enable us to adopt the proper attitudes in everyday community life since it is the community that exercises the second type of control (e.g., monitoring by others), and they have greater impact on individual behaviour since they are relatively conscious and most have been internalized. We notice these when travelling abroad. For example, we feel like we stick out or get disapproving looks.

[33] Ibid

The form of social control that is emphasized depends on the culture. For example, in "traditional societies," informal control would be favoured, which is the opposite of Western societies. It is this control that determines deviant behaviour (i.e., that is not in conformity with existing norms), and more specifically for our purposes, delinquent or criminal behaviour.

"Social control is related to the concept of normality. [...] Social control is exercised by a set of institutions that shape and regulate their own mechanisms and their members' behaviour. This is how the conformist majority is trained by the primary and secondary groups, whose objectives are consistent with those of the majority." [34]

The prison environment affects and influences the norms, values, attitudes and speech of the people who evolve in prison, particularly inmates.[35] A number of notions or expressions are used to identify this phenomenon, such as "prison subculture" or "prison culture," or, more generally referring to prison as a "microsociety." When we use these terms, the culture is said to be "criminogenic" (*prison is the school for crime*) because of its value system, which is ruled by an "inmate code" that encompasses some informal standards of behaviour to be observed, such as solidarity between inmates or hostility towards institutional staff, especially correctional officers, not to mention the use of special jargon, one of the main characteristics of this prison subculture. This would be, in some ways, a response to deprivation resulting from incarceration.

Some authors challenge the idea of a prison subculture created as a result of the effects of incarceration. They believe that it is due to the importation of various cultures from delinquent environments, outside of prison, and that prison is the location where these are expressed, or even reinforced.

However, other researchers talk about a process of atomization to describe the inmate's isolated situation and have observed behaviour that is not consistent with prison subculture, i.e., when the inmate strictly abides by the institution's rules, either to somehow denounce the injustice of the system through exemplary behaviour without reward or to get early release.

As for the female prison population, in terms of a unique prison culture, we have observed characteristics specific to female offenders, such as the reconstitution of

34   Ibid.

35   Canada. Correctional Service of Canada. *New Employee Orientation Program. Preparatory lecture. Session 13. Prison subculture.* Ottawa. Correctional Service of Canada. Not dated.

pseudo-families and different relationships with the correctional staff. But the forms observed within the male prison population would be practically non-existent among female inmates, who would, therefore, share a unique subculture.

Although the concept has been challenged, some authors use the word 'prisonization' to describe the change in inmates' values and attitudes, integration into the prison environment, i.e., the process of assimilation into prison culture, by comparing it to acculturation, which is what occurs when two different cultures come into contact, one of the potential consequences being the assimilation (sometimes reciprocal) of some of the other group's cultural characteristics.

Prisonization affects not only inmates, but correctional staff as well. Some would even go so far as to say there is a subculture of prison staff that suffers the effects of the prison environment, but to a different degree.

In fact, one of Correctional Service Canada's objectives, for example, is to curb the negative influences of this prison subculture since its criminogenic values represent an obstacle to the objectives of social reintegration, emphasize desocialization, of which inmates are victims due to their isolation from the rest of society, and it reduces their reintegration potential.

Inmates from ethnocultural communities, therefore, present a dual challenge and a dual problem since they bring the norms and values from their own culture which are different from the established norms and standards of the host society. The problem is even more apparent when it comes to their reintegration. They are doubly stigmatized and doubly marginalized. The differences are accentuated both socially and culturally.

A new inmate coming from an ethnocultural community will have to adjust to the prison subculture and potentially ends up in one of the many prison sub-groups.

In order to be successful at resolving a conflict, a cultural mediator dealing with the crisis will have to identify which prison sub-group the disputing inmates belong to and what cultural programming they originate from. This is important because membership in either on of the prison sub-cultures has more to do with personality traits than with cultural background.

There are many different types of cultures, subcultures, age groups, classes, personalities and belief systems represented in society, the workplace, and also in the prison setting.[36] In general, every ethnocultural inmate carries two layers of "cultural baggage". The first layer is shaped by the offender's cultural programming or upbringing, and the second layer is based on the prison sub-culture. The diagram above shows the layers that contribute to a person's behaviour. In a prison subculture setting it is the personality that is more pronounced.

Just like the offender, a mediator has his or her own cultural programming which is based on the individual's upbringing. If the mediator relies solely on his or her own cultural programming to resolve an intercultural conflict, he or she will easily fall into the trap of misunderstanding and misinterpreting the questions, answers and behaviours of the conflicting party. The mediator needs to be competent and sensitive to other cultures and should guard against allowing the influence of his or her own cultural programming to manipulate their performance as a mediator. This can worsen rather than resolve the conflict.

When working with a culturally diverse group, it is important for the mediator to consider communication patterns and the meanings different cultures (including prison subcultures) attach to them. This will help the mediator understand the motives and perspectives of each conflicting party. Many factors have to be taken into consideration when mediating between people from different cultural backgrounds.

In Western cultures, quick responses, prolonged eye contact and a steady handshake are often interpreted as confidence, sincerity and self-possession, but this communication pattern does not necessarily reflect the way people from other cultural backgrounds express themselves. Whether the conflict being mediated is between offenders or between a member of staff and an offender, between staff members, between staff and community, or between an offender and the community, it is important to remember that a difference in cultural worldviews or values may not necessarily be the actual source of a dispute, but these differences play a crucial role in the outcome of a mediation process.[37]

A difference in cultural values generally means a difference in ways of communicating. From something as simple as a greeting to something as complex as resolving a dispute, effective communication across cultures goes a long way in establishing

36   Ibid

37   Stringer D M & Lusardo L   'Bridging cultural gaps in mediation' *Dispute Resolution Journal* American Arbitration Association Aug-Oct 2001 Consulted July 7 2008 < http://findarticles.com/p/articles/mi_qa3923/is_200108/ai_n8956641 >

understanding between individuals from different cultural groups. In Western countries, for example, words carry a lot of weight. In these parts of the world, words are the preferred means of communication, and images and writing play a supporting role in language communication. In other cultures, silence, non-verbal signs, graffiti, imitation, gestures, posture, body language, stories, mime, symbols, proverbs, and rites of passage and initiation tend to be more important than speech and carry more value than words.[38]

To perform effectively in a culturally diverse prison setting, an intercultural mediator needs to be informed of the various ways people from different cultures communicate and of the fact that every inmate exhibits more than one layer of culture (culture based on upbringing and subculture based on the prison setting). This will help the mediator understand each party's situation for quick problem solving. An incompatibility in values can be the source of conflict. For example, a discussion between a trainer and an inmate from another cultural background can yield little progress if the cultural philosophies are different. The inmate's understanding of life can dictate that the less you speak, the more you learn and the trainer's cultural philosophy can dictate that the more you speak the more you learn. This situation requires the inmate to change his or her way of gathering information or the trainer to change the way he or she delivers a message. Either way, the mediator needs to recognize the barriers to effective communication involved in a case and build a bridge of communication for both sides to understand each other.

▷ 1.2 CONFLICT MANAGEMENT METHODS

There exists a number of alternative conflict resolution methods; some are more advantageous than others. In a general sense, the alternative dispute resolution methods can be grouped into two categories; the first being based on rights and the second being based on the interests of the parties.

According to the Public Service Agency, "interest-based processes attempt to identify and address deeper concerns that may be at the root of a problem (the cause) as opposed to only resolving or fixing what appears on the surface (the effect). Instead of bargaining over people's positions, which are generally solutions that a party considers to be their

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38   Canfield, A. *Body identity and interaction. Interpreting nonverbal communication.* E-text net. Custom Electronic Text Publisher. 2002. Also see R.S. Feldman
       and Bernard R. (Eds.) *Fundamentals of nonverbal behavior.* Cambridge University Press. 1991.

most gainful outcome, the interests are considered, which are the underlying reasons for a person's position or personal need".[39]

The Public Service Agency also states that informal processes include self-resolution approaches (e.g. face-to-face conversations) as well as approaches such as facilitation, coaching, mediation, conflict assessments, and group intervention. Formal processes refer to approaches to resolving conflicts that involve an impartial third party assessing whether or not a person's rights have been infringed upon (e.g. grievance procedure, harassment and human rights complaints).

Mediation, negotiation, conciliation are mainly interest-based processes while arbitration, med-arbitration, grievance, courts and ombudsman are based on rights of the parties.

The following is a brief description of the most common conflict resolution methods showing the advantages and disadvantages of each. Please note that this description does not include grievance procedures and harassment.

A. ARBITRATION

Arbitration, which is similar to mediation, may be conducted as part of an arbitration tribunal composed of the two parties to the dispute, with a third person acting as an arbitrator. Each party selects an arbitrator and the two arbitrators then select a third. While in theory, anyone can fill this role, arbitrators are often professionals specializing in a particular field (the subject of the conflict) and associated with an arbitration structure or institution. A number of national and provincial arbitration institutes and agencies may be found throughout Canada.

Arbitration is also practiced internationally.

The final agreement between the parties, which is decided by a majority of votes, is called the arbitration award. However, either party may refuse to sign the agreement, rendering it null and void (unlike the case of a traditional judgment). Arbitration is often used in commercial disputes.

[39] Canada Canada Public Service Agency Informal Conflict Management System - http://www.psagency-agencefp.gc.ca/guidconfl-mp-asp - Consulted July 11, 2007.

Pros and Cons of using Arbitration[40]

Pros
> The process is aimed at preserving or re-establishing good working and personal relationships.
> It is less expensive than litigation.
> The parties can choose their arbitrator, whereas they cannot choose their judge in litigation.
> The parties can set some of their own rules of conduct for the arbitration.
> It is faster than litigation in resolving disputes
> It can be done at times more convenient to the disputants.
> It is less stressful than litigation.
> The details of the discussion are kept private.

Cons
> The outcome of the case solely depends on the arbitrator's good judgement.
> By employing arbitration, the parties lose their ability to participate directly in the process.
> Parties in arbitration are confined by traditional legal remedies that do not encompass creative, innovative, or forward-looking solutions to disputes.
> Depending on the circumstance, the arbitrator's fee and expenses, the hearing room and other costs are generally shared by the parties.
> A non-experienced arbitrator may not have the requisite legal expertise.

B. CONCILIATION

As in the cases of mediation and arbitration, conciliation involves a third party called a conciliator, who is impartial. Unlike a mediator, a conciliator proposes solutions to the disputants after hearing their arguments. The disputants may accept or reject the proposals.

Some issues are required by law to go through the courts, rather than being dealt with through conciliation.

40   Gibson. S . The Pros and Cons of Arbitration Playback Magazine April 25 2005 < http://www.playbackonline.ca/articles/magazine/20050425/oped html > Available online July 17 2007

Pros and Cons of using Conciliation[11]

Pros
> Conciliation is respectful. Participants agree to treat each other with respect. Each person has an opportunity to express important concerns without interruption. The conciliators assist the parties by reminding them of their agreements, if necessary.
> Conciliation is voluntary. Those people most closely involved in the situation are encouraged to meet and discuss their concerns in an effort to reach a mutually satisfactory resolution. No one is required to participate.
> Conciliation is collaborative. The conciliation session provides an opportunity for the parties to better understand each other and to work together to create solutions that meet their interests and needs. The conciliation process encourages the parties to move from positions as adversaries or opponents to a focus on communication, cooperative problem solving, and reaching a mutually acceptable resolution.
> Conciliation is empowering. The parties are the decision makers; they explore issues and design solutions that are responsive to their concerns. The conciliators have no decision making authority and will not impose a solution or judgment on the parties.
> Conciliation is confidential to the extent that the parties agree to maintain confidentiality. Often the ability to limit the "audience" and public scrutiny can help disputants safely explore sensitive issues.
> Conciliation is future oriented. It is not necessary to agree about the past. In fact, people rarely do. The past is used only as a guide and background for developing agreements about future interactions. Sharing information about past events and perceptions can help each party gain a new understanding of the point of view and reasoning of others and create some common understanding.
> Conciliation is not a process for assigning blame or determining fault. It is not an adjudication process and is not designed to determine legal rights. The parties are free from the rules of evidence or relevance. Focusing on or deciding who's right and who's wrong are not part of a conciliation session.
> Conciliation focuses on communication, understanding, and creative problem solving. The conciliator's task is to help the parties express their concerns, understand each other's concerns, and work together to develop a solution, plan of action, or agreement for future behaviour or interactions.
> Participants in a conciliation session solve problems, but they have opportunities to do more. They can also repair damage to relationships and re-establish the trust that is required to produce mutually satisfactory and long-lasting agreements. They can create

11   Dr E *Team Conciliators Manual Conciliation Program* Lane Education Service District Office of Special Education and Rehabilitative Services (ED) Washington DC Div of Personnel Preparation 1996 p 5

agreements that are workable, durable, and respectful of differences and do so in a way that strengthens the individual parties and through them their communities.

