

**THE MANY MEANINGS OF MEDIATION:
A SOCIOLOGICAL STUDY OF MEDIATION IN CANADA**

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ABSTRACT

This study provides a snapshot of how mediation is conceptualized in the late 1990's by those who both work as mediators and train others to mediate. It depicts mediation as a dynamic, complex and evolving work form. Differences in understandings about the nature of mediation were found to be linked to the gender of the mediator, their educational background, the dispute sector in which they mediate, and when they began to practice as a mediator. The study shows considerable diversity of understanding about the work of a mediator. It also found considerable difference of opinion on how the practice of mediation should be organized, and concerns over what is taking place within in the field. One of the strongest of these concerns is that mediation will take on a more legalistic form with the recent influx from the legal profession. The fear is that this will dilute the focus of mediation from its original transformative goals to more evaluative and business-like ends.

The primary task of this study was to unmask the richness and complexities of mediation that have been lost in bipolar views of "best practice". The study was exploratory, qualitative and based on grounded theory. It drew from interpretive sociology to legitimate its efforts to obtain knowledge about the nature of mediation by revealing how mediators understand the work they do. An in-depth analysis of how respondents conceptualize their role, their style and their orientation to mediation was undertaken. The results of this analysis were depicted on a matrix table to examine clusters of mediation traits. The table shows that various

mediation traits interact to form at least four interrelated patterns of mediation meanings. Finding more than two sets of meanings underlies one of the study's important insights – that dichotomous modeling of mediation approaches presented in the extant literature is not the way mediators think about their work. As an outgrowth of this research an analytical model from which to engage and study interacting patterns of meanings emerges. This heuristic “tool” is not a rigid concept but is imagined as an emerging and dynamic construct that can do more than examine the mediation traits and interacting patterns of meaning found in this study. It can also be used to find traits that remain to be discovered in future studies.

Two other insights emerged from this study. First, mediators do not share a common understanding of the language they use. To illustrate, most mediators define their role as facilitative, however, in some instances “facilitative” was linked to the management of process, in others it was about enhancing communication between the parties, and in still others it had to do with resolving the dispute. Second, as new mediators enter the field and mediation becomes institutionalized, the reasons individuals are attracted to work as mediators appears to be shifting from visions of social transformation to job satisfaction and personal growth.

The study concludes with recommendations for further research, suggestions for policy considerations and comments on the contribution to the sociology of professions.

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Chapter One

The Many Ways of Mediation

Introduction

Mediation has become a powerful tool for dispute resolution. This dissertation examines mediation as a sociological phenomenon. The study is based on the belief that the use of mediation is greatly expanding, and on the assumption that the nature of mediation is changing as a result of this growth. It argues that it is no longer sufficient to construct mediation as if it were a monolithic process, nor mediators as if they were a homogeneous group. Nor is it sufficient to examine understandings of mediation practice in dichotomous fashions. Instead, it holds that one way to further understand the changing form of mediation is to examine, in an integrated way, the ways mediators conceptualize and give meaning to their work, and take into consideration the ways contextual factors impact on these understandings.

The study undertaken profiles mediation trainer-practitioners in the late 1990's. The design of the research was emergent, inductive and based on grounded theory¹. It explores how individuals who work both as mediators and mediation trainers understand their work through an examination of how they describe their role, orientation and style of mediation. This study also examines the relationship between various contextual factors and differences

¹ For a discussion of grounded theory see Glaser, B, and Strauss, A., *The Discovery of Grounded Theory: Strategies of Qualitative Research*. Chicago: Aldine, 1967

in how mediation practices are conceptualized. Four key contextual variables have been used to investigate the data: 1) gender; 2) the dispute sector in which an individual works; 3) an individual's educational background; and, 4) when an individual began working as a mediator. These four factors emerged because they are frequent topics of inquiry in the conflict and sociological literature and because they are linked to mediators' ideas about what they are doing in mediation.

This research gives support to some of the ideas expressed in extant dichotomous constructions of mediation². It also shows that these depictions are limited because different combinations of sets of traits were found to exist in any one mediator's understanding of mediation. These various traits were found to interact in different ways giving rise to at least four different patterns of mediation meanings. One of the conclusions to be drawn from this finding is that as the field has developed, the propensity of mediators to use concepts from different sets of meanings about mediation has also increased. This suggests that more complex analytical distinctions are needed to examine how mediation is currently conceptualized. One of the contributions of this research is to propose a broader analytical framework for understanding mediation.

² I discuss a number of these typologies in Chapter 2, in particular the transformative and problem-solving dichotomy of Bush and Folger (1994); the bargaining and therapeutic model of Silbey and Merry, (1986); the evaluative and facilitative styles of Riskin (1996), and Kolb's (1994) communicative and settlement approaches.

Why is a study such as this important? Perhaps one of the most pressing reasons is that as mediation becomes further institutionalized, knowing how those who currently work as mediators conceptualize mediation may help uncover and, if necessary, protect essential and visionary elements of mediation. In fact, some of the early visions are thought to already be in jeopardy (Chapter 2). Furthermore, examination of the “professionalization” of other occupations might lead to the prediction that mediation is on its way to becoming elitist (Larson, 1977; Ritzer, 1986). And, it gives cause to question whether current day mediation can only perpetuate the status quo instead of changing it (Johnson, 1972; Klegon, 1978). These possibilities are criticisms that were directed at the legal system that mediation was supposed to improve. As a “profession in the making” (Scimecca, 1991; Pirie, 1994; Picard, 1994), sociological theories of professions would lead us to expect that these and other complex activities are going on within the field.

One of these activities is an increasing call to regulate who can and cannot mediate. There are those who believe it untimely to regulate mediation. For one reason, its nature and impact in society are not fully understood. For another, they fear that limiting who can mediate may slow or even halt the expansion of mediation into areas where innovative dispute resolution is needed. While one of the main justifications of regulation is to protect consumers from ill-equipped charlatans who might seize the opportunity to “hang their shingle” prematurely, sociological theories of

professionalization would have us question how this should be done. In particular they question whether overly restrictive regulation stifle innovation and push a profession towards exclusivity and elitism. A question that today's mediators have to wrestle with is whether governance may in fact be premature. This study provides a number of insights about how mediation is currently conceptualized that may be helpful in these deliberations.

Another value of this study lies in the opportunity to bring out the richness and complexity of mediation which have been masked by dichotomous debates about the right and best model of practice. Furthermore, how Canadian mediators view their work may be different than what we know about mediation practices in other countries. The data collected will be useful should a comparative study of mediation be undertaken. Further still, this study provides baseline data on the meaning of mediation by Canadian practitioners and trainers. Data from which to map the present, examine the past, and help guide the future. The presence of a fuller understanding of this social phenomenon will help inform those who work as mediators, those who are users of mediation, and those responsible for the setting of mediation policy and research.

Two key questions help guide this research. What does mediation mean to the people who mediate in Canada? And two, how do these meanings vary? The data also provides a "snapshot" of mediators in the late

1990's and insight into how they view the occupation in which they work. All of the data analyzed in this dissertation were collected through self-report. Examination was based on the method of grounded theory, which essentially involved a "bottom-up" analysis of the data. The purpose was to gain a fresh slant on what is known about mediation by discovering new meanings and generating new theories. Many of the hypothesis generated from this study offer new insights and challenge existing theories.

This research draws from the interpretive tradition, which highlights social actors' meanings and interpretations. As a sociological approach, it aims to reveal what the social "agent or agents themselves know, and apply, in the constitution of their activities" (Giddens, 1993:13). The questions posed in this study find legitimacy in a number of theories. First, that intersubjective meaning and symbolizing activities are constitutive of social life (Weber, 1962). Second, that how we come to describe and account for our world is socially constructed (Gergen and Davis, 1985). Third, that conceptual constructions of action both shape and are shaped by social practice (Bourdieu, 1990). And fourth, that the concepts we hold enter constitutively into what we do (Giddens, 1993). Thus, how a mediator understands and gives meaning to his or her work is a sociologically significant means of obtaining insight into the nature of mediation.

Interpretive theorists argue for the uniqueness of human action through a number of positions. One of these positions is that humans act toward things on the basis of the meanings that things have for them; second, that meanings arise out of the social interaction that one has with others; and third, that meanings are handled and modified through an interpretive process (Collins, 1985:282).

Another approach is constructionist theory, which resonates with the interpretive emphasis on the world of experience as it is lived, felt and undergone by social actors. Where they differ is with their view that truth and knowledge are created not discovered³. Social constructionists examine the process of knowledge construction by attending to the social constructions of meaning and knowledge rather than cognitive processes (Gergen, and Davis, 1986). Social constructionism is predicated on the assumption that “the terms by which the world is understood are social artifacts, products of historically situated interchanges among people” (Denzin and Lincoln, 1994:127).

Interpretive theory has helped to shape the questions posed in this inquiry, as well as its methods. The view of social science as reflexive

³ Social constructionist theorists advocate that “knowledge is not in the environment or exclusively in the minds of single individuals, but rather in the process of social exchange and linguistic construction which constrain personal categories of understanding” (Lyddon, 1991:266).

supports the notion that social action is not simply a physical act - the practical theorizing of people is a “vital element whereby conduct is constituted or made to happen” (Giddens, 1993:59). Thus, when mediators make statements about their actions these understandings can be considered an active personal and social construction of mediation.

