LEARNING OBJECTIVES
After reading this chapter, you will be able to:

• Understand the wide range of contexts in which mediation is used
• Identify three main goals of mediation
• Explain the five-phase framework of the mediation process
• Understand the significance of adopting a holistic approach for developing mediator competency
• Identify at least three ways that you can develop your mediation competence
• Understand a number of key mediation terms and concepts

CHAPTER OUTLINE
Introduction 1
Mediation Applications 2
Different Approaches to the Practice of Mediation 4
The Goals of Mediation 5
A Mediator’s Framework 6
The Art of Mediation 9
Developing Skills in Mediation 17
An Overview of Key Terms and Concepts Used in This Text 20
Summary 27

In the middle of every difficulty lies opportunity.

Albert Einstein

Introduction
Violent conflict* stubbornly persists all over the world. Disputes arise over natural resources, governance arrangements, and the keys to power. Such disputes result in significant casualties—human ones, most importantly, but also environmental and economic ones. As individuals, we confront conflict in our day-to-day lives on a regular basis. While conflict can be positive, driving us to adapt and change for the better, many of us experience conflict as something negative, to be avoided at all

* This term and other key terms and concepts are defined later in this chapter under the heading “An Overview of Key Terms and Concepts Used in This Text.”
costs. Some of our most serious disputes—determining custody and access to children after divorce; resolving human rights complaints; reconciling victim and offenders after a horrific crime—are best resolved with the help of third parties who have expertise in conflict resolution. These experts are commonly known as mediators. Without their assistance, peace can be elusive.

In this chapter, we examine various aspects of mediation, with the aim of providing the reader with a general picture before we go into more detail in the following chapters. We discuss the many contexts in which mediation is used, provide an overview of the mediation process and different approaches to its practice, reflect on the “art” of mediation and its significance to new mediators, and define key mediation terms and concepts so as to provide the reader with a general orientation to the book.

**Mediation Applications**

Mediation is now used in a variety of contexts and has many different applications, including the following:

- insurance claims;
- land-use planning and development;
- trade and commerce;
- separation and divorce;
- family conflict, including parent–child, intergenerational, and elder conflicts;
- organizational and workplace conflicts;
- civilian interaction with police;
- schoolyard squabbles;
- contractual disputes;
- human rights complaints;
- immigration and refugee issues;
- environmental assessments;
- banking and real estate disputes;
- community and neighbourhood issues;
- criminal and civil cases;
- peace negotiations in the aftermath of war; and
- reconciliation processes following mass human rights violations.

Wherever conflict exists, mediation is becoming a preferred option for dealing with it. New applications for mediation are emerging all the time.

Mediation is becoming an integral part of organizational and institutional conflict management systems. Organizations are increasingly adopting it and other informal processes to resolve disputes internally. In workplaces, mediation is used to address a variety of internal grievances—for example, conflicts arising from staff relations...
or organizational restructuring. Among the reasons for resolving workplace conflict through interest-based, dialogic processes such as mediation are that they improve morale and help build effective teams and team consensus.

In November 2003, the Canadian Parliament passed Bill C-25, the *Public Service Modernization Act*. This Act requires that mediation services be provided for labour relations and that informal conflict management systems be established in every federal department. (See the Treasury Board’s website, listed at the end of this chapter.) Many public sector organizations, such as the Royal Canadian Mounted Police, the Department of Justice, the Canada Revenue Agency, the Department of National Defence/Canadian Forces, and Public Works and Government Services have established integrated conflict management systems (Lynch, 1997). No doubt this trend will continue, and mediation will become more broadly institutionalized.

As well as being used to address conflict within organizations, mediation has become the preferred process for resolving disputes between organizations and members of the public. For example, disputes between civilians and police officers increasingly go to mediation before more formal disciplinary procedures are undertaken. Mediation is more and more often relied on, as well, in physician–patient disputes. Research has shown that many costly medical malpractice lawsuits can be avoided if patients, before commencing a lawsuit, try mediation with representatives of their health organization (Liebman 2011). Mediation provides patients with the opportunity to express their concerns, to officials from the relevant health organization, about the way they have been treated in the medical system. In the United States, where research on these cases has been completed, physicians do not participate in the mediations but are represented by their hospitals, clinics, or medical associations. Nevertheless, even without physicians’ direct participation, all parties come to a better understanding of the difficult decisions and the complex human costs associated with various forms of medical intervention. This sometimes leads health-care representatives to review policies in hospitals or clinics in order to improve patient experiences and safety. In the province of Ontario, the Dentists Association has also adopted mediation to resolve its patient–dentist complaints (see the ODA website, listed at the end of the chapter).

People have become aware of the considerable savings involved in using mediation. This has led to the incorporation of mediation into the formal legal system. In Ontario, for example, many civil lawsuits now require parties to attempt mediation prior to a judicial hearing in a formal trial process. Mediation at an early stage in civil litigation often helps the parties reach a mediated settlement of their legal dispute without the costly step of going to trial. While most civil law disputes are settled through pretrial negotiations between the parties’ lawyers, the use of mediation at an early stage in the litigation process has resulted in more cases being settled earlier, which means lower costs both for the parties and for the legal system (Macfarlane, 1995).
Information technology has recently opened up new fields of mediation. Sessions now take place via email, instant messaging, chat rooms, and video conferencing. Some of the advantages of using online dispute resolution (ODR) include the following: its low cost (people do not have to travel to participate); reduction of time-zone differences; and its speed and availability. For some, ODR is less confrontational than face-to-face mediation. On the other hand, communicating about contentious and emotional subjects without being face to face with the other person can be difficult. In the absence of facial expressions and body language, online or telephone communication can even cause the conflict to escalate. However, as technology develops, innovators will no doubt find new ways to deal with these challenges. ODR will be an ongoing area of development, and a potential market niche for some mediators. (See references to ODR in the websites listed at the end of this chapter).

The field of mediation has broadened on many levels. In Canada, our rich multicultural context has influenced mediation practice. Many newcomers to this country have brought their former societies’ traditions of using social network mediators (Moore, 1996, pp. 43–47) to resolve community and neighbourhood disputes. Canada’s First Nations have traditionally employed forms of community justice and sentencing circles, and these have influenced the practice of mediation. International diplomacy, which influences parties with the carrot-and-the-stick technique, has affected the form that mediation takes in trade and human rights tribunals. The legal profession, too, has placed its stamp on the process, as varied applications have brought mediation into the justice system.

The growing institutionalization of mediation has brought concerns that it is being adopted simply because it is more cost-effective than litigation. Efficiency arguments do favour mediation, but they are not the most compelling arguments for it. The deepest benefit of mediation is its potential to transform relationships and transform the parties’ future orientations toward conflict (Bush & Folger, 2005). The economic rationale for establishing mediation systems should not obscure the full potential of the process.

**Different Approaches to the Practice of Mediation**

Mediation’s use in the varied contexts described above has enriched the field. Professional conferences now offer workshops on narrative mediation practice, human rights mediations, workplace conflict resolution, and numerous other models of practice particular to a mediation context or ideology. Some educational institutions now specifically identify the type of mediation training they supply. For example, the Institute for the Study of Conflict Transformation promotes Bush and Folger’s transformative mediation (see the website provided at the end of this chapter).