Cons
> At least some control of resolution of the problem will be given up.
> The result becomes more uncertain.
> If badly managed, a third party's involvement can add complexity to the dispute.
> The outcome of the conciliation can rest on the conciliator's skill.
> Easy for the personal interests of the third party to influence the outcome of the discussion.
> Resolution tends to depend on conciliator's effective listening skills and ability to deliver the message.

C. NEGOTIATION

In contrast to a mediator, a negotiator is not neutral since, like a lawyer, he represents the interests of one of the parties. The purpose of negotiation is to find the most satis-factory possible arrangement for both (or more) parties to the conflict (win-win) through cooperation. This Alternative Dispute Resolution (ADR) method is generally applied to resolve political, union and commercial issues.

Pros and Cons of using Negotiation[42]

Pros
> Negotiation may take less time than the other methods.
> Cost less money.
> Has a lower emotional cost.
> Gives the best chance of obtaining the desired results.
> The process is private.
> Allows creativity.
> Allows opportunities to preserve the relationship between the parties to the dispute.
> No need to rely on a third party's skill at mediating, arbitrating, or litigating the dispute.

Cons
> The resolution of the dispute may drag on.

42   Stitch R K , Your Winning Edge The Lawsuit Game and it's Alternatives < http://www legalcounseling com/negotiation-mediation-2 html > Simi Valley. CA Thousand Oaks Mediation Services 2006

D. MED-ARBITRATION

As is suggested by the name, this practice is a cross between mediation and arbitration. Initially, the third party who is the intermediary is a traditional mediator. He may subsequently change roles and become an arbitrator, if he cannot find a middle ground between the parties concerned. The principles of mediation and, later, of arbitration are applied in the same way.

Pros and Cons of using Med-arbitration[43]

Pros

> Resolution can be obtained within a reasonable time.
> Resolution can often be achieved at a reduced cost.
> A med-arb proceeding allows the parties more control over the process.
> A combined alternative dispute resolution proceeding may enable the parties to narrow their dispute substantially during the mediation phase and this leaves only a few remaining issues to be arbitrated.
> Med-arb may also enhance the parties' ability to select a form of arbitration that maximizes their control over that phase of the process as well, for example, by limiting the arbitrator's discretion to a choice between the parties' best offers, or within the range bounded by those offers.

Cons

> The parties' willingness to share information candidly with the neutral during the mediation phase of the proceeding may be inhibited because they know the mediator could later become the arbitrator.
> The neutral's conduct of the mediation phase may be inhibited because the neutral knows that he or she will become an arbitrator if the parties do not reach an agreement.
> Confidential information obtained by the neutral during the mediation phase may be used by, or influence, the neutral during his or her deliberations as arbitrator.
> The outcome of the med-arb can rest on the third party's skill.

E. OMBUDSMAN

According to the definition of the Forum of Canadian Ombudsman, *"An ombudsman is an independent, objective investigator of people's complaints against government agencies and other organizations, both public and private sectors. After a fair, thorough review, the ombudsman decides if the complaint is justified and makes recommendations to the organization in order to resolve the problem."* (Forum of Canadian Ombudsman - http://www.ombudsmanforum.ca/whatis_e.asp)

43   Mills, L.R. and Brewer, T.J. "Med-arb process can help settle disagreements". *Puget Sound Business Journal.* Seattle. December 6, 1999

For some, the distinction between ombudsman and mediator reflects the distinction between the public and private sectors, with the ombudsman acting in the former and the mediator in the latter. However, there is little difference between the roles. The term ombudsmediator is occasionally used.

In Canada, a distinction is generally made between two ombudsman models: the legislative, or classic, model and the executive model, where the ombudsman monitors government activity on behalf of Canadians. There is no charge for an ombudsman's services. In Canada, ombudsman positions are found in most public services (CBC, Canada Post, Passport Canada, etc.).

For example, the Department of Justice has established the Office of the Federal Ombudsman for Victims of Crime, to which victims may turn when they have exhausted all other legal avenues, including within the National Parole Board and Correctional Service Canada. The Correctional Investigator Canada, accountable to the Department of Public Safety, may also intervene as an ombudsman for federal offenders (i.e., those managed by Correctional Service Canada). He monitors follow-up to federal offenders' complaints.
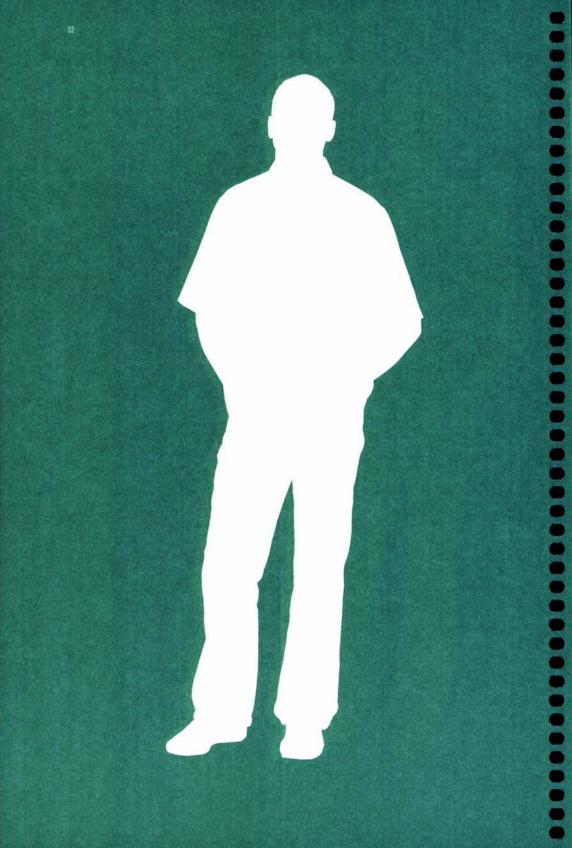
Pros and Cons of using an Ombudsman[44]

Pros
> The ombudsman's intervention is free.
> The ombudsman process has a good record of success.

Cons
> The ombudsman is not always able to provide quick solutions to complex problems.
> The ombudsman can refuse to become involved in a matter.
> The ombudsman's ability to resolve problems is limited to negotiation and the threat of publicity.
> The ombudsman is normally unable to provide quick solutions to complex problems.

44   Netting, F.E. 'The Long-Term Care Ombudsman Program: What Does the Complaint Reporting System Tell Us?' *Gerontologist*, v32 n6 pp 843-48 December 1992

LESSON 2
INTERCULTURAL MEDIATION

▷ 2.1 GENERAL CONCEPTS

A. WHAT IS MEDIATION?

Mediation is the intervention in a negotiation or conflict by a third party, who has limited or non-authoritative decision-making power to assist the parties involved to voluntarily reach a mutually acceptable settlement of the issues in dispute. Simply defined, it is assisted negotiation. The mediation process is meant to result in establishing or strengthening relationships of trust between disputants, or where necessary, terminate relationships in a manner that minimizes emotional costs and psychological harm. The contribution of a mediator is beneficial as it provides the parties with fresh perspectives on the issues dividing them and at the same time, each party learn to negotiate in order to preserve and maintain ongoing relationships.[45]

B. CHARACTERISTICS OF MEDIATION[46]

Mediation makes sense

In mediation, the disputants are the ones in control. They make their own decisions about what is best. The final solution is determined by the people who will live with the consequences. The mediators do not impose their own views or solutions, except under special circumstances.

Mediation is voluntary

Participants only mediate if they choose to, and have the option to stop at any time.

Mediation is confidential

Sessions are held in private, and mediators will not disclose what is said in a mediation session. No records are kept of the discussion except the agreement that is reached by the participants.

Mediation is quick

Mediations can be scheduled within one to two weeks, and most require only a few sessions. The process provides disputants with support to deal with conflict in an informal manner. It helps cultural mediators deal with conflict in the workplace at its onset—before it becomes overwhelming and destructive.

45   Moore, C. W. *The mediation process: Practical strategies for resolving conflict* (2nd). San Francisco: Jossey-Bass Publishers, 1996, p. 15.
46   Northern Virginia Mediation Service. *In a Conflict? Try Mediation.* Brochure Online. Available at: < http://www.nvms.us/PDFs/try.pdf >

Mediation is convenient
Mediations can be scheduled for mornings, afternoons, evenings, and Saturdays, and at a location that is convenient for participants. This exercise can also be done through video and tele-conference, cutting on any travel costs that have to be made.

Mediation is cost-effective
The fees are based on the ability of the parties to pay. Mediation is usually free of charge.

Mediation is non-adversarial
In mediation, parties work together towards a solution that everyone can accept. The objective is not to find who is guilty.

Mediation is respectful
Mediation fosters respect for differences in beliefs and backgrounds. Mediation helps people to preserve and maintain ongoing relationships.

Mediation works!
If people in conflict have already tried to resolve their dispute on their own and have been unsuccessful, they should consider mediation. It is effective and is practiced at all levels of society in many countries. Mediators are sometimes recruited in conflicts between countries or between political opponents.

C. IMPORTANCE OF THE CULTURAL FACTOR IN THE RESOLUTION OF CONFLICTS
The first conceptual definition of culture used to designate the specific culture of a group or a people, not in the broader sense of knowledge, was developed by British anthropologist Edward B. Taylor, *"Culture, or civilization, taken in its broad, ethnographic sense, is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society"*.[47]

Since then, many other definitions have been developed by social scientists, among whom there has been much debate and controversy. But generally speaking, culture is defined as the behaviours, values, beliefs, ways of being and acting that are shared by and transmitted among members of a specific society. The culture includes all acquired forms of human behaviour (as opposed to what is innate or natural).

People tend to think of culture as just the material aspects or most observable characteristics of a culture (explicit culture), which include artistic productions, cuisine,

47   Taylor, Edward B   *Primitive culture* New York J P Putnam s Sons 18 1

clothing, technical knowledge or language. There are many other aspects classified as immaterial (implicit culture) and that are not observable at first; these are much more significant in intercultural situations, especially when there is a conflict. The iceberg metaphor, explained in section 3.2 of this manual, is often used when talking about culture: there is the superficial part that we see, but the most important parts, which are underwater, we are not able to see if we stay on the surface (cf. schemas), e.g., concept of time, management of emotions, methods of communication and relationships that provide the foundation for a system of norms and values.

According to Stephan & Stephan[48] culture shapes affect and its expression by influencing what stimuli take on affective significance, defining the socially acceptable emotions, and specifying the circumstances under which they may be expressed. They add that "culture has an indirect effect on affect by establishing routines that, when disrupted, cause emotional reactions."

Members of particular cultures bring their shared views to the situations they enter, but the specific cognitions that are activated depend on the situational and historical context that can be influenced by the affect which causes emotional reactions such as pleasure and pain. This emotion can be reflected through empathy and various responses to people.

D. ELEMENTS OF CULTURE[49]

Social identity
Social identity involves the cultural practices which serve to distinguish a social group as having a common identity distinct from other social groups. Identity is as much or more a negative process—that is, a process of distinction—as it is a positive process. Therefore, all cultural practices that serve to bestow identity on a social group involve an idea of an "other," a social group or social groups which are used as a negative definition ("we are not like them").

Social memory
As a subset of social identity, social memory serves as a means of defining a cultural group. Social memory not only defines cultural groups positively ("we are who we are because of our history"), it also defines patterns of behaviour, ritual, and other social practices. The primary function of social memory is to explain the origin and meaning

48   Stephan, W G & Stephan, C W Op cit p 128
49   Sellin, R G et E Winters Cultural Issues in Business Communication 2nd ed. Charleston. BookSurge Publishing 2005 p 53

of cultural practices. Social memory takes many forms: religion, mythology, and history. All cultural practices of social memory, like all cultural practices period, derive their form and meaning from world view.

Everything
All things that are done in a social group: marriage, ritual, religion, literature, science, are cultural practices. They occur because and only because that social group has a certain world view; this means that you can derive a world view from anything within a cultural group.

Strategies of adaptation
Response to change either from within or without is built into world view and cultural practice, that is, all world views and all cultural practices have a resiliency built into them. Response to change also changes world view and cultural practice. As change occurs more rapidly within a culture, these strategies of adaptation come to dominate the world view of that social group.

Transmitted through the process of socialization (social heritage), mainly in the family and school settings throughout an individual's life, culture is fluid and ever evolving, and it has an important symbolic dimension (social capital). Our membership in a particular culture determines in part, and often without our knowledge, our identity, our representations, our perception and interpretation of reality, and consequently our relationships with other people.