I. An Overview of Mediation

A Growing Social Trend

The settlement of disputes is an integral part of any society. How disputes are resolved can range from actions where “might makes right” including war, dueling and other physical determinants, to inaction caused by avoidance and denial. In between these two extremes are many possibilities where one can appeal to agreed upon social rules and standards usually overseen by a third party. Mediation is one of these possibilities.

In the past, various dispute resolution methods have enjoyed prominence. In modern society the settlement of disputes has mostly been handled through the courts. This reliance, some would suggest over reliance, on the adversarial system created a “litigation explosion”. To counter this problem, alternative and private settlement procedures began to be piloted in Canada in the mid 1970's. Similar activities had been taking place in the United States for almost a decade before this in reaction to increasing civil rights disputes and protests against the Vietnam War. These alternative

procedures were to produce more humane, grass roots and lasting resolutions. The consensual nature of the process and the non-imposition of outcomes were what distinguished them from more traditional dispute resolution processes.

Many people see the increased use of informal alternative dispute resolution processes as a great step forward⁴. Empirically, however, the extent of this progress is still uncertain. Relatively few empirical studies on mediation have been conducted. In fact, up until very recently mediation was considered more an art than a science where intuitive skills were valued over scientific inquiry (Moore, 1986). The very few Canadian studies which have been conducted focus on who is involved in dispute resolution activities (Department of Justice, 1995), on rates of compliance (Umbreit, 1995), and on levels of satisfaction (Mcfarlane, 1995). None examine the meaning of mediation. Moreover, our understanding of third party procedures is in its infancy (Ross, 1989; Kressel and Pruitt, 1989; Tyler, 1989; Bush and Folger, 1994; Kolb, 1994; Riskin, 1996). Furthering our knowledge about mediation is a goal of this dissertation. More specifically, it provides a “snapshot” of those working as mediators, why they do this work, and the social meaning they attribute to mediation.

⁴ The value of ADR is not universally agreed upon. Some see ADR as disempowering for marginalized groups (Jaffe, 1983), a form of state control (Abel, 1982; Hofrichter, 1983), and a means of silencing of legitimate social conflict (Nader, 1991).

Today, alternative dispute resolution processes (ADR), especially mediation, have become commonplace responses to the handling of many social conflicts. In fact a growing number of jurisdictions now mandate the use of mediation⁵. Individuals from a range of occupations have responded to the demand for non-adversarial dispute resolution services. Where once mediators experienced isolation in their work, today practitioners are found in most sectors of Canadian society. In 1995, more than five thousand dispute resolution professionals worked in Canada (Department of Justice, 1995). This figure is no doubt much larger today. Mainstreaming and institutionalization have, however, reshaped the profile of those who work as mediators. Most notable is the shift from individuals who were at one time primarily community-based and volunteered their services, to mediators who work in private practice and are more business-oriented. This transition is said to be consistent with the changing form of professions in contemporary industrial societies (Brint, 1994).

Other significant changes are taking place. Contemporary mediators appear as occupied with obtaining legitimization through professional status⁶

⁵ In June of 1997, the Ontario Ministry of the Attorney General proposed a new rule (Rule 78) to provide for the mandatory mediation of most civil actions and applications.

⁶ See, Society of Professionals in Dispute Resolution (SPIDR), Qualifying Neutrals: The Basic Principles: Report of the SPIDR Commission on Qualifications (Washington, D.C.: National Institute for Dispute Resolution, 1989); Academy of Family Mediators, "Membership Standards," undated, in Mediation Development Association of British Columbia, Brief on Standards and Ethics for Mediators Presented to the Attorney General of British Columbia (Victoria, B.C.: Ministry of Attorney General,

as with seeking social justice. Virtues once attributed to mediation are now said to be myths, especially claims of neutrality and autonomy (Silbey, 1993). Once associated with a discourse of empowerment and transformation, the goals for mediation today are often cost-effectiveness, timeliness, and accountability. In fact, the Ontario Court of Justice *Civil Justice Review, Supplemental and Final Report* (1996) identified the above benchmarks as principles for a modern civil justice system. The drive to achieve status as a professional is perhaps most evident in conflict resolution listserv⁷ conversations on the Internet where subscribers regularly raise the need for regulation and standardization of mediation services in order to better market their services and charge higher fees. In some conversations mediators have been encouraged not to volunteer their services for fear that it will “de-value” the work of a mediator. Other conversations have encouraged the establishment of an independent college of mediators to regulate mediation. Another posting spoke of a trade association known as the *Alliance for the Advancement of Professional Mediation*, whose sole purpose is to market the “profession” and the services of its members.

It seems that early visions of social transformation may be being displaced by more practical and state-serving goals of case management.

1989); Family Mediation Canada, Code of Professional Conduct (Guelph, Ontario: Family Mediation Canada, 1986); and Mediation Development Association of British Columbia, Brief on Standards and Ethics for Mediators, paper presented to the Attorney General of British Columbia (Victoria. B.C.: Ministry of Attorney General, 1989).

⁷ For example, *mediate-Canada*, *Cornel Law School dispute resolution*, and *mediate.com* listservs.

Current practice seems to pay less attention to the parties in dispute and the structural causes of social conflict arising from issues of class, ethnicity, gender and culture. Is mediation, once a tool for social transformation, being colonized by the judicial needs of the state? This possibility was first raised in the 1980's by those who, drawing upon the Gramscian notion of hegemony, argued that government sponsored dispute resolution programs served to create more institutions of political control than empowering alternatives⁸. This research aims to deepen our awareness of the changing form of mediation.

The Plurality of Definition

The ever-increasing numbers of divergent models that populate the mediation landscape leave little doubt that the use of mediation is expanding, and changing. Many factors have led to a plurality of definitions for mediation. For example, economic, political, legal and social factors lead people to define mediation from particular vantage points oftentimes creating competing discourses. Different users use mediation in different senses and for different purposes. In some instances mediation practitioners take a micro perspective and view mediation as a pragmatic problem-solving process (Moore, 1986). Others associate mediation with macro political functions believing that it can transform oppressive social structures (Warhaftig, 1982).

⁸ See Richard Abel, *The Politics of Informal Justice*, 1982; Richard Hofrichter, *Neighbourhood Justice in Capitalist Society: The Expansion of the Informal State*. 1983; Roger Matthews, *Informal Justice*, 1988; and, Laura Nader, "Harmony Models and the Construction of Law", 1991:41-59.

Furthermore, those who work as mediators differ in their personal characteristics, their backgrounds, their training, and their operational philosophies. As a consequence of this growth many long-held views of mediation are being challenged.

At this point in time mediation does not have a coherent set of core features. This may be due, in part, to the fact that mediators ground their approach to mediation in ideological views of what should happen and why. In many instances their ideologies contradict each other. Two ideologies currently dominate the mediation discourse -- individualistic and relational. An individualist view, upon which the settlement approach is based, sees the world as made up of separate beings of equal worth, but different needs, whose human nature it is to seek satisfaction of their needs and desires. A relational framework, views the world as made up of persons with diverse needs and desires but who possess a common form of consciousness that connects them to each other. Transformative models of mediation are based on this ideology (Bush and Folger, 1994).

Unfortunately, attempts to bring order to the diversity and ambiguity of what constitutes mediation have given rise to a conceptualization that posits mediation approaches in dichotomous positions. Two tensions pervade the mediation community as a result of this dualistic visioning. The first tension is ideological and divides mediation into either transformative social justice

processes or pragmatic problem-solving processes. The second tension locates mediation on the one hand as a grass-roots movement, and on the other as a professional activity. This juxtaposition and positioning of one view against another is problematic as it masks the diversity and complexities of mediation. It draws attention from important contextual influences within mediation and often lead to debates about which form is best. This dissertation is an attempt to bring to the fore the need for a more integrative view of mediation. A view that takes into account the contextual factors surrounding the conflict situation and the plurality of meanings given to mediation.

The Regulation of Mediation

One of the major tensions within the field of mediation is related to “professionalizing” the work of a mediator. The press for standards began to take hold in the late 1980’s with the work of the Society of Professionals in Dispute Resolution (SPIDR) Commission on Qualifications⁹. Since then, several Canadian organizations have developed criteria to certify mediators, namely Family Mediation Canada and the Arbitration and Mediation Institute of Canada. They, along with other dispute resolution organizations and government officials, have been meeting to discuss the feasibility of standardized mediation certification programs for the whole of Canada.

⁹ See the SPIDR report, *Qualifying Neutrals: The Basic Principles: Report of the SPIDR Commission on Qualifications*, 1989.

This trend toward regulation raises many issues. Some say that failing to adopt standards might adversely affect consumers (Honeyman, 1990). Others argue that standards will hamper the development of the field (Edelman, 1986). Still others, wonder if the setting of qualifications will marginalize mediation as a progressive dispute resolution process in Western society (Pirie, 1994). The fear that mediation may become elitist and exclusive has some justification. In the past, occupations seeking professionalization sought to create a monopoly (Friedson, 1971). This desire to move from an occupation to a profession is also a feature of the occupational structure of advanced institutionalized societies (Larson, 1977). The right to claim expert knowledge and lay claim over areas of work is a debate that occupies more than the mediation community. Some suggest that the drive to become a profession is a political process to gain power (Johnson, 1972) and control of the market (Torstendahl and Burrage, 1990). Others see it as a battle over jurisdictional work claims (Abbott, 1988). Still others view professionalization as a more general process of formal rationalization (Murphy, 1990).