As we will examine in Chapter 3, there are many different approaches to the practice of mediation, including problem-solving, evaluative, or settlement types; and transformative, holistic, or inclusive types, which bring together shared ideals.
while recognizing multiple goals and a multiplicity of practices (Picard, 2004). The growth of mediation over the past 20 years has largely been in areas, including civil and family disputes, in which problem-solving, evaluative, or settlement mediation is used. This trend is a concern to some proponents of mediation. They have concerns whether consumers of mediation are making knowledgeable and informed choices about which type of mediation they prefer to use. They also fear that it could lead to mediation’s becoming a subsidiary of the legal profession rather than an alternative to it. Picard and Saunders (2002, pp. 235–236) worry that,

given the increasing involvement of the state in mediation through mandated schemes attached to the courts, and the strong presence of lawyers within these schemes, both as practitioners and as consumers (via their clients), … control of the field [is in danger of] falling into the hands of the legal profession.

We believe that having different types of mediation is a good thing, with the settlement approach used for legal disputes and the transformative or holistic approaches (including insight, transformative, and narrative mediation) used for “relational” conflicts. It is problematic, however, that people who opt for mediation, regardless of the nature of their conflict, often expect the settlement approach rather than a more transformative or holistic one. Mayer (2000, pp. 195–198) has observed that clients often want and expect a settlement approach, and these expectations may be at odds with the mediator’s actual process goals and intentions.

According to a market-driven view of mediation, a settlement approach should be used if that is what people want and expect in legal or other contexts. The rationale here is that if mediators fail to deliver what clients want, mediation will not be used at all.

Mediators who endorse a transformative perspective counter that mediation’s potential for individual, relational, and social growth will never be realized if market-driven criteria are given priority. Such mediators say that the settlement approach should not be used at all, because it simply maintains the status quo and extinguishes any transformative potential inherent in the conflict situation. Bush (1989), a proponent of transformative mediation, has said that if settlement-type mediation is to be the only kind used in court-connected programs, it would be better that mediation not be used at all in the civil justice system.

The Goals of Mediation

In this text, we do not attempt to resolve the debate over whether mediation is primarily a relational or a problem-solving endeavour, or whether one of these perspectives has more value than the other. Our basic position is that mediation should address conflict as a relational, dynamic, and value-based phenomenon, with solving conflict problems as its primary outcome.
The three main goals of mediation, as we see it, are to

1. resolve or settle disputes;
2. facilitate understanding, learning, and growth; and
3. restore relationships after they have been harmed.

The conceptual framework we provide here is based on the mediator’s understanding the parties’ goals and having sound theoretical and experiential knowledge to determine which approach to mediation would be most effective. Depending on which of the three goals identified above is driving the process, the mediation is likely to have different characteristics.

Which of the three goals is driving the mediation process depends, in turn, on the nature of the dispute context. For example, when mediation is being used to establish peace agreements after violent conflict, the dispute-settling goal is likely to be paramount. The same is true for mediation that takes place “in the shadow of the courts,” such as mediation for environmental, human rights, or civil disputes. Community or workplace mediations, on the other hand, are more naturally suited to the goal of facilitating understanding, learning, and growth, so that the disputing parties can peacefully interact in the future. Victim–offender mediation, restorative justice dialogues, and reconciliation processes usually have the goal of restoring relationships and harmony after people have been harmed.

The three goals of mediation are not mutually exclusive, and there are situations where it is appropriate to combine them. For instance, it may be necessary to promote understanding and learning before a dispute can be settled. Consider a conflict involving two spouses who are negotiating child custody arrangements. Before they settle these arrangements, they will need to understand their children’s needs and learn more about one another’s parenting values. The mediation process, in this instance, would aim both to promote understanding and growth in the parties and to settle the dispute. It may even come to involve the third goal of mediation—restoring the spouses’ broken relationship so that they can implement their custody arrangements amicably.

### A Mediator’s Framework

All mediators have a framework for their mediation process. In our experience, most mediators follow a process framework like the one we present in this book (in Chapters 7, 8, and 9), which includes the following stages:

- pre-mediation,
- cultivating dialogue,
- getting to the heart of the conflict,
- reaching decisions and completing the mediation process, and
- post-mediation.
Pre-mediation

There will be tasks to complete prior to conducting any mediation. These tasks may include the following: reviewing parties’ statements of facts, in the case of a civil litigation; meeting individually with each party, in the case of a restorative justice process; facilitating consensus-building processes with groups of stakeholders, in the case of a public policy mediation; or speaking with individuals over the phone, in the case of a workplace conflict.

During pre-mediation, the mediator determines whether the particular dispute situation is suitable for mediation and whether the participants are ready for mediation. In some cases, a mediator may even spend time preparing parties to go to mediation. The practical tasks involved in setting up mediation will also be completed during pre-mediation: determining a place, time, and date; preparing a room and breakout rooms; discussing fees and other issues, if appropriate; removing barriers to participation in mediation and furnishing parties with the technology and supplies they require to discuss and resolve their situation.

Cultivating Dialogue

This phase opens the mediation process and usually begins with a mediator providing introductory remarks. These remarks will cover process information, guidance for discussions, logistical information, and other important tone-setting items. The parties themselves will usually begin by presenting their respective versions of the conflict and its causes. Next comes some attention to the parties’ perspective—how they view events and why. This will unfold differently depending on the mediator’s approach and on his or her goals. The party’s values, consciousness, and culture will shape their perception of the conflict. The mediator’s response to the adversarial narratives will aim at promoting collaborative dialogue.
**Getting to the Heart of the Conflict**

In trying to get to the heart of the conflict, the mediator is focused on achieving a deeper understanding of the conflict dynamics and of the interests, needs, and values underlying the dispute, so that she can unlock the keys to resolution. Mediators typically use strategies that both support and question the parties’ understandings of the conflict. The mediator's approach and the parties' goals will determine the particular shape this phase of the process takes—what types of questions are asked, what information she seeks to elicit from the parties, and how she listens to them. For example, if the parties' goals in mediation are to solve a problem in a contractual dispute, the mediator may listen and question the parties to learn which needs must be met for resolution to occur. If the mediation is more focused on preserving a relationship, as in a co-worker conflict, the mediator’s focus will be on revealing misperceptions about behaviour and promoting alternative understandings. Getting to the heart of the conflict involves the real work of mediation.

**Reaching Decisions and Completing the Mediation Process**

Typically, in the “resolution” phase, the mediator leads or facilitates a process in which the parties generate, consider, and assess various resolution options and then, moving through a process of negotiation, make one or more decisions that will fully resolve their dispute. How the resolution phase of mediation proceeds will vary depending on the nature and the context of the dispute. For example, the resolution phase of a divorce mediation likely will be very different from that of a mediation of a civil personal injury dispute. In the latter case, most of the resolution phase probably will consist of the mediator shuttling back and forth between the parties and their lawyers, seeking to complete their negotiation process. On the other hand, in divorce mediation, the resolution phase is often done with the parties together in joint session, enabling them to fully discuss the implications of all resolution options.