If individuals with different cultural world views can communicate effectively, it will be easy for them to build relationships and avoid conflicts. A cultural mediator's role would be to act as communication-bridge-builder between disputants that have different cultural worldviews. The mediator helps them communicate until they arrive at a mutual understanding of each other's perspectives. Generally, when communicating to resolve a conflict, people usually end up realising that they have been using different cultural concepts to say the same thing.

Every culture—set of values and norms that persists over time and constitutes the frame of reference for individual and social behaviour—is organized around a core group of values that persists over time and is passed from generation to generation in the form of tradition.[50]

50   Szabo, D , « Delinquance (sociologie de la) » dans *Encyclopaedia Universalis*, 1986

In this respect, culture, in its broadest sense, could play a central role in a dispute that pits people from different backgrounds against one another (this is also called intercultural conflict or cultural conflict) and in how the dispute is resolved.

Although they are connected, the concepts of culture, ethnicity and race should not be confused, as the definitions of these concepts are also open to debate. Ethnicity usually refers to a group of people who share a culture, language, history, a common territory, and certain phenotypic traits. Above all, there is a collective consciousness of belonging to this group (self identification, ethnicity). Race is a category of classification in a biological species (genetic identity). But when this concept is applied to humans (e.g., the Black race), it is a social construct that has no biological basis (there is only one race, the human race), although some people have tried to prove otherwise for the purposes of hierarchical organization (to prove the existence of superior/inferior races) by invoking the idea of purity to be preserved (such as Adolf Hitler's bizarre theory of the Aryan race and the eugenic practices that he introduced). Nonetheless, true to the Anglo Saxon tradition, the term race is still widely used as the equivalent of the term ethnicity and is stripped of any biological meaning.

Between the stimulus and the response, culture can be an intermediate variable that intervenes and makes the reaction unpredictable.[51]

Drawing from the key ideas of a cultural variability perspective, Ting Toomey[52] explains that there exists different lenses that create intercultural frictions and conflicts between individualists and collectivists. She adds that there exists a variety of conflict assumptions, conflict rhythms, conflict norms, and conflict styles. All these can distort our perceptions and interpretations of exchanged messages during a conflict episode.

According to Ting-Toomey, different cultural assumptions toward conflict serve as the first set of factors that contribute to intercultural miscommunication and antagonism.

For individualists, interpersonal conflict resolution follows an outcome-oriented model. However, for collectivists, interpersonal conflict management follows a process-oriented model. An outcome-oriented model emphasizes the importance of asserting I-identity interests in the conflict situation and moving rapidly toward the phase of reaching tangible outcomes or goals. A process-oriented model, in contrast, emphasizes the importance of the management of "mutual or group face" interests in the

51 Kabundi M & E Douyon *haribu* Ottawa Public Works and Government Services Canada march 2007 p 26

52 Ting Toomey S *Communicating Across Cultures* New York The Guilford Press 1999 pp 194-230

conflict process before any tangible outcomes or goals can be discussed. As earlier, face, in this context, refers to the orientation of upholding a claimed sense of positive public image in any social interactive situations. From the collectivistic perspective, face is not about what one thinks of oneself but about what others think of one's worth, especially within the context of one's ingroup and outgroup".[53]

▷ 2.2 TYPES OF MEDIATORS

INTRODUCTION

The kind of relationship a mediator has with the parties involved determines the degree of influence he or she uses to help the parties resolve their differences. To this effect, there are generally three types of mediators: Social network mediators, Authoritative mediators, and independent mediators.[54]

A. SOCIAL MEDIATOR[55]

QUALITIES
> Has a desire to help disputants maintain a smooth interpersonal relationship
> Not necessarily impartial but perceived by all to be fair
> Generally has ongoing relationship with the parties after the dispute is over
> May use personal, peer or community pressure to promote adherence to agreement
> Very concerned with promoting stable long-term relationships between parties and their associates

PERSONS THAT FALL UNDER THIS CATEGORY
> Personal friend
> Neighbour
> Associate
> Co-worker
> Religious figure or spiritual leader
> Respected community leader
> Elder

53   Ibid
54   Moore. C. W. Op cit p.43
55   Ibid

RATIONALE

> Considered because of the sense of sincerity and the feeling of security the person inspires. Parties are inspired to trust with assurance that there will be no betrayal

B. AUTHORITATIVE MEDIATOR[56]

3 TYPES

> Benevolent authoritative mediator
> Administrative-managerial mediator
> Vested-interest mediator

QUALITIES

Benevolent authoritative mediator
> may or may not have current relationship with parties
> seeks best solution for all parties
> generally impartial regarding outcome
> has authority to advise, suggest or decide

Administrative-Managerial mediator
> has ongoing authoritative relationships with both parties before and after the dispute is terminated
> seeks solution developed together with parties within mandated parameters
> has authority to advise, suggest or decide
> has authority to enforce an agreement
> can go to the extent of raising the spectre of a unilateral decision as a backup to collaborative decision, if the parties cannot agree on their own

Vested-Interest mediator
> has either a current or expected future relationship with either party
> has strong interest in outcome of mediation
> seeks solution that favours mediator's interests and/or the interests of a favoured side of the conflict
> may use strong coercion to achieve or enforce agreement

56   Ibid p 48

PERSONS THAT FALL UNDER THIS CATEGORY:

> manager
> supervisor
> religious authority
> community leader
> elder
> warden

RATIONALE

Considered because of position of authority or because mediator occupies a position that inspires trust and respect on the part of disputants.

C. INDEPENDENT MEDIATOR[17]

GOALS AND QUALITIES:

> are neutral/impartial regarding the outcome
> seeks an acceptable non-coerced solution where all parties win
> has not authority to enforce decisions

PERSONS THAT FALL UNDER THIS CATEGORY

> professional mediators independent of all parties
> specialists that are independent of all parties (therapists, counsellors, advisors, etc)
> volunteer mediators independent of all parties (community leaders, religious leaders, a neutral outsider, etc)

RATIONALE

Independent mediators are considered because of their:

> Impartiality (not bias and are more concerned in achieving a satisfactory solution for all sides)
> Neutrality (have not had any previous relationship with either party and have no interest in obtaining payment for the favour of having mediated)

Since the goal of an intercultural mediator should be to help disputing parties from different cultural backgrounds to find a lasting agreement, his or her ability to facilitate good communication between disputants, by helping each side understand the other's concerns, will determine the overall positive or negative outcome of the negotiation. A badly handled conflict leaves emotional scars on both participants; it diverts energy

from where it is really needed; it undermines the morale of all the people involved; and it compromises security. On the other hand, when disagreements are handled constructively, the results are gratifying because both or all parties win. In the short-term and the long run, constructive conflict management also helps to ensure that day-to-day operations run smoother.[58]

It is very important to note that a badly handled conflict leaves emotional scars on both participants, diverts energy from where it is really needed and undermines the morale of all the people involved compromises security.

When people in conflict are willing to go through mediation, it is an opportunity for negative unexpressed feelings to come out in the open where they can be resolved. This process helps each conflicting party in numerous ways. Through the mediation process the search for new facts or solutions is stimulated disputants arrive at understanding and forgiving one another peace is promoted and relationships are improved, the disputants learn how to communicate effectively, the parties learn how to negotiate, the parties control the outcome of the conflict; solutions that best meet the needs of each party are tailored and a platform where issues can be discussed without violent confrontation is provided.

The numerous roles of an intercultural mediator consist of being an opener of communication channels, a legitimizer, process facilitator, trainer, resource expander, problem explorer, resource expander, agent of quality, scapegoat, or leader.[59]

58   Canada Correctional Service Canada Unit 11 Mediation and Conflict management Women Centred Training Program Facilitator Manual Ottawa Service Correctionnel du Canada, Vol 1 March 2001
59   Moore C W Op cit p 19

LESSON 3
FACTORS FAVOURABLE TO INTERCULTURAL MEDIATION

▷ 3.1 EFFECTIVE INTERCULTURAL COMMUNICATION

A. IMPORTANT ASPECTS

Communication is a two-way process of giving and receiving information. For mediation purposes, effective communication serves as a tool to create understanding between two parties faced with a disagreement. Every relationship between people is based on communication and good communication is instrumental in preventing and resolving conflicts. Psychologist, Rollo May, puts it in simple terms when he explains that communication leads to community.[60] This is to say that good communication between people, no matter the cultural background, brings understanding, intimacy, promotes mutual values, and encourages unity.

When working with a culturally diverse group of people, there are a number of challenges that tend to be inevitable. Since people have a difference in work styles, world-views, values, communication patterns, goals and aspirations, a level of competency and sensitivity towards other cultures is necessary, especially when mediating across cultures. Mediation in the prison setting requires the Intercultural Mediator to not only be knowledgeable of different cultural groups but also to consider that, while in prison, every inmate has two cultures—the culture from which they originate and the subculture identified by the prison group to which they belong. While the former has to do with their upbringing, the latter has to do with their individual personality.

One way to avoid the differences in cultural and linguistic styles of communication between the mediator and the disputants from becoming unsettling, the mediator needs to understand some facts surrounding the communication styles of people from diverse backgrounds.

i. UNDERSTANDING RESPONSE STYLES[61]

During communication, it is important to identify the different styles of response and attitudes.

60 Wisdomquotes.com Quotations Rollo May quotes *Wisdom Quotes Online* 1 Oct 2008 27 Nov 2008 <http://www.wisdomquotes.com/001611.html >

61 Canfield A *Body identity and interaction Interpreting nonverbal communication* Etext net Custom Electronic Text Publisher 2002 Also see Robert S F and Bernard R (Eds) Fundamentals of nonverbal behavior Cambridge University Press 1991

a. Self-promotion

Many collectivist cultures (e.g. South Asian, Aboriginal peoples, African Canadian) value humility. For people who hold this cultural value, it is common to identify firstly as a part of a larger group and to promote group harmony and solidarity. As a result, in a mediation situation, a candidate with this cultural orientation may downplay his or her accomplishments, deny compliments and feel uncomfortable talking about him or herself.

Consequently, the mediator and listening disputant may have a poor impression of either one of the speakers and their skills, in comparison with mainstream North Americans who tend to be more individualistic in their cultural orientation and are generally more comfortable talking about their achievements.

b. Silence

People of certain cultures tend to feel uncomfortable and awkward with silence. In many collectivist-minded societies, however, group members may prefer to pause and think before speaking. With this style to implicit communication, most meaning is carried by unspoken content and silence is viewed as an opportunity to discover that meaning. This is in direct contrast to the mainstream North American norm where communication is much more explicit, people tend to think while speaking and silences are perceived as a lack of understanding.

Consequently, the mediator or listening disputant may cut off the speaker before he or she has had the opportunity to respond to a question. As a result, the speaker may feel pressured and perceive the interruptions as rude and disrespectful.

c. Directness

In collectivist-based cultures, members are more likely to adopt indirect communication styles. It is common for them to avoid topics that may create conflict or tension in order to save face. As a result, in a mediation situation, candidates with collectivist-based values may initially respond indirectly to questions and may leave the more direct answer until the end of their response, if at all.

Consequently, the mediator and the listening disputant may interpret the initial part of the response as the answer to his or her question and interrupt the candidate before the answer is complete, or conclude that the candidate does not know the answer as he or she has not provided a direct response to the question. The speaking candidate may perceive the behaviour of the mediator as disrespectful.

d. Minimal answer

Some individuals may respond exactly to the question asked and not elaborate or volunteer information until further specific questions are asked. People who value indirect or implicit communication do not often request clarification as this is perceived as acting disrespectfully. Likewise, understanding context is expected and does not require further elaboration.

Consequently, the mediator or the listening disputant may perceive the candidate as being suspicious, uninterested or unconcerned and misinterpret the candidate's skills and experience.

ii. UNDERSTANDING NON-VERBAL DIFFERENCES

The ignorance of non-verbal language can jeopardize communication.

a. Eye Contact

For people of cultures where hierarchy and respect are highly valued, it is not uncommon to avoid prolonged and direct eye contact with authority figures (such as a manager, supervisor, or a mediator) as this can be interpreted as a sign of disrespect.

b. Hand and Head Shakes

Many cultures display patterns of commonly acceptable non-verbal cues, such as body language, to support communication amongst individuals. Aboriginal people, for example, may shake hands softly and pump only once or twice. Chinese people may be saying "yes" or "I understand you and am listening" when they shake their head from side to side.

iii. UNDERSTANDING LANGUAGE STYLES

There exist diverse language styles across cultures.

a. Stress/Intonation

It is common to people of different cultures to have unique stress and intonation patterns in their native language(s). As a result, the same sentence can be spoken by a native English speaker and a native Korean speaker and yet the derived meaning and impact may be completely different.