Strong arguments have been raised in favour of heightening knowledge about the nature and impact of mediation before regulating this social activity. Some have even criticized the value of becoming a “profession”. Restrictions continue to be placed, however, on who can and cannot mediate in Canada and elsewhere. Perhaps the direction mediation is

taking in this regard is inevitable in the long run. If so, systematic and empirical investigation of mediation should be a vital next step before embarking further with this trend.

II. An Overview of the Study

Research Question

The question of this study is simply - what does mediation mean to the people who mediate in Canada, and how do these meanings vary? To answer this question, how mediation trainer-practitioners conceptualize their work is examined. The aim of this investigation is to unmask the richness and complexities of mediation by discovering the meaning of mediation for individuals who both work as mediators and teach others to work as mediators. Increased understanding of the contextual nature of mediation is of importance given that mediation is expanding, becoming institutionalized, and as many would have it, emerging as a new profession.

Design

Triangulation is a strength of the study design. Triangulation is a method whereby different methods are used to analyze the same data. The first triangulation strategy involved the combination of qualitative and quantitative methods to strengthen validity, provide richer detail, and initiate new understandings. The second triangulation strategy involved the triangulation of instruments. This included conducting personal interviews

and a pilot written questionnaire which were then used to construct the final written survey instrument mailed to trainer-practitioners from across Canada. The Department of Justice study (1995) and the study of family mediators by Edward Kruk (1998) were used as secondary sources of data to question and make comparisons of the data.

A number of assumptions and questions helped guide the construction of this study and steps of research. The first assumption is that humans map courses of action based on their interpretation of themselves and the things around them. Another assumption is that all actors do not experience the world in the same way. Three broad questions are explored. How do those who practice and teach mediation understand mediation? How is mediation changing as a result of its growth and institutionalization? And, how do internal and external contexts impact upon mediators' understanding of mediation and conceptualization of their mediation approach.

Concept-related questions were systematically asked of the data. Contextual factors including the gender¹⁰ of a mediator, his or her educational background, experience and the dispute sector in which they primarily work were examined to see how they act upon a mediator's understanding of mediation. How does the dispute sector in which he or she mediates, or, the

¹⁰ I use the term gender rather than sex to acknowledge the complex and reciprocal nature of the biological and social elements of men's and women's experience.

length of time he or she has been mediating impact on their conceptualization of mediation? How similar or varied are these understandings? How consistent are these conceptualizations within particular groups of mediators, or even, within individuals themselves?

The Sample

The population that was studied were people who described themselves as mediators who also train others to mediate. Those sent questionnaires were identified from eight unduplicated directories. These sources included: 1) the Network: Interaction for Conflict Resolution 1997 membership list; 2) a 1996 list compiled by Family Mediation Canada; 3) a list of names suggested by the Canadian Foundation for Dispute Resolution; 4) the 1997 Arbitration and Mediation Institute of Ontario Directory of Members; 5) the Ontario Bar Association 1996 list of ADR practitioners; 6) the Alberta Arbitration and Mediation Society 1997 Directory; 7) the Mediation Development Association of British Columbia¹¹; and 8) data contained in the 1995 Department of Justice report entitled, *Dispute Resolution in Canada: A Survey of Activities and Services*.

Any individual who self-identified as a mediation trainer and practitioner was included in the mail out. Having multiple perspectives helped

¹¹ The BC Mediation Association would not release the names of its members, however, they did agree to mail out the survey to the 13 members they knew to be both mediators and trainers.

to protect against privileging any one voice. In the event that anyone receiving the mail-out package was not both a trainer and a practicing mediator, a brightly colored sheet of paper was included asking them to indicate this by returning the form. In April, a reminder letter was sent to those who had not yet responded (Appendix C). This was followed up in May by a second reminder letter and a full questionnaire package. In August, a thank you letter was sent to all those who had completed the questionnaire.

Individuals who said they currently were working as both mediators and trainers of mediators were selected to form the sample for a number of reasons. First, it was believed they would likely have more actual mediation experience than non-trainer practitioners. Second, that they would be well informed as a result of having read books and other writings on the theory and practice of mediation. Third, that they would have an in-depth understanding of the principles of mediation given their role as teachers. And fourth, that as a group they would provide a rich and varied description of mediation to describe their work. A further reason for selecting mediation trainers as the subjects of this study was that there does not appear to be other research in which they are the population being investigated. In fact, another of the strengths of this study is the uniqueness of the sample. The insights generated from this group of subjects will shed light on current understandings of the practices and principles of mediation. In addition, it provides indicators about the future direction of mediation.

The largest proportion of the sample came from Ontario (43%), followed by British Columbia (20%) and Alberta (17%). A much smaller number of respondents came from Manitoba, Quebec, Saskatchewan, Newfoundland, and Nova Scotia.

Caution is to be given when generalizing to the broader national mediation community for three reasons. First, the sample is relatively small when compared to the number of known dispute resolution practitioners¹². Second, respondents are not proportionately dispersed across the country, and there is little francophone “voice”¹³. And third, not all mediators are trainers. The requirement to be both a practicing mediator and a practicing trainer in order to be included in the sample may set them apart from the general mediation population. Based on the profiles of mediators from other Canadian studies (Kruk, 1997; Department of Justice, 1995) there does appear to be similarity between the two groups.

Data Collection

Most of the data in this study were collected through a lengthy, eighteen page, written questionnaire. This instrument was designed from two previous smaller data collection activities. The first activity involved

¹²In 1995, a database of more than 5000 names of individuals, agencies, organizations and groups who were engaged in dispute resolution work was compiled by the Network: Interaction for Conflict Resolution and the Department of Justice.

¹³ It was reported, in an article published in the Spring of 1999 by the Network, that in 1997 there were just under 800 accredited mediators in Quebec.

conducting personal interviews with six well-known Canadian mediators and trainers. Each interview was recorded and transcribed and the central elements from each interview identified. As a result of these oral descriptions, open and closed-ended questions, which focused more on the theory and practice of mediation and less on the training of mediators, along with short vignettes, were built into the next schedule of questions. The second data collection activity involved constructing a pilot written questionnaire which was distributed to ten individuals - six mediation trainers and practitioners and four researchers who were also practicing mediators. Subjects from different dispute resolution sectors were sought to enhance the data gathered in the first stage. Each individual was asked to complete the instrument and give feedback on the construction and nature of the questions. The final data collection instrument contained eighty-five open-ended, closed, and essay type questions (Appendix A). The questions were organized into four sections. Sections A and D were designed to gather demographic and quantitative information about the respondents, their work as mediators and their work as mediation trainers. Section B included a series of largely open-ended questions intended to gather qualitative descriptions of the subjects' understanding of the process of mediation, their role as mediators, their style of mediation and their orientation or ideology of mediation. Five of the questions in this section were conflict vignettes where respondents were asked to describe what they would do in particular conflict situations, and why. Section C was designed to solicit respondents' views on regulating the

field of mediation, the benefits of mediation, and changes they see taking place in the field. The use of many open-ended questions enabled the examination of the language used by mediation leaders. As shown in the data analysis chapters (Chapters 4, 5 and 6), capturing their understanding of their “lived experience” as mediators provides new insights into the plurality of mediation and created new categories of meaning.

In March of 1998, three hundred and seventy (370) questionnaires, with return, postage paid envelopes, were mailed to individuals who self-identified as mediation trainers and practitioners¹⁴. Thirty-one packages were returned with incorrect addresses resulting in three hundred and thirty nine (339) viable addresses¹⁵. Eighty-eight (88) completed and eligible surveys were returned, along with eighty-seven (87) forms indicating that individuals were not eligible to complete the questionnaire as they were not both practicing as mediators and training others to mediate¹⁶. This results in an overall return rate of fifty-two percent and a questionnaire response rate of twenty-six percent. This was a good response rate for a mail survey and for one where some individuals reported taking upward 5 hours to answer the questions.

¹⁴ Table 8 in Chapter 4 depicts the distribution of mailout and returned questionnaires. For quick reference, the geographic breakdown of mailings by province was Ontario (51%), British Columbia (17%), Alberta (10%), Quebec (6%), Manitoba (5%), Saskatchewan (5%), Newfoundland (2%), Nova Scotia (2%), New Brunswick (1%), Prince Edward Island (1%), Yukon (1%).

¹⁵ There were one-hundred and sixty four no responses.

¹⁶ The breakdown of responses by province was Ontario (43%), British Columbia (20%), Alberta (17%), Manitoba (7%), Saskatchewan (6%), Quebec (5%), Newfoundland (1%), Nova Scotia (1%).

Of note is that the information contained in the database lists for this study had considerably fewer numbers of trainer-practitioners than indicated. This points to the limitations of using membership lists for research purposes and offers a word of caution to other researchers wishing to replicate this study using the same databases.