**Post-mediation**

Post-mediation can take many forms, depending upon the context of the conflict, the mediator's reporting requirements, the legal nature of the issues in dispute, and other matters needing to be settled after mediation has ended. In legal cases, there may be formal requirements to file a written agreement with the courts or to have parties’ lawyers look over and sign off on agreements. In community mediation cases, the mediator may only need to follow up with a phone call to the parties to check in on how the resolution or agreement is holding up. For some “insider” mediators—those who work within an institution and need to consider institutional needs—post-mediation may involve filing agreements with a certain office in the institution. The particulars of the post-mediation stage also vary with the dispute.
context. Yet all mediators will have some task or tasks to complete following a mediation, even if simply a process of self-reflection about what went well in the mediation and what did not go well.

The Art of Mediation

How does one become a competent mediator? People who are just learning about mediation may be told to “trust the process” or to “let the magic of mediation work.” However, these words do not provide much guidance to a new mediator.

So far in this chapter, we have considered a wide range of contexts in which mediation is used, as well as different approaches and goals adopted by mediators in different situations. Regardless of what approach a mediator uses, he or she needs to do more than merely follow the science of mediation—the process stages, the strategies, and the communication skills and techniques. A successful mediator needs to have and to develop artistry. Mediation artistry comes from the skillful employment of intuition, artfulness, empathy, connectedness, and creativity. Both the science and the art of mediation are prerequisites for successful practice. Both elements must feature in a holistic approach to mediation. In the following section, we discuss the new science paradigm required for this approach.

The Traditional Scientific Method

The traditional scientific method relies on the detailed analysis of what can be known through our physical senses. We know what we can see, hear, smell, taste, and touch; we understand larger systems by understanding their basic components. In the case of a machine, for example, the scientific method posits that by studying the parts of this machine, we can understand how it works. In other words, we can take the machine apart and examine the workings of each component to learn how the whole machine functions.

Or take the Western scientific approach to medicine. A doctor observes symptoms (the parts), takes tests (verifies), analyzes the data, diagnoses the cause of the disease, and prescribes or performs the appropriate treatment. This approach is based on the premise that the root cause of the disease can be determined and then resolved through prescribed medicine or medical procedures. This is a linear, causal chain of inquiry.

A fundamental principle of Western scientific theory is that, with complete knowledge of a patient’s condition and of current medical science, a doctor can determine the optimal treatment for the patient. In practice, different medical experts may disagree on what that optimal treatment is. Consider, for example, a patient with an apparent wrist injury. The wrist problem experienced by the patient may be only one manifestation of a completely separate condition, such as a damaged disc in the patient’s spine.
“New” Science: The Holistic Approach

Wheatley (1999, pp. 10–11) proposes that the new science focuses on holistic understanding, rather than on an understanding of the parts. Systems are seen as a network of relationships, and knowledge is derived from understanding the relationships and their interconnectedness within the system. Returning to our machine example, the new science does not take the machine apart, but rather studies it in operation, trying to discover links and understand relationships between the component parts. This is a holistic approach to knowing, and it is non-linear, with unpredictable causal links.

If we return to our medical example of the patient with a wrist problem, a holistic medical practitioner might begin her intervention by seeking links between the wrist concerns and other bodily symptoms. She would analyze the body’s whole system of interaction—how the wrist is linked to other parts of the body, such as the shoulder, the spine, and the musculature. She might study the patient’s hair follicles, eyes, or other systems for information about the wrist. The conclusion she arrives at may be that there is a stomach hernia (or a muscle tear) that is affecting the patient’s posture. The poor posture is particularly evident when the patient works on the computer, and the resulting spine misalignment has led to damage of the wrist tendon. Without a systemic (holistic) analysis, this doctor could have arrived at very different conclusions; she might have treated only a symptom instead of looking for ways to eliminate its cause. Treatment in this instance involves strengthening the musculature around the spine and having the patient practise proper posture alignment when on the computer, as well as more conventional therapies designed to ease wrist pain.

This approach, known as a holistic approach, requires that we continue to use analysis, but that we use it differently than we did before. To understand the causes of conflict, we need to understand its sources; however, more importantly, we need to understand how those sources interact or coexist with other elements of the conflict.

What Is a Holistic Approach to Mediation?

A holistic approach to mediation is based on a number of premises. First of all, holistic practitioners view conflict as a relational phenomenon. Conflict arises from and is manifested as a feature of the interactions and relations among two or more people or groups of people. Any attempt to explain, understand, or resolve conflict as an individual phenomenon will be incomplete. Conflict is a complex, multidimensional phenomenon. In a particular case, it is impossible to isolate or identify all causes, manifestations, and effects of the conflict. How individuals respond to conflict and how people and groups interact in conflict situations are uniquely determined by historical, cultural, psychological, environmental, economic, social, political, and other factors.
Conflict, from the holistic perspective, is a phenomenon arising from the mind, heart, body, and spirit (LeBaron, 2002). People in the midst of conflict experience it with and through their minds, their emotions, their physical sensations, and their souls. Likewise, people influence the conflict situation—and other people and groups involved in it—through ways of the mind, heart, body, and spirit. This inevitably means that logic and rational discussion alone are inadequate to understanding, describing, and dealing with conflict (Benjamin, 1995a, pp. 143–144; Benjamin, 1995b, pp. 3–4; Fisher, 2000, p. 88).

The more that parties and intervenors know about the people and their conflict situation and relationships, the greater their capacity for resolving or managing the conflict productively. An understanding of the connections and the relationship—historical and contextual—between the parties will be most informative in the approach to mediation. The mediator must see the conflict and the parties through a systems lens. This involves observing and sensing the interconnections between the parties and the elements of the conflict.

The mediator should expect a process of inquiry and discovery that will be non-linear and unpredictable. Conflict conditions tend to cause people to think and behave in ways that may be contrary to their rational best interests, both individually and relationally. As Benjamin (1995b, p. 6) says, “virtually every conflict, whether a business or a family dispute, has subjective, non-rational aspects that must be addressed.”

It is thus important to remember that, while an understanding of the parts is important, a holistic approach advises us to observe, feel, and understand the relationships. In addition to individual characteristics of conflict, the mediator must always consider how connections and relationships are affecting each party’s willingness and ability to negotiate effectively. It is this understanding that can move a conflict from its destructive to its constructive nature. The mediator is simultaneously observing the individual (the part) in mediation at the same time that he is observing the entire relationship (the system). To practise holistically, the mediator must interact with the parties in conflict in both rational and non-rational ways. He often starts with logical, analytical frameworks and integrates what he knows intuitively into his reactions and responses. Figure 1.2 shows the assumptions about knowledge and how we know what we know under the old science and new science paradigms.