Consequently, the mediator and the listening disputant may misinterpret a response on behalf of the person speaking based on what is the excepted tone and stress in his or her own native language without considering the "normal" linguistic style of the candidate's first language.

b. Vocabulary

When English or French is either party's second language, their usage of these two languages may also reflect their own native language in terms of interpretation and delivery of their thoughts and ideas. For instance, people of Aboriginal origin may not necessarily use courtesy phrases such as "please" or "thank you" because there may not be an equivalent phrase in their first language.

Consequently, the mediator and the listening disputant may perceive the speaking candidate as being pushy, accusatory or impolite.

The exchange of information is the most vital part of human interaction. A world without good communication breeds ignorance, suspicion, stereotyping, discrimination, prejudice and xenophobia which can all eventually lead to conflict.

B. BARRIERS TO INTERCULTURAL COMMUNICATION

There's an old communications game, telegraph, that's played in a circle. A message is whispered around from person to person. What the exercise usually proves is how profoundly the message gets distorted as it passes from person to person. This section outlines some common elements that lead to a breakdown in communication.

If an individual is not in accord with his or her audience's values, then they are not communicating. Anthony Robbins, a well known public speaker, explains that to communicate effectively, "we must realize that we are all different in the way we perceive the world and use this understanding as a guide to our communication with others."[62] If two people can understand each other's background, then communication between them will be beneficial, but where understanding is lacking, a conflict is likely to arise. This is where a mediator's role becomes important.

The mediator has to ensure that the broken bridge of communication between each party is mended and improved. When people are in conflict, they retire to a self-defensive mode and most of their communication is based on one side trying to prove to the other that he or she right and the other is wrong. The mediator's most important tool in trying to identify the barriers to communication between each party is the use of effective communication. This requires the mediator to be able to hear, decode and bring into light what each of the disputants is not saying. Remember that if there is a conflict or misunderstanding between two people, it simply means that there has been a failure in communication.

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62 ThinkExist.com Quotations. Anthony Robbins quotes. *ThinkExist.com Quotations Online* 1 Oct. 2008. 27 Nov. 2008 < http://einstein/quotes/anthony robbins/>

Barriers to effective communication can be grouped into two – Encoding Barriers and transmitting barriers.[63] Encoding barriers have to do with the process by which a speaker selects and organizes symbols and meanings for the purpose of presenting their message. Transmitting barriers, on the other hand, have to do with the things that get in the way of message transmission. Communication can is bother the speaker's meanings differ with the listener's understanding of what is being expressed, and if there is interference in the transmission of the message, then automatically communication will be difficult. Below are a few examples of encoding and transmitting barriers.

i. ENCODING BARRIERS[64]

Every message is coded. For communication to be effective, each speaker must be on the same wave length. This entails being able to understand the message.

a. Lack of Basic Communication Skills

The receiver is less likely to understand the message if the sender has trouble choosing the precise words needed and arranging those words in a grammatically-correct sentence. This lack in basic communication skills is apparent when the speaker's language is different from the language of communication and he or she is translating directly from his or her mother tongue. The speaker's message may be clear in his or her mind, but the words chosen to express them in the language of choice may either be wrong or wrongly formulated.

b. Hand and Head Shakes

Many cultures display patterns of commonly acceptable non-verbal cues, such as body language, to support communication amongst individuals. Aboriginal people, for example, may shake hands softly and pump only once or twice. Chinese people may be saying "yes" or "I understand you and am listening" when they shake their head from side to side.

c. Lack of Sensitivity to Receiver

A breakdown in communication may result when a message is not adapted to its receiver. Recognizing the receiver's needs, status, knowledge of the subject, and language skills assists the sender in preparing a successful message. If a customer is angry, for example, an effective response may be just to listen to the person vent for awhile.

d. Insufficient Knowledge of the Subject

If the sender lacks specific information about something, the receiver will likely receive an unclear or mixed message. Have you shopped for an item such as a computer, and experienced how some salespeople can explain complicated terms and ideas in a simple way? Others cannot.

63   Guffey Mary Ellen *Essentials of Business Communication* 7th Edition South Western Publishing Company 2006 Also see Wilson Brian, Business Communication College of Marin < http //www marin cc ca us/busrom/index files/page0007 htm > Consulted July 15 2007
64   Ibid

e. Information Overload
If you receive a message with too much information, you may tend to put up a barrier because the amount of information is coming so fast that you may have difficulty comfortably interpreting that information. If you are selling an item with twenty-five terrific features, pick two or three important features to emphasize instead of overwhelming your receiver (ho-hum) with an information avalanche.

f. Emotional Interference
An emotional individual may not be able to communicate well. If someone is angry, hostile, resentful, joyful, or fearful, that person may be too preoccupied with emotions to receive the intended message. If you don't like someone, for example, you may have trouble "hearing" them.

g. Incompatibility in values
Cultural values are formed by, and reinforced through societal pressures (what is considered negative or positive), what we learn from our parents, religious education, formal schooling, and peer groups. Conflict in values happens when one sees his or her own group's norms, values and behaviours as moral, good and proper whereas those of groups that differ from one's own often are seen as immoral, wrong and improper.[65] Verbal and nonverbal behaviours are culture-bound concepts. This means they can be seen as good or wrong, depending on the individual's view, values or culture.

h. A difference in language expressions
Different people may interpret the same words differently. A mediator will need to listen effectively, be precise and clear about the facts, and interpretations and meanings the disputants are deriving from them. Be careful to speak clearly, not using jargon which will confuse the disputants.

i. Using stereotypes and generalizations
An individual's credibility is undermined when he or she makes unqualified generalizations or fails to recognize change. Be careful not to get stuck in the habit of using stereotypes, or making generalizations about people, places or things. Where your goal is to communicate and connect with other people, biased language and general labels tend to create barriers. Another form of generalization is polarization or creating extremes. Try to be sensitive to the complexities of situations, rather than viewing the world simplistically (e.g., "I'm right; you're wrong." "They're either with us or they're against us.")

65   LeVine, R A , & Campbell D T , *Ethnocentrism* New York John Wiley, 1972

j. Jumping to conclusions

Confusing facts with inferences is a common tendency. Do not assume you know the reasons behind events, or that certain facts necessarily have certain implications. Make sure you have all the information you can get, and then speak clearly about the facts versus the meanings or interpretations you attach to those.

k. Using disconfirming responses

There are a number of ways that we might respond to other people which have a negative effect on the communication between ourselves and others. Beware of failing to acknowledge attempts to communicate (giving no response at all), interrupting, and making an irrelevant response (not addressing what was just said).

l. Lacking Confidence

A lack of confidence can be a major barrier to effective communication. Shyness, difficulty being assertive, or lack of self-worth can hinder your ability to make your needs and opinions known. Also, a lack of awareness of your own rights and opportunities in a given situation can prevent you from expressing your needs openly

m. Cultural differences

Effective communication requires deciphering the basic values, motives, aspirations, and assumptions that operate across geographical lines. Given some dramatic differences across cultures in approaches to such areas as time, space, and privacy, the opportunities for miscommunication while we are in cross-cultural situations are plentiful.[66]

ii. TRANSMITTING BARRIERS[67]

An unfortunate situation can create a misunderstanding.

a. Physical Distractions

A bad cellular phone line or a noisy restaurant can destroy communication. If an e-mail message or letter is not formatted properly, or if it contains grammatical and spelling errors, the receiver may not be able to concentrate on the message because the physical appearance of the letter or e-mail is sloppy and unprofessional.

b. Conflicting Messages

Messages that cause a conflict in perception for the receiver may result in incomplete communication. For example, if a person constantly uses jargon or slang to communi-

66   Guffey M E *Op cit* Your note 64
67   Ibid 2006.

cate with someone from another country who has never heard such expressions, mixed messages are sure to result. Another example of conflicting messages might be if a supervisor requests a report immediately without giving the report writer enough time to gather the proper information. Does the report writer emphasize speed in writing the report, or accuracy in gathering the data?

c. Channel Barriers

If the sender chooses an inappropriate channel of communication, communication may cease. Detailed instructions presented over the telephone, for example, may be frustrating for both communicators. If you are on a computer technical support help line discussing a problem, it would be helpful for you to be sitting in front of a computer, as opposed to taking notes from the support staff and then returning to your computer station.

▷ 3.2 KNOWLEDGE OF CULTURAL DIFFERENCES

Cultural world views from around the world can be categorized into two—independent self-individualists and interdependent-self collectivists. The values and practices of collectivists and individualist differ and an understanding of these elements can help de-escalate a conflict between people from different cultures. From the table below, it can be deduced that differences in beliefs, values, ideas, interests, goals, and perceptions, coupled with a lack of effective communication, can foster incompatibility and misunderstandings that often result in conflict.

A. DIMENSIONS OF CULTURAL DIFFERENCES[68]

Individualism	Collectivism
> Priority values: autonomy and responsibility	> Priority values: group harmony and solidarity
> Identity: first the "I"; self-reliance is valued	> Identify: first the "we"; mutual support and loyalty are valued

68   Source Centre for Intercultural Learning/Canadian Foreign Service Institute Pre Posting Course in Intercultural Effectiveness Gatineau 2008. Also see Kazarian Shahe Ph D. Diversity Issues in Law Enforcement 2001. p 126 (Adapted by Marcel Kabundi Director Ethnocultural Programs Correctional Service Canada)

> Decision-making: power is delegated; one representative answers for the group
> Motives: individual achievement and performance are valued

> Decision-making: general agreement

> Motives: group cohesion and stability are valued

Equality

> Power and authority are earned through merit: expertise, leadership, influence
> Power sharing inspires trust, supports equal rights and opportunities
> Those in positions of power and authority ask that subordinates be involved. Subordinates ask to be consulted
> Change is valued, and encouraged by individual autonomy

Hierarchy

> Power and authority are conferred by social factors: age, gender, family
> Power differences inspire trust, ensure order and security
> Those in positions of power and authority require loyalty from subordinates; subordinates ask to be protected.
> Stability is valued and assured by a structured hierarchy

Formality

> Titles and diplomas are proudly exhibited; they help situate people and build trust
> Spoken and written communications should get right to the point
> Rituals around courtesy, dress and rank indicate respect and honour hierarchy

Informality

> Titles and diplomas are concealed out of modesty; trust is won by personality and experience
> Spoken and written communications require formal salutations and closings
> Informality around courtesy, dress and rank create closeness and spontaneity

Explicit Communication

> Most meaning carried in spoken context
> Words carry most of the meaning; one should be clear and direct
> Words are used to check for understanding and clarify the meaning

Implicit Communication

> Most meaning carried by unspoken context
> Words are secondary to who is speaking, how it is said, and in what context
> Understanding of the context is expected. Requests for clarification are disrespectful

> Non-verbal signs supplement words	> Non verbal signs replace words
> Silence is seen as a lack of engagement or understanding	> Silence carried multiple meanings, to be discovered
> "Yes" means "yes, "no" means "no"	> "Yes" may mean "perhaps", "no" would lead to loss of face

Linear Time	Cyclical time
> Time is linear and segmented	> Time is cyclical and can't be compartmentalized
> Time is money. It can be spent, saved, wasted	> Time is not seen as a commodity and as such has no value, it is endless, there will always be more of it.
> Time must be planned. Punctuality indicates respect and efficiency	> Time can be planned keeping in mind that the future is uncertain. Punctuality is relative; people come first.
> One acts in the present and in anticipation of the future	> One acts in the present with consideration for the past

Rules Based	Relationship Based
> Contracts and laws ensure trust	> A harmonious relationship ensures trust
> To be fair, rules must be applied equally to all	> To be fair, rules should be applied flexibly, depending upon relationships
> Agreement details are explicit, often written down, independent of the identity of the signators, legally binding, and unchangeable	> Agreements are general, often oral, bound up with the identity of the persons, and open to change
> Justice consists in treating all similar cases in an identical manner	> Justice consists in treating each case based on its circumstances

Nuclear Family	Extended Family
> The family is limited to father, mother and children	> The family is extended to the clan and beyond

Competition	Cooperation
> An individual victory and success is sought	> A group victory and success is sought

Individualism-collectivism values and priorities play a big role in intercultural conflict. If an individual that comes from a cultural background that is initially collectivist in nature, his or her priorities tend to differ from a person that comes from an individualist

> The conflict outcome is perceived as unproductive when no tangible outcomes are reached or no plan of action is developed

> The conflict outcome is perceived as productive when tangible solutions are reached and objective criteria are met

> Effective and appropriate management of conflict means individual goals are addressed and differences are being dealt with openly, honestly, and properly in relation to timing and the situational context
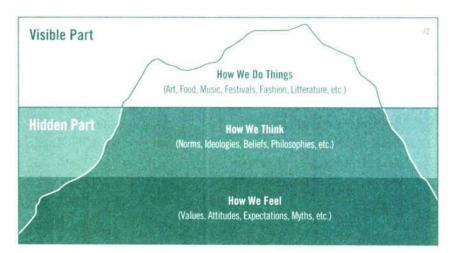
> The conflict process or outcome is perceived as unproductive when face issues are not addressed and relational/group feelings are not attended to properly

> The conflict process or outcome is defined as productive when both conflict parties can claim win-win results on the facework fronts in addition to substantive agreement

> Appropriate and effective management of conflict means that the mutual "faces" of the conflict parties are saved or even upgraded in the interaction and they have dealt with the conflict episode strategically in conjunction with substantive gains or losses

B. THE ICEBERG PHENOMENON

In a prison setting, for example, offenders tend to associate themselves with the group they relate to the most: leaders, advisors and enforcers, followers, unaligned inmates, disgraced outsiders, and outcasts. Advisors & enforcers are described as inmates that provide support to their fellow inmate leaders by providing advice based on their knowledge and ability to maintain their connection between criminal activities inside and outside prison. They carry out orders from the leaders and use their abilities to keep the followers under submission. The followers on the other hand follow the inmate code of conduct and show respect when dealing with anyone above their status position.

