

**Background**

This report is the culmination of the 1992 SPIDR Board of Directors' mandate to the Commission on Qualifications (the Commission) to determine what recommendations might be needed to accomplish the preliminary suggestions of the 1989 report *Qualifying Neutrals: the Basic Principles*. The 19-member Commission, representing a cross-section of Canadian and United States SPIDR members, was drawn from a broad base of practice and geographical origin.

**Purposes**

The Commission's mission statement, workplan, and budget focused on the following:

- Review and revision of necessary competencies for "third-party" intervention in disputes, regardless of the role of the third party (mediator, arbitrator, other) or the number of parties involved;
- Development of supplemental competencies for those working in different practice sectors (e.g., the environmental/public policy sector has already developed a detailed list of skills and tasks of a mediator or facilitator in complex situations);
- Surveying a wide range of qualifications programs to learn the practical applications of the 1989 report; and
- Making other general recommendations regarding qualifications and SPIDR membership areas as the Commission might think appropriate.

**Meetings and Timetable**

The Commission met five times with the two most recent being at the October 1993 SPIDR Annual Conference in Toronto and in Dallas, January 30-31, 1994. The Commission's draft, available well in advance of the October 1994 Dallas SPIDR Annual Conference, will be highlighted at plenary and workshop sessions to offer opportunities for comments and dialogue about its preliminary conclusions. A chart is attached that shows the organization of the work.

A	B	C	D	E	F
Who is responsible for ensuring competency and why?	What is the context?	What do we do?	What are the competencies for good practice? (Mediation and Arbitration)	How do intervenors achieve competency?	How do you assess whether intervenors have achieved competency?
<p>I. Different players and roles</p> <ul style="list-style-type: none"> <li>♦ individual</li> <li>♦ program administrator</li> <li>♦ trainers, educators and researchers</li> <li>♦ professional DR associations</li> <li>♦ policy makers</li> </ul> <p>II. Policy recommendations</p>	<p>I. DR programs</p> <ul style="list-style-type: none"> <li>♦ values</li> <li>♦ goals</li> <li>♦ definition of success</li> <li>♦ individual vs. service providers</li> <li>♦ mandated vs. voluntary</li> <li>♦ paid vs. volunteer</li> </ul> <p>II. Culture</p> <ul style="list-style-type: none"> <li>♦ ethnicity</li> <li>♦ religion</li> <li>♦ age</li> <li>♦ gender</li> <li>♦ social/economic</li> </ul> <p>III. Organizing DR Principles and rules for context</p> <p>IV. Policy recommendations</p>	<p>I. Variety of tasks of the third party intervenors</p> <p>II. Individuals</p> <ul style="list-style-type: none"> <li>♦ core DR tasks</li> <li>♦ core mediator tasks</li> <li>♦ core arbitration tasks</li> </ul> <p>III. Qualification tasks of programs</p> <p>IV. Policy recommendations</p>	<p>I. Individual</p> <ul style="list-style-type: none"> <li>♦ core competencies</li> <li>♦ sector specific competencies</li> <li>♦ context/program specific competencies</li> </ul> <p>II. Organizational competency</p> <ul style="list-style-type: none"> <li>♦ solicit applications</li> <li>♦ screen applicants</li> <li>♦ train intervenors</li> <li>♦ select intervenors</li> <li>♦ assign cases</li> <li>♦ monitor intervenor performance</li> <li>♦ evaluate performance</li> <li>♦ disqualify intervenors</li> </ul> <p>III. Policy recommendations</p>	<p>I. Variety of paths</p> <p>II. Best practice guidelines</p> <ul style="list-style-type: none"> <li>♦ training</li> <li>♦ apprenticeships</li> <li>♦ mentoring</li> <li>♦ supervision</li> <li>♦ course work</li> </ul> <p>III. Policy recommendations</p>	<p>I. Duty to assess</p> <ul style="list-style-type: none"> <li>♦ individuals</li> <li>♦ DR programs</li> <li>♦ DR practitioner associations</li> </ul> <p>II. Variety of assessment approaches and guidelines</p> <ul style="list-style-type: none"> <li>♦ self-assessment</li> <li>♦ peer review</li> <li>♦ live/taped observation</li> <li>♦ supervision</li> <li>♦ complaint system</li> <li>♦ continuing education</li> <li>♦ case load (market demand)</li> <li>♦ performance testing</li> <li>♦ written/oral tests</li> <li>♦ structured interviews</li> </ul>