**The Dynamics of Conflict Intervention**

As we can see from Figure 1.2, one of the key assumptions of a holistic approach to mediation is that the observer or “knower” can never stand completely outside whatever is being observed. Interestingly, this claim comes to us from theoretical physics, the heartland of the old scientific method—not from the social sciences.
## Figure 1.2 The “Old” and “New” Science: A Comparison

<table>
<thead>
<tr>
<th>The “old” (traditional) scientific method</th>
<th>The “new” scientific method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowledge is based on observation and analysis. We can “know” through our physical senses.</td>
<td>Knowledge can be based on observation and analysis and the physical senses. But we can also “know” through experience and insight.</td>
</tr>
<tr>
<td>The observer stands outside the activity or phenomenon that is being observed—a “standpoint of objectivity.”</td>
<td>The observer can never stand completely outside that which is being observed. There is always some interaction between the observer and what is being observed.</td>
</tr>
<tr>
<td>The observer (investigator) must take care not to influence or interact with the data or information being analyzed—the observer is passive and noninteractive with the thing that is being observed.</td>
<td>The observer (“knower”) is actively engaged in the creation of knowledge. The observer is not just a passive observer of objective data, but consciously or unconsciously influences the selection and interpretation of information or data.</td>
</tr>
<tr>
<td>Conflict is a social phenomenon that can be objectively observed and analyzed.</td>
<td>Conflict is a form of social interaction that may be experienced subjectively by the participants in ways that are not always evident to an objective observer.</td>
</tr>
<tr>
<td>Conflict behaviour can also be observed and analyzed objectively.</td>
<td>It is not enough to rely on observation and analysis alone to understand conflict behaviour. We also have to rely on experience and insight to understand how the conflict is experienced subjectively by the participants.</td>
</tr>
<tr>
<td>The emphasis is on the search for objective knowledge—the “truth” about the conflict.</td>
<td>The emphasis is on gaining insight into the different ways in which the participants experience the conflict—the different “truths” about the conflict.</td>
</tr>
<tr>
<td>Observer neutrality is a crucial process value to prevent observer bias.</td>
<td>An interactive observer can never be strictly neutral, in the sense of having no influence on the data or information being observed. Instead, the observer strives to be conscious of his or her influence on the selection and interpretation of data, and to act in an ethically responsible manner.</td>
</tr>
<tr>
<td>That which can be objectively known through observation and analysis can also be modified in predictable ways through external intervention. The “purpose” of conflict intervention, therefore, is to treat or cure the conflict situation.</td>
<td>Because observation and analysis alone will not enable us to obtain the full truth about the conflict, any external intervention based on this assumption is likely to have unanticipated consequences. Intervention should therefore be directed at transforming or changing the parties’ subjective experience of the conflict.</td>
</tr>
</tbody>
</table>
It was Einstein who taught us that there is no Archimedean point from which we can obtain a completely unbiased and objective view of reality. Our perceptions of reality are always influenced, knowingly or unknowingly, by a pre-existing framework of ideas, expectations, and beliefs about the way the world is ordered. We see and hear through filters. We may disregard or fail to perceive information that is incompatible with our pre-existing assumptions, or we may interpret it in a subjective, self-serving way.

Imagine, for example, an anthropologist doing fieldwork among a tribal people who had never before had contact with modern society. The anthropologist is excited because he is able to observe the organization and rituals of a society that has developed over centuries, free of external social or technological influences. The anthropologist believes that the data obtained from this research will provide crucial information about how societies adapt to their natural environment and about whether humans are naturally peaceful social actors or are naturally aggressive. However, by arriving on the island armed with notebooks, computers, recording equipment, cameras, food supplies, a tent, and a hundred other basic supplies, the anthropologist has already influenced the very society he set out to study. It is no longer a society that has developed “with no contact with the outside world.” The tribal people are likely to behave and interact in the anthropologist’s presence differently, if only slightly differently, than they would in his absence. The problem is that the anthropologist can never know this for sure. His very presence has altered the dynamics of the society he has come to observe. What he observes has therefore been affected by his presence.

What is a problematic principle for our anthropologist may be a benefit to mediators and a key element in the art of mediation. As mediators, we recognize that the presence of a third party in a conflict situation is likely to alter the dynamics of the conflict and the relationships between the participants. Indeed, this is the main purpose of the mediator’s intervention. The mediator cannot impose a decision on the parties if they are unable to reach agreement. Yet the intervention of an impartial third party may help the parties alter their perceptions of the conflict and of each other, and may help them move from an adversarial stance to a more collaborative one. The focus of the mediator’s intervention is thus to change the dynamics of the conflict relationship, to unblock obstacles to communication, to enable the parties to generate new insights into their own conflict, and to alter or transform the parties’ subjective experience of the conflict they are engaged in. A mediator is always actively engaged in the communication process between the disputants and in the creation of knowledge about the conflict. Mediation is a form of interactive engagement in a conflict relationship. The mediator can never be strictly neutral between the participants in the sense of being a passive observer. Instead, the mediator strives to act...
impartially with respect to the disputants, to build trust with all the participants, and to allow all the participants to tell their own stories or truths about the conflict.

Now, compare the interactive involvement of a mediator with that of a neutral judge in a courtroom hearing. In the adversarial system, the judge is supposed to be a passive observer while the litigants introduce evidence and cross-examine each other’s witnesses. Judicial neutrality requires that the judge not identify with or assist the litigants in their case presentations. A mediator’s role, by contrast, is to assist both participants in presenting their case (so to speak), or in telling their stories. Moreover, the parties in mediation are not telling their stories to the mediator—even if it often appears this way—so much as to each other. In explaining their interests, cares, or fears, the parties may be talking to the mediator, but they are being heard by the other party. Indeed, as we will explore in later chapters, one of the key roles of a mediator is to act as a communication bridge between the parties.

This brings us to a second core element of a holistic approach to mediation, and one that we wish to emphasize: the importance of incorporating the subjective experiences of the parties into any resolution to the conflict. A holistic approach to mediation is premised on the belief that there is always more than one truth about any conflict situation or relationship. Each party will have his or her own perspective. A mediator needs to understand the various truths about the conflict; he or she needs to obtain information about the parties’ subjective experiences of the conflict—their perceptions, hopes, fears, emotions, values, beliefs, or expectations. Once again, we can contrast this holistic approach to mediation with the assumptions about the “truth” that underpin the litigation process, where the emphasis is placed on the objective facts of the conflict—that is, what actually happened—rather than on the subjective experiences of the parties themselves.

A key objective in litigation is to determine the “truth” of the conflict. Anything that does not assist in determining the core truth is considered irrelevant to the proceedings. Most especially, the parties’ subjective beliefs, emotions, interpretations, or experiences are dismissed. This is one of the main reasons that the parties are represented by lawyers in the litigation process. Lawyers can present the parties’ arguments in a more objective, unemotional manner than the parties themselves are generally able to do. In addition to professional expertise and knowledge of the law, the capacity to be objective and unemotional about the facts of the case is highly prized in the legal profession.

For most mediators, however, the capacity to be responsive to the subjective, emotional needs of the disputants is as important as the capacity to manage the objective dimensions of the conflict. This is one reason that participants in mediation tend to express satisfaction with the process, even if it does not necessarily result in resolution. All conflicts have both objective and subjective dimensions. Any proposed agreement that is not attentive to the latter—to the subjective beliefs, values, and experiences of the participants—is unlikely to be lasting. Indeed, much of a
mediator’s intervention is focused on adjusting the parties’ subjective experience of their own conflict so as to help them move from an adversarial to a more collaborative approach to resolving the conflict.