For a mediator to be successful in resolving a conflict between inmates from either group, he or she has to be informed of both the inmate's adopted prison subculture (which generally has to do with the inmate's personality) and the inmate's cultural background (which is the foundation of the inmate's cultural world-view—their real identity). This is an important step because the first impression that an outsider can have on an inmate will be associated with the prison subculture to which the inmate belongs. The mediator has to explore the offender's identity in order to understand the person's cultural values.

The identity of an inmate can be equated to the example of an iceberg. Just as at first glance an Iceberg does not give the true impression of how large it really is; similarly at first glance an individual or an inmate may not give the true impression of where his or her true cultural perceptions, values, ideas, interests, and goals are.

Culture as an iceberg

Like the iceberg; the little bit of it that can be seen can be equated to how an offender behaves on the surface (personality). On the other hand, the biggest and most important part of the iceberg that is unseen can be equated to the cultural programming of the offender. The culture of a group of people is normally first determined by things like the cloths, the food, festivals or celebrations, and their folklores. However, these are only the superficial side which constitute only the top part of the Culture iceberg. The deeper features of a culture are much more numerous and they are what influence the fore-mentioned visible cultural traits. The actions that identify as criminal behaviour have much to do with negative outside forces and an incompatibility in worldviews between cultures.

72 Adapted from G.R. Weaver. "Understanding and Coping with Cross-cultural Adjustment Stress" in Gary R. Weaver, editor, Culture, *Communication and Conflict, Readings in Intercultural Relations*, second edition (Simon & Schuster Publishing, 1998). Also see, Rocher, G., Introduction à la sociologie générale, Tome 1, 1969.

▷ # 3.3 COMPETENCY AND QUALITIES
▷ # OF A MEDIATOR

Becoming an intercultural mediator is not a complicated process. Since mediation is something practiced everyday and at every level of society, it can be reinforced in the life of a culturally conversant individual who concentrates on developing the necessary qualities of a mediator. If you speak more than one language or understand the world-perspective of different cultures, then you are at an advantage. Every individual has, or can develop, the necessary qualities needed to become an effective cultural mediator. Training can help refine the necessary skills and traits. These skills and traits are transferable and they include the following.

As explained earlier, culture is the way that each person has been programmed to behave in the environment.[73] This programming is comprised of a set of values of right and wrong that everyone receives as part of their education since birth. Within a cultural group, these values tend to slightly differ from family to family, but the difference in values becomes more apparent when an inter-cultural or inter-communal comparison is made. Intercultural mediation is when two or more parties, with different cultural worldviews, come together to resolve an issue between them, with the help of a culturally conversant neutral third party.

A. SKILLS AND TRAITS THAT ARE TRANSFERABLE FOR MEDIATION

Skills

> planning and organizing skills	> able to use initiative
	> persuasive negotiation ability
> conceptualizing	> listening skills
> ability to acquire information	> communicating skills
> guiding skills	> ability to summarize
> able to motivate	> analytical skills

73   Sellin R G et E Winters, *Cultural Issues in Business Communication* 2nd ed Charleston BookSurge Publishing 2005

Traits

> objectivity
> impartiality
> flexibility
> a sense of humour
> honest
> persistency
> ambition

> self-disciplined
> results-oriented
> people-sensitive
> assertive
> enthusiastic
> sociable

Part of the preparation to become a mediator involves focusing on developing any personal qualities that need to be worked on. The following is an explanation of how these qualities can be used.

B. CHARACTERISTICS OF A GOOD MEDIATOR[74]

i. Effective Listener
A mediator must focus on the communication of the parties and listen to interests and issues presented, both verbally and non-verbally. A mediator that continually talks or questions will not have an opportunity to learn the dynamics of the dispute as perceived by the parties.

ii. Empathetic
Maintaining impartiality is a key to successful cultural mediation. A mediator needs to be open to the thoughts, background, concerns and perspective of each disputant.

iii. Flexible
Flexibility on the part of the mediator ensures that a focus is maintained on enhancing negotiations.

iv. Honest
Due to the nature of the mediation process, the mediator's ability to keep the information confidential is crucial to his or her reputation as a mediator.

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74 Brett J M Drieghe R & Shapiro D L (1986) 'Mediator style and mediation effectiveness' *Negotiation Journal* 2 277 285 Katz Erwin L *Refresher Guide Mediators and Mediation* Chicago Chicago International Dispute Resolution Association (CIDRA) 2003 and Carnevale (1986) 'Strategic choice in mediation' *Negotiation Journal*, 2 41 56

v. Imaginative and Resourceful

A mediator's ability to help the disputants see a new perspective and find a new approach to solving their problem helps to speed up the problem solving negotiation.

vi. Impartial and Objective

Any sign of favouritism or biasness on the part of the mediator will defeat the whole purpose of proceeding with the mediation. When one side perceives that their opposition is receiving favour, the negotiation does not yield the desired results. The mediator should not allow comments to affect him or her. His or her role is to be an objective observer and not active to the extent of giving opinions during the discussion.

vii. Intelligent

Intelligence to be able to maintain the disputants' confidence in the mediation process and discern when the argument is going off course is essential.

viii. Optimistic

A mediator should show optimism and focusing on the future to encourage the disputants to believe that a solution is possible.

ix. Patient and Persevering

There are times when the disputants will move slowly towards their solution, the mediator needs to be understanding of this and look out for opportunities to help the disputants not to deviate from the issue at hand.

x. Respectful

The mediator's ability to maintain self-respect and treating the disputants with respect and dignity will encourage them to respect themselves as though they were in front of a Judge. This helps the mediation process.

xi. Sense of Humour

The mediator should be able to use humour to ease the tension and laugh with the disputants and not at them.

xii. Capacity to analyze conflicts[75]

The mediator must be capable of analysing the following seven factors: 1) the conflicting parties, 2) the key issues, 3) the nature or intensity of the conflict, 4) the nature of inter-personal relations between the parties, 5) the nature and the scale of power between the parties, and 6) the behaviour and attitudes of the parties.

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[75] Bloomfield, D . G . Yash & Reilly, B "Analysing Deep-Rooted Conflict", in Harris, Peter and Reilly, Ben (Editors), *Democracy and Deep-Rooted Conflict Options for Negotiators*, Stockholm, International IDEA 1998 pp 31 -48

According to Bloomfield (1998) , an analysis is complete only after the mediator has become familiar with all the elements and factors – the actors, the issues, the relationships, and so on–which will need to be taken into account in order to develop a process for managing the conflict peacefully. From the analysis, in other words, it is then possible to move to a consideration of all the ingredients which must be part of (a) a workable process for reaching an agreement among those involved, and (b) a viable outcome which covers all the elements, needs and interests identified.

Correctional Service Canada, for example, has a *Directory of Cultural Mediators* and interpreters that volunteer their time to assist in cross-cultural conflict resolution. This publication can be ordered or viewed via Correctional Service Canada's Ethnocultural Services Section Website (http://www.csc-scc.gc.ca/ethnoculture/).

LESSON 4
INTERCULTURAL MEDIATION PROCESS

▷ 4.1 SEVEN STEPS TO A ▷ SUCCESSFUL MEDIATION[76]

The mediation process can be undertaken in different steps. We have listed seven, some of which can be skipped depending on the context and nature of the conflict. The following are the steps:

> Introduction
> Preliminary interview
> Opening phase
> Exchange phase
> Resolution phase
> Closing phase
> Re-evaluation phase

In mediation, everyone's role is important. For the mediation to be successful, each disputant needs to share information about his or her wants and needs in a clear manner to help the mediator effectively address the situation and to help the parties understand each other's plight. With impartiality and without judging who is right or wrong, the mediator's role is to provide a supportive, calm process or structure for the disputants to identify options for solution. Due to the variety of circumstances that vary from one mediation session to the next, the information in this section is structured in a manner that can be adapted by different kinds of mediators (social network mediators, authoritative mediators, and independent mediators) such as those mentioned in Lesson 2.

The following serves as a guide to the mediation process. These steps[77] to mediating can be applied to all conflict resolution situations.

1. Find a neutral, private location for the meeting
2. Get agreement from both parties confirming that they want to try mediation
3. Meet with each disputant individually to hear their own words about the problem and the events leading up to it
4. Arrange for a joint meeting to explain the ground rules the meeting

76 This chapter was inspired by the following publications: (1) Canada. Correctional Service Canada. *Unit 11. Mediation and Conflict management Women-Centred Training Program Facilitator Manual* Ottawa: Service Correctionnel du Canada. Vol. 2. March 2001. (2) Ontario. Ministry of Labour. *Rules of Practice. Pay Equity Hearings Tribunal.* Ottawa: Ministry of Labour. November 2002. Also available at < http://www.labour.gov.on.ca.pe. prht/rules/pehl_rule.html >. (3) Moore, C. W. The mediation process: Practical strategies for resolving conflict (2nd). San Francisco: Jossey Bass Publishers. 1996. (4) Stephan, W. G. & Stephan, C. W. (2001). Cognition and Affect in Cross-Cultural Relations in Handbook of international and intercultural Communication (Editors) William B. Gudykunst and Bella Mody. 2nd Edition. 2001. and (5) Zutter, Deborah Lynn. *Preparing for Mediation A Dispute Resolution Guide.* Toronto: Trafford Publishing. 2005.

77 Canada. Correctional Service Canada. *Op. cit.* See footnote 77.

5. Describe the mediation process—the mediator's role and the expected role of the disputants
6. Sort the comments of disputants into categories to track the information (for example: interests, facts, alternative actions, and possible solutions)
7. Conduct the joint meeting respectfully while exploring all possible solutions that honour both disputants' interests
8. Encourage disputants to decide on an agreement that they will follow through in good faith
9. Determine with disputants how they will evaluate whether or not the chosen solution is working
10. Set a specific date for a new meeting to evaluate the progress

The entire mediation process can be organized into the seven phases elaborated below.

A. THE INTRODUCTION

Before the mediation can begin, the mediator is introduced to the disputants in order to hear each one's complaint. When the disputants finally decide on a solution, they must also demonstrate that they are ready to commit to their suggested solutions. The disputants are responsible for making realistic final decisions and implement them.

To begin
> the mediator explains his or her limits and role during the discussion
> the concept of mediation and its procedure are explained to the disputants
> the mediator must be satisfied that both parties are ready and willing to mend their differences. An Agreement to Mediate is prepared and signed by both the mediator and disputants. The Agreement to Mediate protects the mediator in case either party wants to have their own way.[78]
> the mediator answers questions posed by either party
> the mediator affirms that he or she will be impartial and keep proceedings confidential.[79]
> the mediator sets a proposed time for the duration of the mediation session

B. PRELIMINARY INTERVIEW

The preliminary interview serves as an information-gathering session that will help the mediator understand the problem from each party's perspective. Depending on the case, this can be done at each participant's discretion or can be done together with the participants as part of the mediation's opening phase. This is also the stage where the mediator has the opportunity to inquire about key cultural differences that either party finds offensive—things that can escalate the conflict rather than calm it down (pointing, interrupting, stereotyping, etc).

Depending on the request made by either disputant, it is possible that a mediation session be held in more than one language. If this is the case, the mediator will be

78   Sample agreement is provided in the Annex
79   Moore, C. W. Op cit. See footnote 77

informed prior to the session and the appropriate measures will be undertaken based on the rules that govern Correctional Service Canada's mediation procedures.