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**Conclusion**

The Commission plans a relatively short, readable report. In addition, it plans the following:

an appendix documenting representative models from the survey of qualifications programs; a miscellany of key articles, unpublished materials, and useful items for practitioners, program administrators, and policymakers; an updated compendium and sourcebook of generic articles, unpublished materials, and relevant documents for those interested in qualifications issues; a 1995 Bi-National Conference on Qualifications; and preparing materials/modules useful in developing or implementing training, screening, and assessment programs.

For a *Qualifications Sourcebook and Compendium*, consisting of key published and other materials on the subject of qualifications and standards of practice and further information about the Commission's work, please contact SPIDR's Washington, DC office (202-783-7277). □

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The United States Congress passed a law extending the existing pilot court annexed arbitration programs in federal district courts for another year. On February 9, 1994 an ADR resolution was introduced in the House and referred to its Committee on the Judiciary.

**H.R. 355 encourages citizens of the United States to practice random acts of kindness.**

**State Legislatures in Louisiana passed a law that uses mediation as part of its efforts to prevent juvenile delinquency and street gangs.**

On October 12, 1993 the House of Representatives passed H.R. 1102, the Court Arbitration Act of 1993, which requires all 94 federal district courts to adopt either a mandatory or a voluntary court-annexed arbitration program. H.R. 1102 increased the maximum amount in controversy for cases referred under the mandatory programs from \$100,000 to \$150,000.

On October 29, 1993, the Senate Judiciary Subcommittee on Courts and Administrative Practice heard from witnesses who testified either in favor of or against the H.R. 1102. Several witnesses testifying in favor of H.R. 1102 referenced the benefits of mandatory court-annexed arbitration. U.S. District Court Judge Ann Claire Williams testified on behalf of the Judiciary Conference of the United States — the policy making body of the Federal Judiciary. She recommended that Congress pass legislation continuing the 20 arbitration pilot programs and authorizing all federal and state courts with the discretion to establish voluntary non-binding court-annexed arbitration programs. One federal district court judge opposed H.R. 1102, criticizing the mandatory aspects of the bill as being unwise policy, violating citizens' Seventh Amendment rights to a civil jury trial. Jack Watson, At-Large Council Member to the American Bar Association's (ABA) Section of Dispute Resolution, testified in favor of the policy goals of H.R. 1102. He advised the committee that the ABA has not adopted policy regarding mandatory use of ADR procedures. ABA policy encourages voluntary use where appropriate.

Due in part to the lack of consensus on whether or not the new arbitration programs should be voluntary or mandatory, Senate Subcommittee Chair Howell Heflin (D-AL) felt it to be improvident to recommend passage of H.R. 1102. He introduced S. 1732, which ultimately passed and simply extended the 20 pilot programs for another year; thereby giving the Senate more time to study this issue.

On December 14, 1993, S. 1732 was signed into law (now P.L. 103-192). This extends until December 31, 1994 the authorization for ten mandatory and ten voluntary court-annexed arbitration pilot programs in 20 federal district courts. The authority to continue these pilot programs had been scheduled to end November 19, 1993. Senate Bill 1732 was introduced in late November after a hearing on the house bill by the Senate Judiciary Subcommittee on Courts and Administrative Practice.

On February 2, 1994 Congressman Walter Tucker (D-CA) introduced House Resolution 355, expressing the view of the House of Representatives that the people of the United States should be encouraged to practice random acts of kindness. This resolution has been referred to the House Committee on the Judiciary.