As you work through the material in this textbook, we encourage you to use the holistic approach as you examine the issues that you encounter in the case studies and examples we provide. You will need to be slow to make judgments, and you will need to stay open to different opinions and points of view, including those you are inclined to reject. This does not mean agreeing with all that others say with respect to a conflict situation. It does mean respecting others (especially those you disagree with) as intelligent and well-meaning people whose opinions and perspectives are worthy of consideration. It means seeking to understand the deeper meaning and truth of others’ apparently opposing perspectives. By doing so, you will arrive at a new, more valuable understanding of the issues underlying a conflict. With this approach, you will be able to learn from those whose ideas and points of view you would otherwise have rejected.

**Mediators’ Ways of Knowing**

According to Michelle LeBaron, a mediator derives knowledge through his or her analytical skills, as well as through more creative “ways of knowing” (LeBaron, 2002). Intellectual ways of knowing are well developed in mediation education, research, and practice—through theories about human behaviour, communication, negotiation, and conflict. More emotional, physical, or intuitive ways of knowing have not received much discussion in this field. They are not readily trusted because they do not follow the linear methods of discovery traditionally used in science. They are a part of the “new” science or the holistic understanding of conflict and human interaction.

LeBaron (2002) outlines four types of intelligence that are important to those working in conflict resolution:

1. emotional,
2. somatic,
3. intuitive-imaginative, and
4. “connected” intelligence.

Emotional fluency (or intelligence)—in other words, the awareness and capacity to develop insights into one’s own and other’s emotions—enables the mediator to recognize, understand, and respond to emotion that is connected to the conflict. What this ability means and how we may develop it have been widely discussed since the publication in 1995 of Daniel Goleman’s book *Emotional Intelligence*. To understand this ability in the context of mediation, consider the following example. Let’s say that one party begins to physically withdraw from the mediator and from
the other party by moving back in her chair and breaking eye contact with them. An emotionally fluent mediator will recognize that a deeper emotion, a feeling of isolation, is behind the withdrawal. The party does not articulate this feeling verbally, but the mediator’s fluency or emotional intelligence enables him to “hear” the sentiment as strongly as if it were spoken.

Somatic intelligence is the capacity to “read” and flow with the body’s instincts—to perceive when one party is physically withdrawing, reacting, or connecting. Again, consider a party who is physically withdrawing from the mediator and from the other party. A mediator will be responding somatically to this development if he moves his body closer to the receding party, offering a form of physical support and encouragement with his proximity and his open, attentive posture.

Using imagination and visualization—and guided by our intuitive senses—we are able to disconnect from old ways of seeing so that we can consider new paths forward. Consider, for example, two co-workers who are in conflict. The mediator asks each of them to picture their working relationship in the future. If both are able to visualize an effective partnership and to describe what they will contribute and what they need to receive, they are using imagination and visualization to help overcome their deadlock.

A faculty for making and responding to metaphor is part of intuitive-imaginative intelligence. This is a key tool for getting to know—and for fully addressing—important conflict experiences. For example, imagine that we describe a mediation process as an expedition that started in a desert, crossed rocky ground, moved into a thick jungle, and eventually emerged on wide, fertile fields. This metaphor speaks volumes about what people have experienced and achieved in this mediation. The use of metaphor and stories is covered more fully in Chapter 8.

Connected intelligence, or connected ways of knowing, is essential for understanding conflict as part of a relational system. These ways of knowing emerge from the ties we have with others and from our acknowledging and understanding the influence of those ties. Again, consider two co-workers who are in conflict. The two parties would demonstrate connected knowing if they could be brought to recognize each other’s importance in carrying out their work and to discuss each other’s relative strengths in doing so.

Like Benjamin (1995a, 1995b), LeBaron (2002) recognizes the need for resourcefulness and flexibility in mediation; she explains how mediators draw on various creative sources of knowledge, in addition to traditional analytic ways of understanding, to guide their actions. Developing these other ways of knowing is critical to the mediator’s effectiveness. We believe that creative tools are essential for fully knowing and expressing the human conflict experience. Indeed, many forms of artistic expression—music, painting, dance, and so on—are ways of expressing aspects of human experience that cannot be described with words.
Developing Skills in Mediation

This text aims to impart knowledge that has both theoretical and practical value for readers. Our hope is to provide knowledge sufficient to enable the reader to

- diagnose conflict in future,
- consider and apply techniques that may be useful in its resolution, and
- understand why these techniques succeed.

People who read this book may never become professional mediators. All of us, however, take on the role of a mediator from time to time in the sense that we find ourselves periodically trying to resolve conflict. The contexts vary: issues among friends, roommates, or co-workers; a group project in school or at work; a political issue in the community. In these situations, a mediator will seek to respond to conflict assertively and respectfully; to achieve a resolution that is fair and beneficial for all; to build up, not break down; in other words, to make peace, not war.

We hope this book will help you learn the skills you need to take on the role of a mediator—to discover and develop your mediation talents and generally to enhance your existing skills for responding to conflict. This process may be challenging; individual talent may be wrapped in inhibitions, doubts, fears, and confusion. Time and experience are needed to unpack this talent. As with most human endeavours, people often need help to discover and develop their talent for mediation. Good instruction, coaching and honest self-assessment all will contribute to this process.

Attributes of a Skilled Mediator

What are some essential attributes of a good mediator? Our list includes being empathetic, non-judgmental, tolerant, fair-minded, flexible, creative, patient yet persistent, optimistic, and having a healthy sense of humour. Maggiolo (1971) presents an interesting list of characteristics that mediators need:

- the patience of Job;
- the sincerity and bulldog characteristics of the English and the wit of the Irish;
- the physical endurance of a marathon runner;
- the broken-field dodging abilities of a halfback;
- the guile of Machiavelli;
- the personality-probing skills of a good psychiatrist;
- the confidence-retaining characteristics of a mute;
- the hide of a rhinoceros;
- the wisdom of Solomon;
- demonstrated integrity and impartiality;
• fundamental beliefs in human values and potential, tempered by the ability to assess personal weaknesses as well as strengths;
• the hard-nosed ability to analyze what is available in contrast to what might be desirable; and
• sufficient personal drive and ego, qualified by a willingness to be self-effacing.

Reflective Practice

Reflective practice is what moves mediators from mediocrity to artistry (Lang & Taylor, 2000). It is how mediators acquire confidence and competence; it enables them to be creative, flexible, and to think outside the box, so they are not simply following a prescribed set of actions within a particular framework. Becoming a competent mediator requires commitment and openness to learning from mistakes. It requires mediators to review their performances, with the aim of improving their ability to better serve those who call on them for help. They assess their actions and strategies, then enter into discussions with others about how they can enhance their performance.

Lang and Taylor (2000, p. 47) say that being reflective is essential to achieving competence and artistry as a mediator. They say that

[t]he ability to learn from each experience; to refine, adjust and enhance one's skills; and to respond thoughtfully to the unique and surprising events in professional practice can be achieved through the consistent, thoughtful and intentional application of the methods and principles of reflective practice.

They list six characteristics of reflective practitioners (2000, p. 123):

1. engaging in a continual process of self-reflection;
2. relying on theory to guide and inform their practice;
3. using experimentation to test observations, perceptions, and formulations of the experience, beliefs, and needs of their clients;
4. being willing to see through perspectives other than their own, to experience surprise;
5. being open to new information about their practices—as lifelong learners, they are open to new strategies and techniques; and
6. not seeing themselves as experts—acknowledging that both they and their clients have expertise to bring to bear on the conflict situation.