For example, the Ontario Pay Equity Hearings Tribunal has provided accommodation for parties that request services in languages other than French and English. The rule for mediation states that: "Any party seeking services in languages other than French or English must notify the Registrar as soon as possible. Where a party intends to call a witness to testify in a language other than French or English, the party must arrange for a translator acceptable to the tribunal to attend at the hearing."[80]

These rules make it possible for intercultural mediators to better serve the non-French and non-English speaking offenders and members of the community.

C. OPENING PHASE

In this phase, the mediator establishes the ground rules that each party has to follow during the discussion. The intercultural mediator, with the participation of disputants, can discuss and arrive at a set of ground rules that are aimed at helping the dialogue. For instance, they can decide the following:

Sample Ground rules
> respect for one another is crucial to solving the issue
> either party can ask for the discussion to be stopped at any time if they strongly feel something is not working
> interruptions, name-calling and stereotyping are prohibited
> participants should make an honest effort to solve the problem
> the discussion remain confidential
> the end solution is to be respected

Ground rules are helpful in making sure the discussion is productive and that offensive words or actions that can escalate the conflict, rather than worsen it, are avoided during the discussion. The mediator's well-formulated opening statements will encourage the disputants to express themselves in a respectful manner. Outlined below is an example of opening statements for mediation.[81]

> *I'd like to welcome you here today. We know it can be difficult to come to a meeting like this. Your presence here today shows you are willing to find a way to put your differences aside. (validation)*

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80   Ontario Ministry of Labour *Op cit* See footnote 77
81   Stephan, W G , & Stephan C W *Op cit* See footnote 77

> *I want to start by saying that we are not judges. Neither are we here to blame anyone or decide anything for you. We are here to help you solve the problem; you are the ones that will decide the final outcome of this mediation. (mediator's role explained)*
> *Everything said in this room will remain confidential. Only the agreement and the intake information will remain, notes taken at this session are just to help us keep track of the discussion. (confidentiality)*
> *The discussion will be in three sections. First, each of you will explain what is disturbing you, secondly you will face each other and discuss the issues, and thirdly we will all talk about possible ways to reach a solution. (process)*
> *Every one will be given the opportunity to speak. Interruption is not permitted and we all have to be respectful of each other. (ground rules)*
> *If you feel that two hours is not enough time for this discussion, please let me know. (set time frame)*
> *I am open to any questions you may have about the mediation. (questions)*
> *I would like you to take a few minutes to express your concerns (person A), and when you are done I will pass the right to speak to you (person B). (Invitation to speak)*

D. EXCHANGE PHASE

The mediator's goal in this phase is to bring the disputants to a point where one feels understood by the other. While encouraging the disputants to elaborate on facts surrounding the dispute, the mediator needs to concentrate on discussing the arguments that are dear to each disputant's heart. Failure to do this may result in the disputants feeling misunderstood and frustrated.

When disputant feels understood:[82]
> he or she shows led tension in body and voice pitch
> his or her expressions are more positive
> he or she may begin to ask for forgiveness
> he or she does not dwell on the same topic but rather moves on to the next

When a disputant does not feel understood, the following characteristics are noticeable in his or her attitude.

When disputant does not feel understood:[83]
> he or she shows more tension in body and voice pitch
> he or she repeats the same arguments over and over
> stronger, and possibly offensive, words are used
> he or she is prone to interrupt the other speaker

82   Ibid
83   Ibid

The exchange phase involves the disputants explaining how they feel about their situation and how much effort they really put in avoiding the conflict. When all disputants are allowed to express themselves, they generally feel equally heard and respected. The mediator needs to help the disputants explain what is important to them and acknowledge each one's experiences, concerns, needs and values. The process can proceed in the following manner. The mediator:

Encouraging disputants to express themselves:[84]
> begins by asking the first person *"What has brought you here today? What happened?"*
> asks the first person how she or he feels about it.
> asks the second person *"What has brought you here today? What happened?"*
> asks the second person how she or he feels.
> asks the first person what she or he could have done differently.
> asks the second person what she or he could have done differently.
> asks the first person what she or he can do here and now to help solve the problem.
> asks the second person what she or he can do here and now to help solve the problem.

Throughout this question-answer period, the mediator focuses on rephrasing the responses that will bring about quick understanding, in case the other party missed something. One way to encourage the parties to understand each other is by having them exchange roles. This exercise helps the mediator identify what is missing from each disputant's understanding of the other and helps to bridge the gap of understanding by rephrasing and offering clear explanations.

This phase is a good exercise that permits the disputants to learn how to negotiate and pushes them to be more aware of each other's cultural values.

E. RESOLUTION PHASE

The mediator's goal in this phase is to help the disputants focus on problem-solving until they understand each other for an agreement to be established.

The resolution phase can be sub-divided into the following phases, throughout which the mediator makes lists of interests and choices the disputants will make:

> Identify common interest
(person A) You have said that according to your culture's religious practices it is really important that you (spend your nights on the floor). (person B) you say that it

84   Ibid

is important that you (wake up early to pray) and you need the space for this sacred moment. Both of you mention that you want to (maintain a good relationship and communication with each other). (common interest)

> List the main issues

There seems to be two issues that need attention: the space for prayer and the requirement to humble one's self to sleeping on the floor. Have I missed anything else? Could we start with discussing the requirement to humble one's self to sleeping on the floor? (the main issues are listed and dealt with step by step)

> Brainstorming for options

Is there anyone with a suggestion or suggestions on how to resolve the issues you have both outlined? I will list the ideas and later we will tackle them one by one until you both decide on what sounds feasible and satisfactory to both of you. Who is ready to begin? (presenting ideas and choices)

> Evaluate and decide on best possible options

Thank you for your suggestions. Are there any options that standout? Do you see any options that will work well with others? (the pros and cons of the options are discussed to eliminate what does not satisfy the disputants)

When *person A* has finished talking, the mediator needs to rephrase for clarity or ask *person B* to put in his or her own words what they have understood. The mediator also moves the discussion to another concern once an issue is understood; and intervenes when counterproductive words are used; prevents the discussion from getting repetitive or out of topic.

It is in this phase that the mediator will be able to determine if the whole mediation process was successful. If the session was not successful, the exchange and resolution phases will have to be repeated at a time when participants are ready.

On the other hand, if the discussion was successful, the disputants will express it in their increased understanding of one another, in their progressively calm behaviour, and in their new-found understanding towards each other. At this point the participants are ready to sign an agreement on the options they chose. This agreement is a document known as a *Memorandum of Understanding*.[85]

F. CLOSING PHASE

At this point, the intercultural mediator's goal is to make sure that each party feels satisfied with the final solutions they have proposed. If the parties are satisfied with the discussion, they need to come up with an agreement of how they will co-exist from

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85   A Sample Memorandum of Understanding is provided in the annex

this moment on. The terms of agreement are written down in the *Memorandum of Understanding* and signed by all parties, including the mediator.

In order to make sure that peace has been restored between the disputants before the mediation is closed, the disputants must arrive at:

> an apology—a personal statement of regret from both sides can be pronounced
> a restitution—parties find a way to make up for the wrong done
> designing new plans for the future—parties can make a commitment to do or not to do certain things in the future
> forgiving each other—one side forgives the other person for doing what was perceived to be a wrongdoing. The parties decide to let go and move on and no longer holding on to this situation.

Normally, the concept of mediation process has three main goals :[86]

1. To help disputants arrive at a mutually acceptable resolution while preserving their dignity and self-respect and building respect for one another
2. To get agreement and commitment to a specific course of action that they freely agree upon
3. To stimulate positive feelings within the disputants themselves for having solved their own problems

It is important to note that apologies mean nothing if a person is fearful or anxious that the same behaviour, action or event will happen again. No amount of money will make it right, either. It's easier to forgive if the other person makes a commitment to do something differently in the future.

G. RE-EVALUATION PHASE

At the end of the mediation meeting, the disputants and mediator set a specific date to reconvene for a progress report session. This will help determine whether or not the process was a success. This needs to be done regardless of the mediation's outcome.

If the solutions proposed at the meeting are not working, it might simply be that some minor adjustment or another meeting is required. If the problem persists, then the traditional intervention of higher authorities such as a judge, warden or another superior needs to be considered to find a lasting solution.

86   Canada Correctional Service Canada *Op cit* See footnote *11*

4.2 INTERCULTURAL MEDIATION TECHNIQUES AND STRATEGIES'

During the mediation process, the most important tools the mediator utilizes are listening, clarifying and rephrasing in order to properly identify the concerns of each party. On the side of the disputants, their ability to clearly verbalize their concerns is what will help them come to an agreement. It is not the duty of the intercultural mediator to assign blame, pass judgments on who is right or wrong, or make final decisions about what should happen. An intercultural mediator is expected to help disputing parties openly discuss their problem and reach an agreement that satisfies all participants. The aim of this exercise is to motivate a higher standard of excellence in resolving conflicts at all levels of the society. The following are some helpful conflict mediation tips to remember.

A. STRATEGIES

B. SKILLS

A. STRATEGIES	B. SKILLS
1. **Defuse the emotions** **Ensure that the person is sufficiently rational to proceed with problem-solving**	> Use crisis intervention strategies or steps. Some of these are: 1. recognize the signals 2. take a supportive stance 3. model personal self-control 4. use calm verbal and non-verbal communication skills 5. watch for personal safety 6. avoid complicated or threatening instructions 7. avoid unnecessary physical handling
2. **Choose an appropriate location**	> Use a secluded location to avoid the disputants' need to "perform" in order to save face.

3. **Acquire information by listening from the other person's frame of reference** **Avoid being judgmental**	> Give attention by both verbally and physically attending. > Listen attentively for understanding, not to rebut. > Mirror and paraphrase as appropriate. > Use silence effectively.
4. **Acknowledge feelings**	> Tentatively label emotions and check out your interpretation, but don't tell him or her how he or she feels.
5. **Acquire more information** **Confirm information provided**	> Probe with open-ended questions. > Identify interests and needs behind disputant's stated position. > Use close-ended questions to confirm information. > As necessary, verify information with other sources.
6. **Summarize the problem and the feelings**	> Summarize your understanding of the problem and disputant's feelings, in your own words.
7. **Problem solve**	> Encourage the disputants to assume responsibility for their roles in the conflict to arrive at discussing; if it is his or her problem, then he or she needs to keep ownership with the assistance and encouragement of mediator.
8. **Follow up**	> Report back to the disputant about progress on the agreed-upon response to the problem > Inform other staff through written and verbal reports, as necessary.

Once introduced to the participants, the mediator explains the mediation process and answers each participant's questions. The disputants are then encouraged to tell their side of the story without interruption. Each party then negotiates to find a way to remedy their situation until they come to a closing that they all find satisfactory. Throughout the session, the mediator's knowledge of the major characteristics of intercultural conflict goes a long way in facilitating a rapid satisfactory solution to the problem being debated.

▷ 4.3 ATTITUDES TO ADOPT DURING THE MEDIATION SESSION

To avoid prolonging the negotiation, the mediator has to help the disputing parties communicate mainly on core issues—the main reasons why the parties have come to see the other as an obstacle. The mediator can successfully achieve this by using the Active Listening Communication Techniques elaborated below.[88]

By actively listening the mediator decodes a spoken message in order to highlight the sentiments attached to the message. An active listener verifies what he or she has heard by rephrasing, paraphrasing and asking for clarity. This helps the mediator understand what the issues are and builds trust because it shows the mediator has respect for each party's values, concerns and feelings. The mediator does not need to endorse any concerns, only recognise them. Once each party feels valued, it helps to relieve the tension of high emotions and calms the participants.

A. ENCOURAGING THE SPEAKER[89]

Purpose
To provide a safe space for the speaker to talk; to encourage the speaker to elaborate on what is important to him or her. When the mediator encourages each speaker to elaborate on points that he or she perceives as key important, it helps each party to be more open. This will help create understanding and help speed up the mediation process.

Method
Minimize distractions; use body language to convey attentiveness; avoid making commentary on what is being said; ask for more information.

88   Stephan W.G. & Stephan C.W. *Op. cit* See footnote 77
89   Ibid

Examples
> Face the speaker; nod your head;
> encouraging sounds, such as *"Uh-huh...... Mm......"* etc;
> Ask questions such as "Can you say more about that?" and "What happened next?"

B. CLARIFYING QUESTIONS

Purpose
To get more information; to help the speaker be concrete and specific. The mediator helps the speakers to structure and organize their ideas, an approach that helps bring clarity to their arguments.

Method
Ask open-ended questions; questions that can't be answered with only *"yes"* or *"no"*.