Analysis

In keeping with the interpretive tradition, the research did not begin with a clearly developed hypothesis or a constructed model of what was to be studied. It also did not rely upon existing typologies to categorize the information collected, but rather constructed typologies that emerged from the responses to the questions asked. A qualitative examination of the words, themes, patterns and relationships was the first activity of analysis. The objective here was two-fold. First, to gain insights into how mediators understand their approach to mediation, and how they view their occupation. And second, to gain insights into the nature of mediation in Canada.

Open coding was used to examine the similarities and differences within the data, group similar concepts into categories, and then name the various categories. Naming a category involved fitting responses as closely as possible to each other, then linking them with the language used by respondents. Naming in this way assured the coded terms were representative of the study group's understandings. To enhance reliability of

the coding scheme and to minimize researcher bias, two additional researchers did random coding on various questions. Inter-rater reliability was high; between eighty (80%) and one hundred (100%) percent on each set of questions among all three coders.

Connections were then made between each category and its sub-categories in a relational form using what is known as axial coding. This form of coding involved specifying the conditions giving rise to the phenomena being investigated along with the context in which it was embedded by asking questions, making comparisons and verifying the patterns of association. The story line was then explicated and the data and codes scanned to validate relationships against the data. SPSS was used to identify patterns and generate theory specificity.

Validity and Reliability

To minimize researcher bias and enhance credibility, five research strategies were used. First, data collection strategies involved in-person interviews, written accounts and secondary data. This form of mixed method research has become increasingly popular to address complex questions in natural settings (Drew, Hardman, and Hart, 1985; Miles, and Huberman 1994). Second, peer debriefings with non-involved professional peers provided external checks on findings. Preliminary findings from the study were presented at three dispute resolution conferences as a further means of

soliciting on-going feedback. Third, multiple case sampling added confidence to the findings. Looking at a range of cases from across Canada helped to strengthen the precision and stability of conclusions. Fourth, two other persons were engaged to do sample coding to ensure that the categorization scheme had meaning to others. This resulted in an inter-rater reliability rate of eighty to one-hundred percent between all three coders. And fifth, a thorough set of files throughout this inquiry has been maintained to enable an “audit” to be conducted. This information includes the research proposal, instruments, data bases, oral and written transcripts of interviews with identifying information removed, the coded data and code book, notes from peer consultations and dissertation committee meetings, and drafts of the dissertation.

As the primary sociologist in this study, I bring considerable professional and personal experience of mediation as well as substantive knowledge of mediation to the research process. These sources contributed to being theoretically sensitive and practical. Theoretical sensitivity increased the ability to recognize relevant data as more information was acquired and increased the ability to discern the meaning in the data. Various subjectivity’s were brought to this research: more than twenty years experience as a mediator and trainer, a social work background, and the knowledge of a

university professor in this developing discipline¹⁷. Action was taken to help ensure validity. In addition to the multiple research strategies previously mentioned, an attitude of skepticism toward any interpretive directions that arose early in the study was maintained, and periodic reflection was given to how personal experience and knowledge fit with the data collected.

Conclusion

This exploratory study is designed to analyze the diversity and complexities of mediation in Canada. It examines how mediation trainer-practitioners talk about and conceptualize mediation, and how these understandings vary. Drawing from interpretive sociological theory (Weber, 1962; Giddens, 1993), attention was paid to the social construction of meaning (Gergen, 1985) attributed by individuals to the theory, principles and practices of mediation. Taking an interpretive perspective meant paying attention to the context within which these understandings are based. In this study an individual's gender, educational background, experience as a mediator and the dispute sector in which they work are examined to determine how each is connected to respondents' understanding of their

¹⁷ I am also a woman, and an advocate of mediation. I have also been critical in recent years of the direction mediation is taking in some instances. My training and experience have influenced me in a number of ways. For one, I believe that in most instances mediation is a better dispute resolution process than more adversarial processes. For another, I believe mediation has the potential to empower individuals to achieve greater understanding of each other and the relations that connect them. I also believe that mediation has the potential to shift social attitudes and thus transform social institutions. And finally, I believe that a relational framework of mediation is more favorable than a settlement approach.

approach to mediation. Two fundamental questions permeate the research: 1) how is mediation understood by mediators; and, 2) how do these conceptualizations vary in relation to different contexts and as understood by different people?

In Chapter 2 a review of the extant literature on mediation with a particular focus on the debates about form and function is provided. Chapter 3 examines the emergence of mediation as a profession, and includes an analysis of what respondents think about certification as well as their hopes and fears for mediation as a profession. Chapter 4 presents a portrait of Canadian mediators, and examines what attracted them to become mediators and what sustains their interest in doing the work. The findings show that incentives to mediate have changed over the years. More contemporary mediators view mediation as an opportunity for personal growth and job satisfaction while veterans were enticed into mediation by goals of social change and empowerment. Chapter 5 discusses how respondents understand their role as mediators by examining the meanings they attach to their role, how these meanings differ, and how they are linked to gender, dispute sector, educational background and the length of time they have been mediating. Chapter 5 also brings to our attention that while mediators often use the same language to describe mediation, they do not always attribute the same meaning to the words. Chapter 6 follows much of the same form of analysis as the previous chapter only it examines how mediators describe

their style of mediation and the variations that exist within these definitions. It affirms what was found in Chapter 6, that respondents exhibit a convergence in the use of words but a divergence in the meanings associated with them. In Chapter 7, a model for understanding mediation emerges. This framework consists of four distinct patterns of mediation meanings, based on clusters of mediation traits, which interact as elements of each other rather than dichotomous patterns. In Chapter 8, questions for future research along with implications of this study for the setting of policy and the practice of mediation are offered.

The dichotomous representations of mediation in the extant literature might lead one to expect that this study would find two opposing sets of language being used by mediators. This was not found – mediators for the most part use the same language, however, they attribute different meanings to the words and these meanings can no longer be placed in opposing camps. The insights from this study show mediation as a complex and varied social activity in which diversity is linked to four internal and external factors. This means that a broader range of analytic tools is needed to understand the variations of meaning attributed to the practice of mediation in contemporary Canadian society. One of the main contributions of this study is an empirically-based analytic framework to aid in more fully understanding this complexity.

Chapter Two

Introduction to the Literature on Mediation

Introduction

This chapter provides an introduction to the field of mediation. In particular, it contrasts various ideologies and approaches to mediation found in the extant literature. Many of the authors whose works are cited have presented mediation in bipolar dichotomies leaving readers to expect that there are two sets of mediation approaches. As will become apparent, the poles in the various dichotomies are not always defined the same way.

In its early years, mediation was relatively easy to define. As it has moved beyond experimentation toward institutionalization there is less consensus on what constitutes mediation. This may be due in part to the expansion of mediation into new dispute arenas and to the increasing involvement of individuals from other professions (most recently, law). It may also be a result of the growing number of books and journals that discuss mediation from competing standpoints. And, to the proliferation of academic courses and professional development training programs.

Mediation is said to be a communication process that reflects the context in which it occurs (Taylor and Beinstein Miller, 1994). Attention to contextual factors in the mediation literature has, however, been sadly lacking

with the exception of some recent writings on the influence of culture¹⁸ and gender on conflict and its resolution. Some of the literature on conflict and gender is reviewed in this chapter because gender is one of four the contextual factors used to examine the data in this study. The other three factors are 1) the dispute sector in which respondents most often work, 2) their educational background, and 3) the number of years they have been a practicing mediator. These four contextual differences were decided upon for various reasons. For one, there have been substantial, and at times contentious, discussions in the mediation community regarding differences in how mediation is practiced by those who are lawyers and those who are not. While there is much talk, there has been little research on this topic. It seemed timely to examine if, and how, these differences might impact on Canadian mediators' understandings of mediation. Attention has also been paid to distinguishing the approaches used by labour and non-labour mediators. Thus, including dispute sector as a contextual factor was also timely and relevant. The absence of an amount of research on mediation and gender, in combination with studies that suggest men and women negotiate differently, were reasons for including gender as a contextual variable. Finally, it seemed prudent to include time as a variable given that one of the

¹⁸ For a discussion of conflict and culture see Lederach, John Paul, *Preparing for Peace: Conflict Transformation Across Cultures*. Syracuse University Press (1995); Ross, Marc Howard, *The Culture of Conflict*. New Haven: Yale University Press (1993); Avruch, Black, and Scimecca (eds.) *Conflict Resolution: Cross Cultural Perspectives*. Westport, Greenwood Press (1991) LeBaron, Michelle, "Mediation, Conflict Resolution and Multicultural Reality: Culturally Competent Practice," in E. Kruk, *Mediation and Conflict Resolution in Social Work and the Human Sciences*. Chicago: Nelson-Hall, 1997: 315-335.

assumptions underlying this study is that mediation is changing as a result of its growth and institutionalization. Furthermore, economic, political and social influences are known to impact social attitudes so it is to be expected that mediators trained in past years might have different attitudes than those of today. There are many other important contextual variables that could be included in a study designed to uncover differences in how mediation is understood. These could have included differences in race, social class, life experience, status, power, age, mediation training, characteristics of the parties, type of dispute and the nature of the conflict situation, to name some. These variables are left for other studies to examine.