The concept of “reflecting in action” comes from the work of Schon (1987). It means that the mediator is able to carry on an internal conversation about the unexpected. Reflecting in action is based on the premise that professionals usually know more than they say about their actions, more than the theory they are using. In other words, intelligent practice is more than an application of knowledge. As Schon
(1987, p. 50) writes, “know-how is in the action.” While we may think before acting, much of the spontaneous behaviour of a skillful practitioner comes from somewhere other than prior knowledge. Taking the time to reflect upon our actions can lead us to examine the tacit norms underlying a judgment, the theories implicit in patterns of behaviour, the feelings linked to courses of action, the roles being played out, and the contextual framing of a problem, to name some reflection-in-action objects.

**Becoming an Advanced Practitioner**

To separate the novice, apprentice, and practitioner, Lang and Taylor (2000, p. 12) use the concept of developing artistry. Picard (2002, pp. 140–141) also says that being a skilled mediator involves the integration of skills, knowledge, and self-reflection. She sets out five hallmarks of advanced practitioners.

1. **Knowledge and skills.** These are required, along with assessment, timing, intuition, empathy, judgment risk, patience, confidence, and the ability to assume the many roles of a mediator.

2. **Critical mind.** This means that advanced practitioners are able to do the following: distinguish their orientation from other mediation approaches; reflect on how a mediation could have been improved; assess the possible good and harm that can come out of a mediation; know when it is time to consult or bring in the experts; and know when it is time to terminate a mediation.

3. **Flexible, creative, and inquisitive.** Advanced practitioners are flexible in that they are willing to change their style of mediating to accommodate parties’ needs and abilities; they are creative in that they use humour, metaphor, drama, drawing, language, sculpting, and other creative tools to help parties present their points of view, understand each other, and continue negotiating; and they are inquisitive in that they stay curious and non-judgmental.

4. **Reflective.** This means that advanced practitioners recognize personal limits, biases, values, and world views; that they are in touch with and can manage their own emotions; and that they can “think outside the box.”

5. **Lifelong learner.** This means that advanced practitioners are familiar with developments in theory and research; they read books, academic journals, and professional newsletters; they frequently attend professional conferences, workshops, and courses; they are members of professional associations, and they network with other professionals in the field.

**Developing Mediation Competence**

Achieving artistry as a mediator requires lifelong learning. It requires experience, reflection, and a continuous stream of new knowledge and insights.

One of the most powerful ways for mediators to advance their skills is to observe themselves mediating. A simulated mediation can be videotaped. As part of the
debriefing, the mediator discusses the mediation with the role players, stopping at various points to get their reactions to the interventions. The mediator identifies his or her own strengths and weaknesses and, if possible, compares this assessment with other assessments. Less experienced mediators can learn much by asking a more senior mediator to debrief a video with them.

A mediator may give back to the field and advance his or her own skills by coaching new mediators and by participating as a role-player in private sessions. Some communities have organized coaching groups for ongoing skill development.

Another way to develop your conflict competence is to keep a regular journal of your relevant experiences with conflict and of your reflections, insights, and learning in connection with these experiences. A reflective journal is a tool for experiential learning. You can use the journaling process to learn more about conflict, about how you deal with conflict, and about your own conflict competencies and practices—both those you have and those you don’t have but may choose to develop.

Experienced and prospective mediators alike should approach their practices with open, yet critical, minds. Being mindful in the work of mediation means drawing upon both theory and practice. A mediator needs sufficient knowledge and confidence to be transparent, strategic, and intentional. Artistry in mediation comes through competence, creativity, intuition, and resourcefulness.

An Overview of Key Terms and Concepts Used in This Text

What follows is a brief introduction to some of the key terms used in this text. It is not an inclusive glossary of all the new and important terms you will encounter throughout this book. Its main aim is clarification; it is a list of terms that other writers in the area may define slightly differently. We will return to these terms in more detail as we move through the text, deepening your understanding and appreciation of them. To illustrate these terms, we refer to the various conflict scenarios included in this book, the first of which is the Car Repair Blues scenario (see Box 1.1).

**BOX 1.1 Scenario: Car Repair Blues**

Chris is the owner-operator of the ARCO service station. Dale lives in the neighbourhood, and occasionally she gets her gas at the ARCO station. But she has never had her car fixed there—until yesterday. Early in the morning, she came to the station with her seven-year-old Ford. She told Chris that it needed its six-month check and that it was running a bit “rough” and probably needed a tune-up. She asked Chris if he could do her a real favour and fix it by the end of the day; she needs her car for work and really can’t be without it. Chris said that he would have
Conflict

Conflict exists when a person perceives another person, group, organization, nation, or people as a threat and therefore as an adversary. It involves a subjective perception and belief. Brian may have adversarial perceptions of Alice and be in conflict with her even though Alice does not know how Brian thinks, and she does not have such adversarial perceptions of him. To say that Brian perceives Alice as an adversary means that Brian believes that Alice has or may hurt him somehow, that she has had or may have some adverse effect on him.

Conflict can occur between people who have generally good, cooperative relations. In such a case, it probably will be mild, temporary, and related only to one aspect of the relationship. In other cases, conflict may be much more serious, longstanding, and intractable. In those cases, the adversaries probably view each other as enemies and their adversarial perceptions and emotions (which we call “hostility”) will probably permeate all aspects of their relationship.

Conflict may exist without there being any recognized dispute or disagreement between the parties involved. On the other hand, people may have a dispute without there being conflict—in other words, without any adversarial perceptions or emotions developing between the parties. For example, good friends may disagree about what movie or what restaurant to go to without being in conflict.

Conflict Competence

Conflict competence is the measure of a person’s ability to successfully respond to and resolve interpersonal conflict. As in other areas of human endeavour, conflict
competence requires innate talent and aptitude as well as the skill and artistry that come from ongoing learning and reflective practice. An important goal for any mediator is to help the parties develop conflict competence.

**Conflict Narratives**

In every conflict situation, there are different **conflict narratives**, or stories, from the people, groups, or organizations involved. These differing interpretations of the conflict are based on each party’s values, assumptions, and beliefs, which influence how they make meaning and how they think. Among other things, a conflict narrative will present a protagonist (the good guy, or hero) and an antagonist (the bad guy, or villain). For example, in the Car Repair Blues scenario (see Box 1.1), Dale’s conflict narrative will be very different from Chris’s; each side will villainize the other according to a particular “justice perspective.”

What is a **justice perspective**? It is a narrative perspective on the events that precipitated the dispute, and it determines the form of the conflict narrative. A justice perspective may yield, for example, one of the following:

- an **oppression** story (he/she/they are oppressing me, putting or keeping me down, making my life miserable);
- an **exploitation** story (he/she/they are exploiting me; using me in an oppressive way for his/her/their own gain or profit but to my disadvantage, loss, or hurt);
- a story of **persecution** (he/she/they are persecuting me; wrongfully attacking me, accusing me, blaming me, scapegoating me); or
- a story of **subversion** or **sabotage** (he/she/they are working behind the scenes to do me in, to defeat me), or a **conspiracy** (they have a deliberate plan or scheme to do me in, to defeat me).