Examples
> *"When did you first notice this?"*
> *"What is your normal daily schedule?"*
> *"Can you help me picture the situation?"*
> *"How did that affect you?"*
> *"Can you give me an example?"*
> "What were things like before the incident?"

C. RESTATING AND REPHRASING[50]

Purpose
For the mediator:
> to show he or she is listening and understanding what is being said;
> to check the interpretation of what is being said;
> to make sure he or she understands clearly.

Method
The mediator:
> uses his or her own words to briefly state what is being said;
> encourages the speaker to correct him or her if the interpretation is wrong.

Examples
> *"It sounds as if you felt betrayed when you heard that she had talked about you behind your back. Is that right?"*
> *"So you want your Parole Officer to understand your family's situation?"*

50 Ibid.

D. REFLECTING FEELINGS

Purpose
> for the mediator to show that he or she understands how the speaker feels;
> helps the speaker understand his or her own feelings after hearing them being expressed by someone else.

Method
The mediator:
> identifies the speaker's emotions;
> encourages the speaker to correct him or her if the interpretation is wrong.

Examples
> *"You were sad and felt betrayed when you heard that she had talked about you behind your back. Is that right?"*
> *"You were angry when the guard threw out your property. Am I right?"*

E. VALIDATING

Purpose
The mediator:
> acknowledges the speaker's values and how they affect the conflict;
> shows respect without necessarily agreeing with what the speaker says.

Method
The mediator:
> puts the speaker's values and how they affect the conflict into words;
> recognize the speaker's positive values, efforts and intentions.
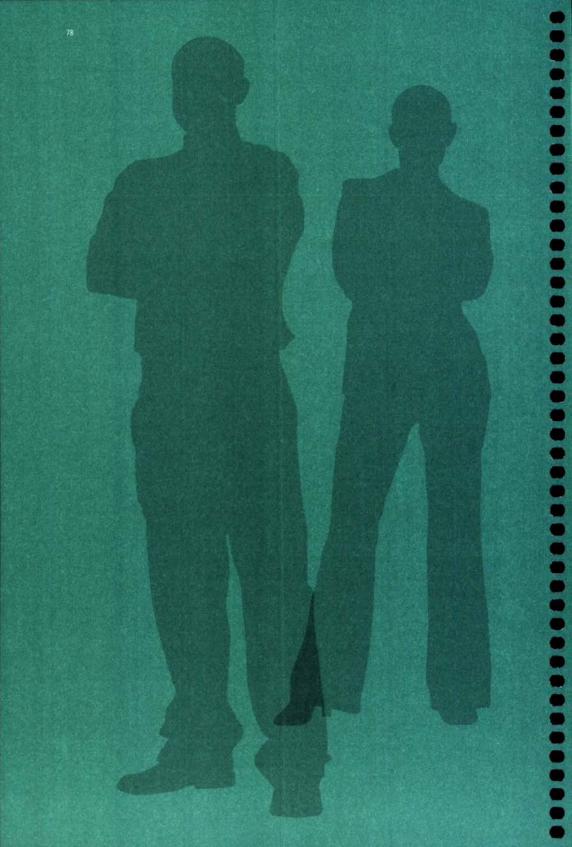
Examples
> *"So the respect of other inmates is very important to you. Is that right?"*
> *"It seems as though privacy is very important to you. Am I right?"*
> *"So intended that statement as a complement. Am I right?"*

Open-ended questions help the speakers to become more specific and they fill the conversation with each speaker's ideas, hypotheses and concerns. It is a way to make people feel heard and respected and this encourages each speaker to express themselves even more.[91]

91   Ibid

LESSON 5

UNFAVOURABLE SITUATIONS DURING INTERCULTURAL MEDIATION

5.1 WHEN MEDIATION IS NOT AN ALTERNATIVE

Although informal conflict management options are found to be helpful in most cases, it is not always appropriate.

Informal conflict management may be appropriate when:

> The individuals in dispute are willing to address and try to settle the issue(s)
> Parties want an informal and flexible process
> Ignoring the problem is not viable
> Other options for resolving the dispute are not acceptable (i.e. formal grievance process)
> There is interest in maintaining the relationship
> A case is complex and requires a creative solution
> Parties prefer to resolve their dispute in private
> Etc.

Informal conflict management may not be appropriate when:

> The parties in dispute do not have the authority required to resolve the problem
> The involved parties are unwilling to work toward a resolution
> A party is challenging the validity of a law, policy, etc.
> There is a need to set a precedent with regards to the issue of law
> The issue is one that should be debated in the public eye
> There is fear of violence between the parties
> Etc.

5.2 WHAT TO DO IF NOTHING WORKS

The mediator should begin by analysing the situation and trying to understand why it failed. Mediation may be inappropriate in specific scenarios and prove unsuitable, making it ineffective, even though the "rules" were followed.

In any case, there are other forms of Alternative Dispute Resolution (ADR) which are not always part of a legal proceeding. They represent alternatives to the legal system (thereby

relieving pressure on the courts) but are not necessarily separate from it, since some practices are governed by a legislative framework. Lesson 1 of this manual elaborates on these alternatives: arbitration, conciliation, negotiation, med-arbitration, and ombusman. These procedures may be subject to a number of national and international regulations (cf. ADR Institute of Canada, Inc.). In general, ADR methods are appreciated for their private, less formal character. They are less onerous in practice and take less time than conventional legal proceedings.

If the ADR methods fail, other more conventional resources are available, such as recourse to an ombudsman or a tribunal. In the case of Correctional Service Canada, for example, the Offender Redress Division and the Restorative Justice and Dispute Resolution Unit, are available.

Whatever the method selected, it is always crucial to consider the cultural parameters, even when they are not the direct source of the conflict.

CONCLUSION

Cultural competency training is an essential tool when it comes to resolving conflicts across cultures. The knowledge of cultural competency can contribute to harmonious intercultural relationships in the workplace or community as well as combat stereotypes, prejudices and cognitive biases. Indeed, a culturally competent individual is one who is aware of his or her own culture and values. This person works at controlling his or her own values and biases and how these may affect interactions with others.

With cultural competency training, any individual can become aware of, and respect cultural differences, and gain knowledge of institutional barriers that prevent some cultural groups from accessing resources. Strong intercultural relationships reduce distance between individuals while improving cross-cultural relationships. All these factors can contribute to a good intercultural mediation.[92]

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ANNEX

1. SAMPLE AGREEMENT TO MEDIATE[93]

THIS IS AN AGREEMENT TO MEDIATE

made on [Date]

BETWEEN

Party A

AND

Party B

The parties hereby agree to mediate this grievance concerning file [File number].

By signing this document the parties undertake to conduct this mediation process in good faith and in a forthright manner, and to make a serious attempt to resolve the following (please enumerate them) outstanding matters. The parties wish to mediate these matters in accordance with the following terms:

1. [Name of mediator] has been appointed to act as mediator;
2. the parties agree that the mediator is a neutral facilitator who will assist the parties to reach their own settlement. Further, the mediator has no duty to assert or protect the legal rights of any party, to raise any issue not raised by the parties themselves or to determine who should participate in the mediation;
3. the parties and/or their representatives attending the mediation will have the authority to reach a settlement in this matter, or will have the means to readily and rapidly obtain that authority;
4. all information exchanged during this entire procedure shall be divulged on a without prejudice basis for the purposes of settlement negotiations and shall be treated as confidential by the parties and their representatives subject to the requirements of any statute and the need to protect individuals against physical harm. Further-

93   Aboriginal Human Resource Council. Building a Memorandum of Understanding < http://www.aboriginalhr.ca/en/resources/articles/MOU > Consulted on November 3, 2007

more, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the mediation;

5. it is understood that in order for mediation to work, open and honest communications are essential;

6. the parties undertake to communicate with each other in a civil and courteous manner;

7. it is recognized that the mediation process is voluntary, and may be terminated by the mediator or the parties at any time;

8. the mediator is free to caucus with the parties individually, as he or she sees fit, to improve the chances of a mediated settlement. Any confidential information revealed to the mediator by one party during such caucusing may only be disclosed to the other party with the former party's express permission. It is understood that any of the parties may request at any time to caucus, with or without the mediator;

9. in order to ensure the confidentiality of the process it is understood that any notes prepared or written by the mediator shall be destroyed; the mediator shall only report to the Board whether there has been a full settlement or not; any memorandum of settlement reached by the parties shall not be placed on any Board file, nor shall its terms be disclosed unless the parties otherwise agree ;

10. it is agreed that when a settlement is reached there will be a written memorandum of settlement, which will be signed by the parties forthwith.

Dated at [*Location*], on [*date*]

SIGNATURES:

Disputant A: Disputant B:

_____   _____

_____   _____

Mediator:

_____

2. SAMPLE MEMORANDUM OF UNDERSTANDING [1]

Memorandum of Understanding

> We the undersigned parties acknowledge that we have resolved the following (please enumerate them), through mediation, the issues between us.
> The terms of our agreement will be confidential and will not appear in our personnel files.
> In the event of any breach, or any new issues arising between us, we will have the option of returning to mediation
> We understand that we have not released our legal/contractual rights by entering into this agreement
> The terms of our agreement are as follows:

(person A) agrees to : ....
(person B) agrees to : ....

Party: Party:

_____   _____

Mediator: Date: at [*Location*], on [*date*]

_____   _____

3. CULTURAL COMPETENCY SELF-ASSESSMENT

Survey Description and Note to the Participant

Note to the participant: The purpose of this anonymous Cultural Competency Self-Assessment questionnaire is to help any individual to know their strengths and areas where improvement is needed. At the end of this exercise, the participants will be committed to becoming more interculturally effective and motivated to acquire the skills needed to address the challenges of dealing with an increasingly diversified clientele. This questionnaire is divided into three main sections dealing with personal knowledge, skills and attitudes. Everyone working in a cross-cultural environment is encouraged to complete the questionnaire and assess their cultural competency. This questionnaire is strictly voluntary and not destined to be used as part of a recruitment exercise. It has been adapted to the Canadian context; please adapt it, mutatis mutandis, to the context of your country.

1. Please state your Name, Community/City, Region, Province, Educational Profile, Sector/Division/Department (Optional):

   _____

   _____

   _____

   _____

2. What is your gender?
   ☐ Male
   ☐ Female

3. List any non-official language that you speak or understand.

   _____

   _____

   _____

   _____

95   Source: Permission to adapter the questionnaire was received from Arel Holman of Portland State University's Research and Training Center on Family Support and Children's Mental Health. Mason. H. C. *Cultural Competence Self-Assessment Questionnaire: A manual for users*. Portland State University, Portland, 1995.

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4. Professional experience (please check the appropriate category)
   ☐ Executive
   ☐ Scientific and professional category
   ☐ Administrative and Foreign Service category
   ☐ Technical category
   ☐ Administrative support category
   ☐ Operational category

5. Do you have management or supervisory responsibilities?
   ☐ Yes
   ☐ No

6. What is your first official language?
   ☐ English
   ☐ French

7. Which category best describes your current age?
   ☐ 35 and younger
   ☐ 36-55
   ☐ 56 and older

8. How many cultural awareness or competency workshops or conferences have you attended since 2000?
   ☐ None
   ☐ 1 to 3
   ☐ 4 to 6
   ☐ 7 to 9
   ☐ 10 or more

9. Do you know how the Canadian immigration process works?
   ☐ Not at all
   ☐ Barely
   ☐ Fairly well
   ☐ Very well

91

10. Rank in order of most to least, the ethnocultural groups with whom you serve most :

_____

_____

_____

_____

11. Rank in order of most to least, the ethnocultural groups of which you feel most knowledgeable:

_____

_____

_____

_____

12. Rank in order of most to least, the ethnocultural groups with whom you have most social contact:

_____

_____

_____

_____

13. Which of the following experiences apply to you?
    ☐ Active religious affiliation
    ☐ Active cultural affiliation
    ☐ Counselling experience

14. Have you ever lived in a foreign country? (If so, how long and where?)

_____

_____

_____

_____

Personal knowledge

15. Please list the ethnocultural groups that reside in your community:

_____

_____

_____

_____

16. Which percentage best describes the population that these communities represent?
    - ☐ 0 - 5 %
    - ☐ 6 - 10 %
    - ☐ 11 - 15 %
    - ☐ Over 20 %

17. How well are you able to describe the ethnocultural communities in your community, city, region and province?
    - ☐ Not at all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

18. How well are you able to describe differences between these ethnocultural groups?
    - ☐ Not all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

19. How well are you able to describe the strengths of these ethnocultural groups in your community?
    - ☐ Not at all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

20. To what extent do you know the following factors within ethnocultural communities in your community or region? (Circle the value that corresponds)

	Not at all–Very well			
Unemployment rates	1	2	3	4
Geographical locations (neighbourhood)	1	2	3	4
Income differentials	1	2	3	4
Educational attainment	1	2	3	4
Birth / death rates	1	2	3	4
Criminal crime rates	1	2	3	4
Homicide rates	1	2	3	4
Home ownership / renting rates	1	2	3	4
Family status	1	2	3	4
Religious / spiritual affiliation	1	2	3	4
Criminal gang activity	1	2	3	4
Age distribution	1	2	3	4

21. To what extent do you know the following resources regarding the ethnocultural communities in your neighbourhood or region?