The chapter begins with an overview of the history of mediation followed by some of its defining features.

I. The Rise of Mediation

Mediation is an old and common form of conflict resolution (Kressel, Pruitt and Associates, 1989). Like many modern practices, it is an adaptation of something that existed in other countries and other times. In ancient China, mediation was the principle means of resolving disputes. It was based on Confucian beliefs about the existence of a natural harmony in human affairs that should not be disrupted. Adversarial proceedings were seen as the antitheses of harmony (Folberg and Taylor, 1984). Mediation in China continues to be widely practiced today through the People's Mediation

Committee¹⁹. In Japanese law and customs mediation also has a rich history, and in parts of Africa the *moot* or neighbourhood meeting has long provided an informal mechanism for resolving interpersonal disputes. In England, mediation has existed since Anglo-Saxon times.

The transplanting of alternative dispute settlement systems to North America is thought to have come from Europe by way of the Quakers (Whiting, 1982). Their settlement procedures handled disputes ranging from commercial transactions to marital disagreements, and coexisted with the English system of law providing disputants with a choice for how to deal with their disputes. The use of alternative forms of dispute resolution was, however, not limited to the Quakers. The Dutch and Scandinavian settlers also utilized private means of dispute resolution. In fact, mediation has long been seen as a “natural” way to deal with conflict. Extended families, elders, clan members, religious leaders, friends, and neighbours have all offered their wisdom and skills to assist in the resolution of social conflicts.

Why has mediation become popular again and why now? Golberg, Green and Sander (1985) speculate on the confluence of events that led to the renewal of interest in mediation. They describe the 1960’s as a time of

¹⁹ According to Dr. Yan Ling Chang from the Law School of Su Zhou University, in 1988 China had six million mediators and one million committees to deal with civil disputes, which included quarrels, property rights, assault, fraud, and theft. In that same year, mediators, who are unpaid and locally elected, dealt with 7.255 million cases. Less than one million of these ended in court appearances. (This information came from a talk by Dr. Chang at Carleton University in 1991.)

considerable strife and conflict emanating in part from civil rights struggles, protests over the Vietnam War, student unrest, growing consumer awareness, gender role re-examination, and acceptance of divorce as a common event. Each of these gave rise to reduced tolerance for perceived wrongs and grievances, which were turned into legal disputes. Conflicts that in the past might have been resolved by deference, avoidance, or resignation were directed to the courts resulting in the statutory creation of many new causes of action. Cries for equal access to justice on behalf of minority groups resulted in even greater reliance on formal legal structures. The shift from an industrial society to one of technology and information created new social problems, over-reliance on existing institutions and a demand for new avenues of dispute settlement. Thus, the growth of mediation has been fed by a growing dissatisfaction with formal adversarial processes (Burger, 1982; Auerbach, 1983). Also by reports which indicate that the cost of court-administered justice has risen sharply, and that long courtroom delays are becoming the norm²⁰. Various social goals are said to undergird mediation's development. They include: community empowerment (Wahrhaftig, 1982); court reform (Zuber, 1987); restorative justice (Wright, Martin, and Gallaway, 1989); self-determination (Bush and Folger, 1994); and, the preservation and enhancement of relationships (Folberg and Milne, 1988).

²⁰ See, for example, the work of the *Civil Justice Review First Report*. Ontario Court of Justice, 1995 and the *Supplemental and Final Report*, 1996; Hon. T. G. Zuber, *Report of the Ontario Courts Inquiry*. Ministry of the Attorney General, 1987; *Report of the Canadian Bar Association Task Force on Alternative Dispute Resolution: A Canadian Perspective*, 1989.

Defining Mediation

In its simplest form, mediation can be defined as a process of assisted or facilitated negotiation. A fuller definition is put forward by Chris Moore.

Mediation is the intervention of an acceptable, impartial and neutral third party who has no authoritative decision-making power to assist contending parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute (1986:6).

Lon Fuller believes that the central quality of mediation is:

...its capacity to reorient the parties towards each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and disposition toward one another (1971:325).

The practice of mediation is subject to interpretation and debate; however, there do appear to be elements common to most mediation models. Mediators assist negotiation. They do not hold decision-making power. They help disputing parties understand each other through effective communication. Parties need to go beyond positions to uncover interests (Fisher and Ury, 1981). Parties are best able to generate options for settlement. And, mediation is future, more so than past, oriented. A number of assumptions underlie most mediation approaches. It is a consensual process. Parties should be empowered to resolve their own disputes to the greatest extent possible. Parties will be more compliant with an agreement they have themselves constructed. Parties need to vent emotions and they need to feel heard. It is the nature of mediation that is said to set it apart from

more traditional dispute resolution processes. It is more commonsense-based, less bureaucratic, more humane, and more efficient.

Mediators serve a number of functions including that of catalyst, educator, translator, expander of resources, bearer of bad news, agent of reality, and scapegoat. To meet these and other functions, a mediator should be capable of appreciating the dynamics of the environment in which the dispute is occurring. He or she should be an intelligent and effective listener, as well as articulate, patient, non-judgmental, flexible, forceful and persuasive, imaginative and resourceful. A mediator should also be a person of professional standing or reputation. They should be reliable and capable of gaining access to necessary resources, non-defensive and a person of integrity. As well as, being humble, objective and neutral with regard to the outcome of a dispute (Stulberg, 1981:94).

Mediators are called into negotiations for a variety of reasons. Their services are requested when the emotions of the parties prevent a settlement, when communication between the parties is poor, when misperceptions or stereotypes hinder productive exchange, or when repetitive negative behaviors create barriers. They may also be called in when there are serious disagreements over data, there are multiple issues in dispute and parties disagree on how to address them, there are perceived or actual incompatible value differences that divide the parties, or the parties have

reached an impasse (Moore, 1986). Some writers assume the objective of mediation is to make parties aware of the “social norms” applicable to their relationship, and to persuade them to accommodate themselves to the structure imposed by these norms (Goldberg, Green and Sander, 1985). In other words, the authors suggest that the difference between mediation and adjudication would be that whereas a judge *orders* the parties to conform, a mediator *persuades* them to do so. There are others who suggest that mediation is not directed toward achieving conformity to norms, but toward the creation of relevant norms. They believe that mediation processes can produce new structures. This led proponents of community-based models to argue that mediation brings about neighbourhood empowerment, social change, equal distribution of power among citizens, and reductions in reliance on services provided by the government (Wahrhaftig, 1982; Shonholtz, 1984). They see the goal of mediation as promoting a just society in which power is more evenly distributed. Also as a means for neighbourhood residents to resolve their own disputes without recourse to state institutions. Mediation is claimed to be faster, less expensive, and better suited to tailoring outcomes to the needs of the parties. This in turn is said to lead to greater satisfaction with resolutions, higher levels of compliance than with adjudicated decisions, and improved capacity for resolving future disputes without external intervention. Other positive qualities of mediation are said to include: that solutions reached are more flexible than those of the other mechanisms, that it avoids the win-lose syndrome, and that the process involves inquiry into

what parties want to talk about, not only what the judge wants to hear (Kressel, 1989:40).

Criticisms of Mediation

There are those who do not support the use of mediation in the resolution of social conflict. Women's rights activists are concerned that through mediation women may lose their leverage in bargaining and receive less in the way of settlement than would be offered through formal court processes (Rachofsky, 1985; Hart, 1990). They also argue that a more sophisticated understanding of power is required for mediation to serve the interests of women (Shaffer, 1988). And, that mandatory mediation is especially harmful to women (Grillo, 1991). Others are concerned that mediators may try to reduce tensions by altering perceptions, thus promoting the illusion of harmony and a false spirit of agreement (Nader, 1991). The concern is that resulting agreements may push aside tension surrounding dispute for a time, only to emerge later causing more serious conflict situations. A number of legal scholars have expressed concerns about mediation as "second class justice". These were based on the potential for violating legal rights (Tomasic and Freeley, 1982), exploitation of the less powerful and use of coercion (Jaffe, 1983), and expansion of state control into private lives (Abel, 1982). Their arguments suggest that power differentials may result in the more powerful party refusing to participate in mediation or dominating to the point of intimidating the less powerful one into a potentially

inequitable agreement. In her article, *Myth And Practice In The Mediation Process*, Merry (1989) refutes the belief that mediation enhances social justice, and she emphasizes the need to take a hard look at what mediation is and, is not. She goes on to say that even though mediation may be more humane, responsive, and participatory, it does not have any long-range impact on the distribution of power, or on the social and economic pressures of working-class family problems.

The use of third-party neutrals is no longer associated only with labour or international disputes. Mediators are increasingly called upon to resolve disputes about family relations, child custody, contractual obligations, defective automobiles, professional malpractice, waste disposal sites, noise, and playground squabbles. And while clergy, elders, and community leaders continue to assume the role of mediator, an increasing number of “professional” mediators are now part of the dispute resolution community. As will be seen, not everyone subscribes to the same approach toward mediation practice. Expansion in the use of mediation and in those who act as mediators is changing the character of mediation. No longer is there agreement on what mediation is, or, should be.