**Convening**

**Convening** is the process for determining the best method for the parties to use to resolve their dispute. In this process, an impartial third party known as the “convenor” will help the parties consider various process options, including the following: negotiation, mediation, conciliation, arbitration, adjudication, or some combination of these processes. Mediation is not always the best choice. It is the convenor’s job to discuss the process options with each party and help them determine what process is best for their situation.

There are two ways for a convenor to become involved in a dispute. It may be consensual; that is to say, he or she may intervene at the request of and with the consent of the parties. In other circumstances, convening may be mandatory—a process required by certain procedural rules or regulations that apply to disputes in a particular context.
Let’s consider an example of convening that occurs on a consensual basis. In the Divorcing Spouses scenario (see Exercise 1, at the end of Chapter 3), either Jo-Anne or Paul may contact a private practice family mediator to explore the possibility of using mediation to resolve their dispute. Before starting a mediation process with Paul and Jo-Anne, the mediator will need to conduct a convening process that consists of one or more private meetings (in person or by telephone) with each of the parties to determine whether mediation is an appropriate dispute resolution process, agreeable to both of them. If either party refuses to speak to and meet with the convenor/mediator, then the process will not go ahead.

In the Workplace Change scenario (see Box 8.1, in Chapter 8), the convening process provided for in the company’s mediation program policy is not really a consensual one. Under this policy, each party is required to meet privately and confidentially with the mediation coordinator. However, neither party is compelled to proceed with mediation. Mediation will be used only if both parties agree to it. In this instance, then, the convening process is not a consensual process, but the mediation is. In the case of the Sonata Development scenario (see Exercise 1, at the end of Chapter 2), a convening process could be initiated by either of the parties (Haven Homes or Sonata Preservation Society (SPS)), or by the City. Whichever party initiates the process, the person conducting the convening process will need to be an independent consultant with expertise and experience in the multi-party mediation of public land-use disputes.

**Decision-Making Authority**

Decision-making authorities are individuals or entities (groups, organizations, or nations) with legitimate and generally recognized power and authority to determine the outcome of a dispute in the event that the parties fail to do so on their own. An authority may impose a decision or outcome on the parties. Or an authority may help the parties make their own decisions on the issue between them. In the Band Next Door scenario (see Exercise 2, at the end of Chapter 4), the apartment building landlord or superintendent would be an authority with the authority or legal power to enforce the rules of the apartment building about loud noise between the hours of 10:00 p.m. and 7:00 a.m.

In the Sonata Development case (see Exercise 1, at the end of Chapter 2), the City Council has legal authority to decide what new zoning designation and conditions will apply to the land owned by Haven Homes. The City Council will exercise its decision-making authority on a rezoning application that is submitted by Haven Homes and that is opposed by the SPS. If any party is dissatisfied with the Council’s decision on the rezoning application, that party may be entitled to appeal the decision to the Ontario Municipal Board, the body with the statutory power to review and decide disputed land-use issues in Ontario.
Dispute

A dispute is a disagreement between two or more persons, groups, organizations, or nations about what action they will take in a specific situation, individually or collectively. For instance, in the Car Repair Blues scenario (Box 1.1), the dispute between Dale and Chris is a disagreement over the costs charged for the repair of a car, and what action should now be taken. Each party has adopted a position that is unacceptable to the other side. Dale refuses to pay Chris the $1,200 he has charged her for fixing her car. Chris refuses to return Dale’s car to her until she pays his bill. Until Chris and Dale reach a mutual decision, they will remain in conflict.

Dispute Resolution Processes

Dispute resolution processes are processes for resolving disputes. They fall into two categories:

1. With a consensual process, the parties decide the outcome. The two main consensual processes are negotiation and mediation.
2. With a formal, legal, or third-party process, a third-party authority decides the outcome of the dispute. Third-party dispute resolution processes include adjudication, arbitration, and authoritative command.

The Integrative Paradigm

The integrative paradigm of dispute resolution is fundamentally different from the positional paradigm to which most people refer when involved in a dispute. With the positional paradigm, people present arguments in support of their own position and try to rebut or undermine an opposing position. Through this process of debate, all arguments are presented and tested. In theory, right shall prevail. Indeed, this is the “adversarial” process that is the basis of our legal system. This is what Deborah Tannen (1999) calls the “argument culture.”

The integrative paradigm is based on the premise that there is some validity to both sides’ points of view. In pursuing this paradigm, you will explore and try to understand all conflicting points of view. Having done that, you will seek a conclusion that draws on and, so far as possible, integrates the different perspectives.

Issue

In a dispute or conflict among two or more people, we refer to the basic subject of their disagreement as the issue between them. In the Car Repair Blues scenario (Box 1.1), the disputed issue is that Dale has refused to pay Chris’s bill for $1,200. In some disputes, there are two or more issues. For example, in the Divorcing Spouses dispute between Jo-Anne and Paul, there are at least three issues between the parties: (1) custody of their children, (2) division of their property, and (3) support payments.
by Paul. The issues that need to be settled for the dispute to be resolved are referred to as the substantive or material issues between the parties. In any legal analysis of a dispute, a lawyer should be able to identify and describe the substantive issue or issues between the parties in such a way that any other lawyer would concur and say, “Yes, those are indeed the issues between these parties.”

**Justice and Justice Perspectives**

**Justice** is a complex concept that has different meanings in different situations. It is both a subjective perception (as is injustice) as well as an objective ideal. In most situations of conflict, a sense of injustice will be an element in one party’s perception of the other. Party A invariably believes, for example, that Party B has committed, or is in the process of committing, some wrong against Party A. Depending on the context, we may refer to a party’s alleged wrong as either an offence, a violation of another’s rights, or a breach of a duty or obligation or a liability.

A primary purpose of our legal or justice system is to apply the rule of law—our established system of laws, procedures, and processes for determining legal liability. In this way, we aim to hold people accountable for actions they commit that are contrary to law. This is the principle of retributive justice: wrongful actions are subject to legal sanction.

The notion of justice may be examined at different levels, with the view changing as the level shifts. We can use the Google Earth program as a metaphor. From the Street View, we examine what happens in detail in a specific case and assess to what extent justice is achieved there, in terms both of outcome and process—in other words, procedural justice. If we go to a higher level, we may view and assess the justice of a given organization or community (for example, an ethnic or faith community). At a still higher level, we may view, examine, and assess the overall justice of a national justice system. At this national level, we can consider to what extent a nation is a “just society.” Pierre Trudeau was a lifelong advocate for a just society in Canada.

Another concept of justice is known as **restorative justice**. Some of its fundamental assumptions and premises are different from those of the traditional retributive justice system. Restorative justice is achieved through the active responsibility and accountability of the offender, which bring healing and reconciliation for victims, offenders, and the community.

**Mediation Programs**

A **mediation program** is a system of resources, personnel, procedures, and practices for providing mediation services to people within an organization, school, institution, or community. Typically, an organizational mediation program will have a permanent manager or administrator. There are organized mediation programs in many different organizations, including workplaces, schools, non-profit organizations,
and government departments and agencies. Many communities have mediation programs, such as victim–offender mediation programs or neighbourhood mediation services.