	Not at all–Very well			
Informal supports and natural helpers	1	2	3	4
Formal social service providers	1	2	3	4
Immigration service providers	1	2	3	4
Community leaders	1	2	3	4
Informal leaders	1	2	3	4
Halfway houses providers	1	2	3	4
Chambers of commerce	1	2	3	4
Human rights advocacy groups	1	2	3	4
Clergy or Pastors	1	2	3	4
Parole / Probation officers	1	2	3	4
Legal aid services	1	2	3	4

22. How well are you able to describe the social or community problems faced by ethnocultural groups in your community or region?
   ☐ Not at all
   ☐ Barely
   ☐ Fairly well
   ☐ Very well

23. Do you know the prevailing beliefs, customs, norms and values of ethnocultural groups in your community?
   ☐ Not all
   ☐ Barely
   ☐ Fairly well
   ☐ Very well

24. Do you know the social service needs with ethnocultural communities that go unaddressed by the formal social service system?
   ☐ Not all
   ☐ Barely
   ☐ Fairly well
   ☐ Very well

25. Do you know the social service needs that can be addressed by social networks of support within ethnocultural communities?
   ☐ Not all
   ☐ Barely
   ☐ Fairly well
   ☐ Very well

26. Do you know of conflicts within ethnocultural groups in your community?
   ☐ Not all
   ☐ Barely
   ☐ Fairly well
   ☐ Very well

27. Do you know the greeting protocol within at least two ethnocultural groups?
    - ☐ Not all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

28. Do you know the conflict resolution methods within at least two ethnocultural groups?
    - ☐ Not all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

29. Do you know the cultural-specific perspectives of mental health/illness as viewed within at least two ethnocultural groups in your community?
    - ☐ Not all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

30. Do you understand the conceptual distinction between the terms "immigrant" and "refugee"?
    - ☐ Not at all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

31. Do you understand the legal impact between "Canadian citizen" and "landed immigrant"?
    - ☐ Not at all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

32. Do you understand the distinction between "systemic discrimination" and "racism"?
    - ☐ Not all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

33. Do you understand the distinction between "culture conflict" and "intergenerational conflict"?
    - ☐ Not all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

34. Do you know what languages are spoken by at least two ethnocultural communities in your community?
    - ☐ Not all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

35. Are you able to describe the common needs of ethnocultural communities in your community or city?
    - ☐ Not all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

Personal Involvement

36. Do you attend cultural group holidays celebrated by various ethnocultural groups in your community?
    - ☐ Not at all
    - ☐ Seldom
    - ☐ Sometimes
    - ☐ Often

37. Do you interact socially with people from various ethnocultural groups in your community?
    - ☐ Not at all
    - ☐ Seldom
    - ☐ Sometimes
    - ☐ Often

38. Do you attend school-based meetings with people from various ethnocultural groups in your community?
    ☐ Not at all
    ☐ Seldom
    ☐ Sometimes
    ☐ Often

39. Do you attend community forums or neighbourhood meetings within ethnocultural communities?
    ☐ Not at all
    ☐ Seldom
    ☐ Sometimes
    ☐ Often

40. Do you consume products from businesses owned by people from ethnocultural communities?
    ☐ Not at all
    ☐ Seldom
    ☐ Sometimes
    ☐ Often

41. Do you feel safe within ethnocultural communities or neighbourhoods?
    ☐ Not at all
    ☐ Seldom
    ☐ Sometimes
    ☐ Often

42. Do you attend horizontal coordination meetings that affect service delivery in ethnocultural communities?
    ☐ Not at all
    ☐ Seldom
    ☐ Sometimes
    ☐ Often

43. Do you attend community-based or culturally-based advocacy group meetings within communities?
    ☐ Not at all
    ☐ Seldom
    ☐ Sometimes
    ☐ Often

Resources and Linkages

44. Do you have linkages with institutions of higher education (i.e. colleges, universities or professional schools) that can provide accurate information concerning ethnocultural communities?
    - ☐ None
    - ☐ A few
    - ☐ Some
    - ☐ Many

45. Do you have linkages with civil rights, human rights or human relations groups that provide accurate information concerning ethnocultural communities?
    - ☐ None
    - ☐ A few
    - ☐ Some
    - ☐ Many

46. Do you have linkages with community service organizations, local planners, chambers of commerce, or philanthropic groups who can provide you with accurate information regarding ethnocultural groups?
    - ☐ None
    - ☐ A few
    - ☐ Some
    - ☐ Many

47. Have you ever published or assisted in publishing information on cultural groups?
    - ☐ None
    - ☐ A few
    - ☐ Some
    - ☐ Many
    - ☐ N/A

48. Have you conducted or participated in a needs assessment of ethnocultural clientele?
    ☐ None
    ☐ A few
    ☐ Some
    ☐ Many

49. Do you have linkages with ethnocultural advocates who can provide reliable informa-tion regarding community opinions about diverse and important issues?
    ☐ None
    ☐ A few
    ☐ Some
    ☐ Many

50. Have you ever organized open-house type of events to which you invite providers, con-sumers, and others concerned with service delivery to ethnocultural clientele?
    ☐ None
    ☐ A few
    ☐ Some
    ☐ Many
    ☐ N/A

51. Do you utilize cultural consultants who can help you work more effectively within a cross-cultural context?
    ☐ None
    ☐ A few
    ☐ Some
    ☐ Many

52. Do you utilize interpreters to work with non-English or non-French speaking persons?
    ☐ None
    ☐ A few
    ☐ Some
    ☐ Many

53. Have you ever subscribed to publications (local or national) in order to stay abreast of the latest information about ethnocultural populations?
    - ☐ None
    - ☐ A few
    - ☐ Some
    - ☐ Many

54. Do you have access to culturally related materials (books, video, etc)?
    - ☐ None
    - ☐ A few
    - ☐ Some
    - ☐ Many

55. Do you have a personal library with cultural resources?
    - ☐ None
    - ☐ A few
    - ☐ Some
    - ☐ Many

56. Have you attended any cross-cultural workshops or seminars?
    - ☐ None
    - ☐ A few
    - ☐ Some
    - ☐ Many

57. Do you encourage your staff or colleagues to take courses pertaining to cultural competency or ethnic studies?
    - ☐ None
    - ☐ A few
    - ☐ Some
    - ☐ Many

58. Do you have any cultural artefacts in your office or the workplace?
    - ☐ None
    - ☐ A few
    - ☐ Some
    - ☐ Many

Service Delivery And Practice (If Applicable To You)

59. Do you discuss racial/cultural issues with clients in the treatment process?
    - ☐ Not at all
    - ☐ Seldom
    - ☐ Sometimes
    - ☐ Often

60. Do you assess client acculturation or assimilation with respect to mainstream culture?
    - ☐ Not at all
    - ☐ Seldom
    - ☐ Sometimes
    - ☐ Often
    - ☐ N/A

61. How well do you see cultural strengths and resources when planning services for clients from ethnocultural communities?
    - ☐ Not at all
    - ☐ Barely
    - ☐ Fairly well
    - ☐ Very well

62. Do you use cultural references or historical accomplishments as a source of empowerment for people from ethnocultural communities?
    - ☐ Not at all
    - ☐ Seldom
    - ☐ Sometimes
    - ☐ Often
    - ☐ N/A

63. Do you routinely discuss barriers to working across cultures?
    - ☐ Not at all
    - ☐ Seldom
    - ☐ Sometimes
    - ☐ Often
    - ☐ N/A

64. Do you routinely express your feelings about working with clients and coworkers from ethnocultural communities?
   ☐ Not at all
   ☐ Seldom
   ☐ Sometimes
   ☐ Often

65. Are you able to communicate and understand all or most subtle non-verbal intercultural communication cues?
   ☐ Not at all
   ☐ Seldom
   ☐ Sometimes
   ☐ Often

66. Do you know problems with mainstream diagnostic approaches?
   ☐ Not at all
   ☐ Seldom
   ☐ Sometimes
   ☐ Often
   ☐ N/A

67. Do you routinely use culturally-normed evaluation or treatment approaches?
   ☐ Not at all
   ☐ Seldom
   ☐ Sometimes
   ☐ Often
   ☐ N/A

68. Do you make sure, where applicable, that agency materials are translated into appropriate languages used by the ethnocultural clientele?
   ☐ Not at all
   ☐ Seldom
   ☐ Sometimes
   ☐ Often

69. Do you routinely use culturally appropriate client satisfaction measures to evaluate service delivery?
    ☐ Not at all
    ☐ Seldom
    ☐ Sometimes
    ☐ Often

Applicable to everyone

70. For your personal development, list the courses that you would like to undertake, where offered:
    ☐ 1. Cultural competency
    ☐ 2. Diversity in the workplace
    ☐ 3. Cultural mediation and conflict resolution
    ☐ 4. Cross-cultural communication and interviewing techniques
    ☐ 5. Immigration and deportation
    ☐ 6. Religious needs and reasonable accommodation in Canada
    ☐ 7. Prevention of harassment in the workplace
    ☐ 8. Cross-cultural health caring

Other:

9. _____

10. _____

11. _____

12. _____

13. _____

14. _____

15. _____

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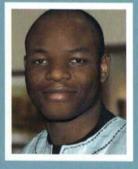
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▶ ABOUT THE AUTHORS

Marcel Kabundi

Mr. Kabundi is a graduate of the Faculty of Law of the University of Kinshasa. He holds a Master in Laws (LL.M.) from the University of Ottawa. He also possesses a Master of Science (M.Sc.) in Criminology from the School of Criminology of the University of Montreal. He has taught Correctional Law at the Faculty of Law, Civil Section, University of Ottawa. As a former Magistrate in the Democratic Republic of Congo and Local 70041 President of the Union of the Solicitor General Employees, he has practiced mediation. Mr. Kabundi is also a qualified evaluator in the domain of cultural competence. He has been certified by the Centre for Intercultural Learning of the Canadian Foreign Service Institute of the Department of Foreign Affairs and International Trade. Mr. Kabundi is currently Director of the Ethnocultural Services Section, Offender Programs and Reintegration Branch, National Headquarters of the Correctional Service of Canada In February 2007, he was selected "Person of the Week" by the Canadian Broadcast Corporation and Le Droit. He received the Professional Excellence Award of Black History Ottawa in January 2007.

Donat-Tshibasu Bilomba

Donat-Tshibasu Bilomba is a graduate of Carleton University in Interdisciplinary Studies with concentration in International and community development. His holistic and interdisciplinary approach to research has enabled him to contribute to numerous research projects and to be involved in a variety of international initiatives, including Central Asia. He is Senior Project Officer, Ethnocultural Services Section of the Correctional Service of Canada.

Amandine Meniri

Amandine Meniri, anthropologist, graduated from Université de Lyon II, is doing research on cultural anthropology at the Université de Lyon II in France. She is also doing reintegration work in one penitentiary facility located in the region of Lyon. She teaches informatics. She is particulary interested in comparative studies on the treatment of ethnocultural minorities, both in France and in Canada, where she did her internship at the Ethnoculrural Services Section of the Correctional Service of Canada.

" The process of mediation has many advantages. It offers an alternative to formal methods such as the court system and contributes to the resolution of disputes at all levels of society. As a tool for resolving disputes and establishing peace between disputants, mediation has the capacity to promote communication and cooperation; is less expensive than litigation; helps to improve relations between the conflicting parties; is usually quicker and more efficient than the trial process; and allows individuals to tailor solutions that best meet their needs."

Larry Motiuk, Ph.D.
Director General
Offender Programs and Reintegration Branch
Correctional Service Canada

" To resolve intercultural conflicts, the authors of the text are justified in proposing alternative dispute resolution models as a means to a solution. Human relationships have much to gain from crisis prevention that is not based on reprisals. Just as there are self-defence mechanisms to defuse a psychological conflict, so there are collective mechanisms to help resolve an intercultural conflict. Intercultural mediation is one such device. As it requires tact, this form of intervention is most certainly best suited for professionals. A multi ethnic context calls for multi-faceted skills."

Emerson Douyon, Ph.D.
Chair
National Ethnocultural Advisory Committee