II. Contrasting Approaches to Mediation

Mediation is a varied concept. Differing philosophies and approaches guide it and these differences have been analyzed in various ways. The

common practice when classifying approaches to mediation has been to situate them as polar opposites. Or, as Nader (1984) would say, as binary positions. Early studies of mediation classified mediators' approaches as being either *content* or *process* interventions. Content interventions focused on substantive issues while process interventions focused on communication and relationship factors. Other examples of dualistic notions of mediation include Schwerin's (1995) work, which classified interventions as contrasting schools of thought about a mediator's role - one as facilitator, the other as activist. Similarly, Riskin (1996) described mediators as facilitative or evaluative. Bush and Folger (1994) contrasted styles of mediation as transformative or problem-solving. And, Kolb (1983) characterized mediator functions as dealmaker or orchestrator. These typologies characterize mediators as being either passive facilitators or active shapers of solutions. Other theorists seeking to order the diverse methodologies of mediation also created dualistic classification systems. They include broad versus narrow, open versus closed, positional versus interest-based, settlement versus process-oriented, and individualistic versus relational. Four often cited mediation classification schemes are depicted in summary form on the following table (Table 1). They include the work of Silbey and Merry (1986), Bush and Folger (1994), Kolb and Associates (1994), and Riskin (1996).

Table 1. Four Mediation Classification Schemes

Silbey & Merry 1986	BARGAINING STYLE	THERAPEUTIC STYLE
	<ul style="list-style-type: none"> - purpose of mediation is to reach settlement - job of mediator is to look for bottom-lines, narrow issues, control process, be an agent of reality - structured - frequent use of caucus - settlement based on parties "wants" - claim authority based on expertise in managing process and in law - less direct communication between parties - agreements written without parties present 	<ul style="list-style-type: none"> - purpose is to help parties reach understanding - disputes viewed as communication problems - focus is on communication and relationships - parties encouraged to express feelings and attitudes - emphasizes mutuality - claim authority based on expertise in managing relationships - explore past relations - less discussion of legal issues - agreements written with parties present
Bush & Folger 1994	PROBLEM-SOLVING APPROACH	TRANSFORMATIVE APPROACH
	<ul style="list-style-type: none"> - individualist worldview - disputes viewed as problems to be solved - focused on reaching agreement - mediators decide what case is about, drop issues that cannot be handled, directive style - conflict emerges from unmet and incompatible needs - solutions maximize joint satisfaction 	<ul style="list-style-type: none"> - relational worldview - disputes viewed as opportunity for moral growth and transformation - greater sense of own efficiency - two dimensions: <ol style="list-style-type: none"> 1) empowerment – strengthening of self to reflect, make choices and act 2) recognition – ability to move beyond self to relate to others
Kolb & Assoc. 1994	SETTLEMENT FRAME	COMMUNICATION FRAME
	<ul style="list-style-type: none"> - mediators work to uncover elements of a deal and convince parties to accept - directive, activist role, "deal-maker" - evaluative – provide case precedent and risks to non-settlement - make suggestions, persuade and influence - make judgments about good and bad agreements 	<ul style="list-style-type: none"> - goal is to help understand conflict - influence how issues are framed and understood - conversation fosters agreements - settlement secondary to attaining mutual understanding - less directive, - "orchestra leader"
Riskin 1996	EVALUATIVE APPROACH	FACILITATIVE APPROACH
	<ul style="list-style-type: none"> - urges parties to accept settlement - develops and proposes settlement - predicts court outcomes and impact of not settling - assesses strengths and weaknesses of legal claims & probes parties interests 	<ul style="list-style-type: none"> - helps parties evaluate proposals - helps parties develop proposals - asks about likely court outcomes - helps parties understand issues and interests - asks about strengths and weaknesses of legal claims and focuses discussion on underlying interests

i) *The Bargaining versus Therapeutic Approach*

Silbey and Merry (1986) carried out one of the early observational studies that examined mediators at work. After observing one hundred and seventy-five mediation sessions involving forty different mediators, they concluded that bringing cases to settlement required mediators to develop a repertoire of strategies. To organize their observations of patterns within various strategies, they constructed a classification scheme that consisted of two ideal-type descriptions of mediator styles - the bargaining style and the therapeutic style. They differentiated the two styles on the basis of a number of factors. How mediators present themselves and the mediation process, how they control the mediation process. The control they have over the substantive issues to be mediated. And, how they activate commitments to encourage settlement. Silbey and Merry note that their styles describe regular patterns of dealing with problems rather than the categorizing of mediators, and that a single mediator uses both styles to some extent.

In their typology, the bargaining style is one where mediators show a greater measure of control on the process and where they focus on settling the dispute based on what parties "want". Mediators claim authority based on their expertise in process, law, and the court system, and they define the purpose of mediation as reaching settlement. This style tends toward a structured process with overt control over the proceedings, use of private caucuses, and less direct communication between parties. The job of the

mediator is “to look for bottom lines, to narrow issues, to promote exchanges, and to side-step intractable differences of interest” (Silbey and Merry, 1986:20); in other words, to become an “agent of reality”. Bargaining mediators typically write agreements without parties present.

The therapeutic style focuses more on communication and relationships and less on settlement. It assumes that disputes are more a result of miscommunication than differences of interests. Thus, parties are encouraged to fully express their feelings and attitudes as a means of resolving their differences. Mediators claim authority based on expertise in managing relationships. They describe the purpose of mediation as helping people to reach mutual understanding through collective agreement. They expand the discussion by exploring past relations and issues not directly related to the dispute. There is less discussion of legal norms than in the bargaining style. The therapeutic style emphasizes the mutuality, reciprocity, and self-enforcement of agreements; agreement writing is a collective activity.

Silbey and Merry tell us that “mediation strategies develop through interaction with the parties who come with sets of expectations, wants and skills” (p.19). And, that “neither the relationship of the parties, not the type of case (small claims, spouse abuse, neighbourhood dispute), not the sex of the mediator seems to determine which style eventually predominates” (p.19).

They go on to suggest, however, that with increased experienced mediator strategies become more pronounced toward one mode or the other.

ii) *The Problem-Solving versus Transformative Approach*

A more recent account of how mediation is approached has been put forward by Bush and Folger (1994) in their book, *The Promise of Mediation*. They describe current mediation practice as encompassing a directive and problem-solving approach where reaching agreement is paramount. The problem-solving approach is based on an individualist worldview where conflict is seen to emerge as a result of unmet and incompatible needs. Disputes are viewed as problems to be solved and solutions are sought that maximize joint satisfaction. Bush and Folger contrast this approach with a transformative model of mediation that gives individuals a greater sense of their own efficacy and a greater openness to others. This approach is based on a relational view of others, which views individuals as possessing an inherent form of consciousness that connects them to each other as well as having diverse needs and desires. Disputes are viewed, not as problems to be solved, but as opportunities for moral growth and transformation. Two dimensions make up the transformative approach – empowerment and recognition. Empowerment involves the strengthening individuals' abilities to reflect, make choices and act in a conflict situation. Recognition involves "becoming more open, attentive, sympathetic and responsive to the situation of the other party" (p.89). As with Silbey and Merry's typology, Bush and

Folger's problem-solving and transformative constructs represent opposite ends of a continuum of mediation practice.

Bush and Folger contribute to our understanding of mediation through their characterization of the different accounts or, as they put it, "stories" of the mediation "movement". They portray the *Satisfaction Story* as a tool to reduce court congestion. The *Social Justice Story* is portrayed as a vehicle for organizing people and communities to obtain fairer treatment. The *Oppression Story* signals the presence of covert means of social control and oppression. The *Transformation Story* is said to be a way to foster a qualitative transformation of human interaction (1994:15). The presence of these "stories" give Bush and Folger confidence that mediation is pluralistic, not monolithic, and that it has different impacts on society as a result of value choices determined by the setting of goals for mediation. They go on to suggest that:

... not all mediators follow the practices described by any one story of the movement. Rather, there are different approaches to mediation practice, with different and varied impacts, and the different stories depict these different approaches. Therefore, at a factual level, none of the stories is "the true story", each is probably a valid account of the practices of some number of mediators working in the field today (p.25).

While they acknowledge the diversity of mediation, Bush and Folger believe it is impossible to achieve all of the goals at one time. They argue that the dominant pattern of practice which has emerged focuses on solving problems

and getting settlements, and that little attention is being given to coalition building or transforming disputants. They are not alone in reaching this conclusion. Nolan-Haley said, “much of what passes for mediation today resembles evaluative services, hybrid settlement processes or rough justice” (1995:149). Bush and Folger are concerned about the direction that mediation has taken. They argue strongly that moral growth and transformation are the most important goals of mediation and should become the “guiding vision of the movement” (p.28). And, they use this evaluative emphasis on transformation or settlement as an analytic tool for classifying mediation approaches.

iii) *The Settlement versus Communication Approach*

Deborah Kolb and Associates (1994) used the metaphor of “framing” to characterize the interpretive schemes that mediators use to organize their activities. Based on their study of twelve influential mediators from different sectors²¹, two primary frames, settlement and communication, reflected the tendency of mediators to define their roles and structure their activities.