**Parties and Stakeholders**

Both conflicts and disputes involve two or more parties. A *party* is a person, group, organization, or nation that is engaged in and has some responsibility to act in relation to the subject matter of the dispute. Parties have both rights and responsibilities with respect to all other parties in relation to the subject matter of the dispute. These may be legal rights and responsibilities, defined according to the applicable legal system, or they may be moral rights and responsibilities, defined according to a relevant code of conduct or established social practice. An example of the latter would be the universal expectations that people generally have when they line up to purchase tickets at a theatre or to be served at a bank, coffee shop, or grocery store. Party A has rights vis-à-vis Party B (legal or moral) when Party A has a legitimate and generally recognized expectation about what Party B should or should not do in relation to the subject matter of that dispute. Conversely, to say that Party A has responsibilities vis-à-vis Party B (legal or moral) means that Party B has a legitimate and generally recognized expectation about what Party A should or should not do in relation to the subject matter of that dispute.

A *stakeholder* is a person, group, organization, or nation that is affected by a dispute but generally does not have responsibilities to, or claims on, others in relation to the subject matter of the dispute. In the Car Repair Blues scenario (see Box 1.1), Dale and Chris are the parties to the dispute, whereas Dale’s family, friends, and employer might be considered stakeholders. In the Sonata Development scenario (see Exercise 1, at the end of Chapter 2), community groups or, for example, the local school board could be involved as stakeholders rather than as parties.

In a multi-party public dispute, stakeholders may participate in a dispute resolution process. Mediation is a consensual process, so the parties would need to consent to their participation. With a formal or legal process (for example, adjudication), a stakeholder would generally be allowed to participate as an intervenor if the procedural rules or the process authority allows for such participation.

**Principle of Self-determination**

The principle of *self-determination* is a fundamental principle of mediation. It applies to most (but not all) forms of mediation in North America. According to this principle, it is better for the parties themselves to determine the outcome of their dispute than for others to make decisions for them. Ideally, the parties will do this by a process of negotiation, with only the assistance they need, but not more. This assistance often takes the form of mediation. A mediator who applies the principle of
self-determination does only what is required to help the parties decide for themselves the outcome or resolution of their dispute.

**Resolution and Settlement**

**Resolution** refers to the outcome, result, or conclusion of a dispute or conflict. The resolution of a dispute is often referred to as a **settlement**. In the Car Repair Blues scenario (Box 1.1), if Chris and Dale agree that Dale will pay Chris $800 in full satisfaction of his bill, we would say that their dispute has been settled and that their agreement on the disputed amount was their settlement. Reaching a settlement usually means that there is no further legal claim for either party to pursue; any such legal claims have also been settled. In a case with multiple issues, such as Paul and Jo-Anne’s divorce dispute (see Exercise 1, at the end of Chapter 3), it is possible to settle one issue—for instance, child custody—without settling the other issues.

The resolution of conflict can also be subjective and interpretive. For instance, Party A’s conflict with Party B is resolved when Party A no longer perceives Party B as an adversary, or when Party A’s adversarial perception of Party B is reduced, even if that perception is not eliminated altogether.

**Response to Conflict**

Conflicting parties’ perceptions, emotions, and thought processes produce behaviours that are a **response** to these experiences. While we always have a choice in how we respond to conflict, sometimes we respond without thinking—in an instinctive or knee-jerk way. A person will typically have one or some of the following responses to conflict: ignore it and do nothing; flee or withdraw; fight; accommodate; or collaborate with the other party by engaging in dialogue.

For example, in the Car Repair Blues scenario (Box 1.1), Dale could have ignored her conflict with Chris and not acted on her perception that he ripped her off. She could have accommodated him and paid the bill and carried on without even mentioning her negative feelings. If she had done that, she would likely have decided never to take her car back to the ARCO service station, a withdrawal or “flight” response. Alternatively, she could have ignored the conflict as a small blip and continued to patronize Chris and his business. Instead, Dale chose to respond to the conflict by communicating her adversarial perceptions and angry feelings to Chris. Had she not been so aggressive, her communications with Chris might have resulted in a more collaborative, cooperative outcome.

**Summary**

In this chapter we introduced the reader to the wide variety of mediation applications, including the following: organizations or institutions; public complaints; the formal justice system. We also discussed the new fields of mediation opened up by
innovations in information technology. Mediation can achieve various goals. They range from dispute settlement or resolution to understanding, learning, and growing, to restoring or repairing relations after grievous harm has been inflicted. All mediators follow the five-phase approach we have outlined in this chapter, with adaptations within each phase depending upon the goals of the mediation.

Regardless of what particular approach or approaches a mediator may use, the effectiveness of mediation largely stems from its holistic orientation toward understanding conflict and toward helping parties to transform their relationship. A holistic orientation is based on the “new science” paradigm, which seeks knowledge not through examining a system’s parts in isolation but through an understanding of the relationships between the parts—their interconnectedness. Logic and rational discussion alone are not sufficient to understand the subjective experience of parties in conflict. Mediators do need to use traditional scientific methods of analysis and strategic planning. At the same time, they need to rely equally on emotional, somatic, intuitive-imaginative, and “connected” ways of knowing to interpret and understand events and experiences. Mediators work to influence parties’ ways of understanding, thus promoting relational change. This is done through the heart, mind, body, and spirit.

A key component in the development of mediator competence and artistry is ongoing reflective practice, and we provided some tips as to how you might go about integrating reflective practice into your handling of conflict in order to improve your mediation competence. Finally, we included a list of key terms that we will be using throughout the book. This is not a comprehensive list, but rather a collection of some of the terms and concepts we use frequently in this text.

**DISCUSSION QUESTIONS AND EXERCISES**

1. How and where will you apply what you learn in this course (be as specific as you can)?

2. Why is it important for the mediator to clarify the goals of the mediation?

3. Think of a conflict you have been involved in. Now, think of a metaphor or analogy that describes how you viewed that situation. Think creatively. Was it like a “pot boiling over,” “walking on eggshells,” “a cold Canadian winter”? How evocative—and successful—is your metaphor in describing what it felt like to be in the situation? What emotions does it evoke? How rich and full is the picture you have painted?

4. Read the Car Repair Blues scenario (Box 1.1) and then answer the following questions:
   a. What is the conflict between Dale and Chris?
   b. What is Dale’s conflict narrative? What is her justice perspective? What is Chris’s conflict narrative? What is his justice perspective?
   c. Who are some third-party decision-making authorities in this case?
5. Think of a conflict situation that you are or have been involved in. Write a two-page reflective journal about this conflict, including what you said and did, some of the challenges you experienced and what you could do differently in this case to be more conflict competent.

**FURTHER READING**


**Websites**

The Association for Conflict Resolution (ACR): http://www.acrnet.org

This is a professional organization dedicated to enhancing the practice and public understanding of conflict resolution. ACR gives voice to the choices for quality conflict resolution.

The Institute for the Study of Conflict Transformation, Inc.: http://www.transformativemediation.org

This is a professional organization dedicated to the study of transformative mediation.

National Center for Technology and Dispute Resolution: http://www.odr.info

Ontario Dentists Association. ODA Mediation Service: http://www.oda.on.ca/you-your-dentist/oda-mediation-service


**REFERENCES**