In Kolb’s typology, mediators who frame their role as settlement tend to work toward uncovering the elements of a possible deal and convincing the

²¹ Sectors included family, divorce and child custody, special education, environmental, labour, community, international, business, public policy and public housing.

parties to accept the deal, leading them to be seen as “dealmakers”²².

Settlement mediators are directive, taking an activist view of the role of the mediator. They frequently provide evaluative information based on case law, precedence and risks to non-settlement. They also make judgments about good and bad agreements, offer suggestions, persuade and influence parties.

Mediators whose frame is characterized as enhancing communication work to keep the parties talking so that they can better understand their conflict.

Reaching a settlement is considered secondary to attaining mutual understanding. Communicative mediators are less directive seeing their role as the “orchestra leader” causing them to influence the ways parties talk, how issues are framed, the way the problem is understood, and the flow of information. They are much less directive than settlement mediators.

Although frames translate into specific actions, Kolb suggests that they do not appear to be preset and often reflect on-the-spot decision making (1994:470).

iv) *The Evaluative versus Facilitative Approach*

Riskin (1996) tackled the problem of representing what mediation is and what mediators do by proposing a system for classifying mediator orientations. His grid for evaluating the character of mediation styles emphasizes two contrasting features: how mediators view the role of the

²² Also see other works by Deborah Kolb, “To Be a Mediator: Expressive Tactics in Mediation,” 1985:11-26; “Strategy and The Tactics of Mediation,” 1983:247-268; “Roles Mediators Play: State and Federal Practice,” 1981:1-17; *The Mediators*, 1983.

mediator (evaluative or facilitative) and how mediators define the problem (narrow or broad). The evaluative mediator assumes that the participants want and need the mediator to provide direction while the facilitative mediator assumes the parties are capable of developing better solutions than those a mediator might create. An evaluative-narrow approach to mediation practice would involve a mediator assessing the strengths and weaknesses of parties' claims, predicting court outcomes, developing and proposing a settlement, and pushing parties to settle based upon his or her assessment. An evaluative-broad perspective also seeks settlement but uses a process, which emphasizes interests over positions, with the mediator's proposed solutions attempting to accommodate these interests. A facilitative-broad approach helps the parties understand and define the problems they wish to address, and facilitates a discussion of underlying interests rather than positions. The parties are encouraged to generate and assess proposals designed to accommodate those interests. A facilitative-narrow mediator helps parties become "realistic" about their situation, but does not use his or her own assessments, predictions, or proposals to construct agreements. Riskin's typology is designed to help disputants determine what kind of mediation they wish to undertake and what type of mediator to seek.

One of the contributions of the Riskin typology is the notion that mediation approaches are not tightly contained – that there is some fluidity within the concepts. That being said, Riskin also states that mediators

usually have a predominant orientation that is based on a combination of his or her personality, experiences, education, and training (1994:113). He also suggests that mediators may depart from their orientation to respond to the dynamics of the conflict situation.

These depictions of mediators at work have a number of things in common. For one, they posit mediators as having either a settlement goal or a relational goal; mediators are rarely seen to use both sets of goals. In fact, the assumption is that if you follow one set of goals you are not following the other. Silbey and Merry's bargaining style, Bush and Folger's problem-solving approach, Kolb's settlement role, and Riskin's evaluative typology are similar in that they describe mediators as valuing the goal of reaching a settlement. In turn, these goals are reflected in a mediator's style of mediation, which is characterized as structured, directive, and focused on making a deal. In these characterizations, mediators are seen to take an activist role, to propose solutions, and to be less concerned about direct communication between the parties. These approaches to mediation are contrasted with the therapeutic, transformative, communicative, and facilitative typologies, which are also quite similar. In general, they emphasize relationship building, mutuality, understanding, empowerment, and recognition. In these approaches mediator styles are described as less directive, focused on feelings and emotions, and more communicative.

The result of these analytical typologies is to understand mediation in dichotomous terms. This dichotomous way of analyzing this field leads us to believe that, for the most part, there are only two sets of mediation meanings. While this form of binary placement analysis may be instructive for demonstrating conceptual differences, it has major weaknesses. For one, dichotomous positioning pits one concept against another and gives it “pride of place” by allowing it to become the standard that measures the other. For another, it tends to be rigid and over-simplistic thus, preventing more varied approaches to mediation practice from being revealed and legitimated. As with most dichotomies this positioning also tends to mask what are often complex forms of interaction between concepts.

The research being reported on in this dissertation supports the view that characteristics from both poles in a dichotomy can be present in a single mediation approach. The analysis also suggests that these characteristics interact in different ways to yield different patterns of understandings about mediation. Individual mediators, as well as groups of mediators, often used more than two patterns of meanings when conceptualizing mediation. Patterns of meanings are also linked to various internal and external contextual factors.

Before moving to look at gender as a contextual influence on mediation, one other typology for understanding mediation is briefly

mentioned. This typology was constructed by Ellen Waldman (1996). It is discussed here because, while it is not a dichotomous representation of the nature of mediation, her research was used to construct the scenarios used in the data collection instrument. Furthermore, various questions on the instrument were coded using her typology and have been included in the variable-ordered matrix table used in the analysis found in Chapter 7.

v) *The Social Norm Approach*

According to Waldman, categorizations of mediation such as the four discussed previously share a common theme in that they distinguish approaches that make reference to social norms and those that do not. This observation led her to devise a typology that focused explicitly on the role of social norms in mediation. Waldman's typology includes three mediation models: norm-generating, norm-educating, and norm-advocating. Each of the models is believed to share common assumptions, follow similar procedural routes, and employ many of the same mediative techniques. The distinguishing features of the three models are as follows. The norm-generating model is inattentive to social norms and seeks above all else to give maximum autonomy to the disputants. The norm-educating model is premised on the belief that knowledge of social norms is a precondition to autonomous decision making. In the norm-advocating model the mediator assumes responsibility for ensuring certain societal principles are included in an agreement in addition helping the parties reach an agreement that

satisfies their individual needs. Waldman believes that diversity could be assured if legislation made clear that all three models were embraced in their appropriate contexts.

III. Taking Context into Account

As mentioned previously, conflict takes place within a context and is influenced by that context. Social, economic, political and cultural contextual factors each influence how an individual perceives a conflict situation and interacts with it. To illustrate this point, Merry (1993) tells us that individuals with lower class status have more faith in adversarial than consensual processes preferring the former because they are believed to be fair and impartial. As well, some ethnocultural groups prefer not to use mediation programs because they wish to keep their conflicts private (LeBaron, 1997). Furthermore, mediation has been heavily criticized for producing “second class justice” when it was found that a disproportionate number of clients diverted to mediation programs were poor, black and predominantly female (Jaffe, 1983; Tomasic and Freeley, 1982). Questions about the transferability of mediation across cultural boundaries are increasingly attracting the interest of scholars and practitioners. The influence of gender on the mediation process, the parties involved, and the mediator is also receiving increased attention. Attempts to look at gender and conflict have been stimulated by the belief that gender shapes conflict issues as well as conflict management processes (Taylor and Beinstein Miller, 1994; Kolb, 1994; Dewhurst and Wall, 1994;

Weingarten and Douvan, 1985). There is, however, agreement that significantly more attention needs to be paid to contextual considerations in both the practice and evaluation of mediation. This was confirmed in the lack of literature that took into account any of the four contextual factors being examined in this study. While some studies did indicate that mediators strategic choices were linked contextual factors, no analysis was undertaken to link particular strategies with specific contexts. Instead emphasis was given to examining the nature of the strategies. It is worth briefly mentioning some of these studies on strategies in mediation before turning to a more lengthy discussion of gender and mediation.

Strategies employed by mediators are thought to be influenced by past experience, instruction and training as a mediator and expectations regarding the probable success of different techniques. Wall and Lynn (1993) believe a mediator's choice of strategy is also governed by rules and standards, common ground and concern for parties outcomes, dispute characteristics, the mediation context, and a mediator's ideology. Kochan and Jick (1978) suggest that mediators employ three general strategies²³. Similarly, Kressel (1977) constructed a scheme involving three general strategies - reflexive, directive and non-directive. Simkin (1971) also developed a scheme

²³ Their three strategies include: 1) non-contingent strategies, which are process-oriented and aimed at gaining the trust of the parties and gathering information; 2) contingent strategies, which are content-oriented and involve the mediator in decision-making, and 3) an aggressive strategy, which is a more extreme form of a contingent strategy.

consisting of three tactics: 1) communication 2) substantive and 3) procedural. A fourth taxonomy, provided by Sheppard (1984), consists of process, content, and motivational control strategies. Of significance in Sheppard's control strategies is that they were illustrative of mediator strategies in both labor-management and non-labor-management situations. In a study undertaken by Ross (1989), Sheppard's classification scheme was used to test the viability of classifying a range of interventions for both mediators and arbitrators. After surveying close to three hundred members of the Society for Professionals in Dispute Resolution (SPIDR), Sheppard found that mediators and arbitrators believed content control strategies were effective, and that both would use motivational and process techniques. Finally, Carnevale, et al (1989) identified four basic mediation strategies - integrate, press, compensate and inaction, as manifestations of different forms of social power. Each of his strategies is considered to be a strategic problem that is determined by a mediator's assessment of the cost and benefits.

As can be seen, strategies used by mediators have been examined using various classification schemes. And while the authors infer that contextual factors such as background, training, professional discipline and arenas of conflict may influence use of certain tactics, few have fully examined these links. This study has examined how contextual factors are linked to differences in mediators' understandings of mediation practice and

will be reported on in later chapters. Some of the research that looks at gender and mediation is now reviewed.

Gender as a Contextual Influence

Gender is said to be a social construction²⁴. It is said to organize social life, social structure, and social beliefs. Some of the conflict literature supports the argument that there are differences in the ways men and women perceive and react to conflict (Kolb, 1994). There is also literature that suggests that gender influences the way we process information about the world; hence it influences communication in and about conflict (Taylor and Beinstein Miller, 1994:5). Studies have shown that female talk is inclined toward intimacy and inclusion while men's talk is more competitive (Gourley, 1994:77). Gilligan's (1982) work shows a tendency from early childhood for females to value relationships, cooperation, and an ethic of care, whereas males tend to value rules, rights, competition, and an ethic of justice. Dewhurst and Wall (1994) found male mediators used formulations that enhanced their control of the mediation process more often than did females. Conversely, females were found to use formulations that enhanced integration between disputants by clarifying their points of agreement and disagreement more often than did males (p.297). The authors conclude that

²⁴ There is considerable debate in feminist writings about conflating gender and biological sex, as they are considered not to be equivalent, and, according to Taylor and Beinstein Miller (1994), the two concepts should not be used as if they were.

formulations to facilitate dispute resolution were used differently by male and female mediators. Based on comparisons of resolved disputes, Dewhurst and Wall did not find evidence that male and female mediators differed in perceived effectiveness. They did, however, find that in unresolved disputes men were considered to be somewhat more competent than female mediators, but that greater satisfaction with the process was expressed when mediators were female. They also found a tendency for mediators to use more formulations with same-sex disputants suggesting that males may be more inhibited when both disputants are female than when at least one is male, and vice versa. It follows that male and female mediators might want to become aware of the potential differences in their use of communication management acts, and that they would want to strive to utilize the full spectrum of formulations. In other words, men might attempt to use more integrative types of formulations and women more control formulations. Dewhurst and Wall also suggest that “male and female mediators should most definitely be sensitized to the potential differences in they ways they communicate with all-male, all-female, or mixed-sex disputants” (p.298).

Other empirical research supports the notion that male and female mediators are likely to interpret conflicting parties' communication quite differently. For example, Weingarten and Douvan (1985) found evidence supporting the contention that male and female mediators differ in the construction and interpretation of the mediation process (p.357). Female

mediators were found to envision the mediator role as collaborative and as a process of transformation and change affecting all the parties, including the mediators. Male mediators were more likely to look at their personal performance and to envision their role as one of acting on the other parties. Men used the terms neutral and objective to define themselves whereas women saw themselves as a bridge between the parties. A study by Maxwell (1992) tentatively puts forward the suggestion that gender is a surrogate variable for style and that some elements of style have a latent impact on the effectiveness of mediation. His findings indicate that “male and female mediators are equally effective at reaching an agreement, however, female mediators are significantly more effective at mediating binding settlements. The greatest gender difference occurs in emotionally charged disputes” (p.353).

There is a need to learn more about the diversity of skills and communication patterns men and women mediators bring to the mediation process. And to examine the effects these have on mediation outcomes and participants in the mediation process. At this point in time, little is known about the differential success of males and females as mediators.

Contrary to the above studies, there is research that shows little difference between men's and women's conflict behavior. The results of these studies suggest that gender may be a poor predictor of conflict

management style and that stereotypes persist because of the influence of social situations, not gender alone (Watson, 1994; Ruble and Schneer, 1994). Based on her review of selected studies on gender and conflict, Keashly (1994) shows the inconsistency of results from empirical studies, and she demonstrates that other variables besides gender account for differences in conflict behavior. She goes on to argue that “processes and outcomes of conflict depend on the nature of the relations between conflicting parties (including intimacy and relative statuses, the specific situational context in which they conflict, and the beliefs they hold about conflict” (p.167). Watson (1994) supports Keashly’s conclusion and she states that situational power based on social roles is a better predictor of negotiator behaviour and outcome than gender. Kolb (1994) cites Catherine MacKinnon (1982) to point out that because women have occupied lesser positions of influence they have had to learn ways of thinking about the world that emphasize maintaining good relationships and deference.

To sum up this section, there are many opinions, contradictory studies and few conclusive answers about the influence of gender on conflict. The fact that some research indicates there may be differences in male and female behaviour and in the way mediators perceive and respond to mediation, means that mediators should be knowledgeable about how gender (along with other contextual variables such as age, race, and class) may influence their mediation behaviour. They also need to be aware of the

philosophical base from which they practice mediation so that their biases are made clear to themselves and the parties in mediation. At the very least, these studies remind us as mediators that generalizations about gender and negotiation are difficult, complex, and oftentimes contribute to the creation of stereotypes about men and women. They also point out that inconsistencies in studies of gender could be due to other contextual factors or combinations of factors and that there is a need for more research in these areas. Studies such as this one encourage further investigation on how contextual factors shape ones thinking about mediation and, ultimately, how it shapes their practice.

Conclusion

This review of the mediation literature has shown that approaches to mediation are often presented in dichotomous classification and organizing schemes. It has also shown that allegiance to a particular ideological approach has an impact on the role a mediator assumes, the goals they set, and the strategies they use to help parties resolve their disputes. Four commonly cited typologies were highlighted to show the characteristics of each. What stands out most from this review are the similarities between the schemes. Each is constructed as a bipolar phenomenon. In each typology a pragmatic settlement-type goal is found at one pole while a relational communicative-type goal is at the other. From the depictions of these classification schemes, inferences can be drawn that a mediator's actions

place him or her at one or the other pole, not both. The authors in each of the four schemes made note that a single mediator may use some of the traits from either pole. But they also stated that mediators seem to have a dominant style and that this style can be characterized by its proximity to one or another of the two poles. Silbey and Merry (1986) take this further by suggesting that a mediators' style becomes more pronounced over time. The authors studied here seem to give little attention to how internal or external contextual factors influence a mediator's approach or call for a shift in their overall style. They do however, suggest that context does influence a mediators' choice of tactics.

Clarity about the form and function of various mediation styles, models of practice, and ideological orientations is expected to be of increasing importance as the mediation community moves toward becoming more "professionalized", and the need for an established system of knowledge heightens. This need is likely to become even stronger given that many practice-related issues have come into question as different styles of mediation present themselves – issues regarding neutrality, confidentiality, advice giving, the use of caucus, and being directive. Mediators are increasingly consumed with debates about the best and right way to practice. One of the growing concerns is that the expansion of mediation into legal and quasi-legal matters and the adoption of the role of mediator by lawyers and judges are causing mediation to become more "rights-based" than "needs-

based". Measuring success based on settlement alone is also of concern as it encourages evaluative over communicative models of practice to be valued. Another concern is that as an increasing number of newly trained mediators are drawn to work in court programs because they offer opportunities for paid work. This may yield a crop of new mediators trained in evaluative-models unaware or uninterested in the fact that different mediation modalities exist.

The literature is not consistent on whether gender accounts for differences in conflict behaviour. Some studies indicate that there may be gendered perceptions of the mediator role (men being more competitive and women more collaborative). Other studies argue that social situations, not gender, are better predictors of negotiation behaviours.

Studies conducted on what it is that mediators "do" have relied on observational studies, survey research, experiments, and content analysis. This research uses another methodology. It examines mediators' conceptualization of their actions through the patterns of meanings found in descriptions of their approach to mediation. This form of interpretive inquiry provides insight into how mediators understand their work. Variations in these understandings are then linked to contextual factors to examine further differences. As will be seen in the following chapters, this work shows elements of similar depictions of mediation to those found in the extant literature. It builds and expands upon their dichotomous presentations by

suggesting that a more complex portrait of mediation exists. A portrait that reveals that traces of understandings of mediation from both poles can be present in the same mediator. This portrait also shows the influence of gender, experience, educational background, and the dispute sector in which mediators primarily work.

This chapter has provided a backdrop for arguments presented in this dissertation. The next chapter is designed to familiarize the reader with sociological theories of professions. The desire to become recognized as a profession is one of the tensions motivating this research. Theories of professionalization indicate that some of the activities taking place within mediation are shared by other “professions in the making”. They also lead us to expect complex activities to be taking place that require methodological tools in order to understand these activities. Respondents views on the licensing of mediators and setting of standards, along with concerns about the direction the field is taking also presented in the following chapter.

Chapter Three

The Emergence of Mediation as a Profession

Introduction

This chapter sets out to do two things. Part I overviews sociological theories of professions and recent activities directed at regulating the practice of mediation. The debate over mediators' credentials is a major tension underlying this study about what mediation means today. Those in favour of regulation believe it will set mediation on a path toward becoming a profession. Those opposed believe it is premature to restrict the practice of mediation before understanding the breadth of its nature, and that regulation would pose a threat to the diversification of mediation. If, as it seems, mediation is emerging as a new profession then we can expect to find certain activities that might be better understood using the lens of professions theory. Some of the activities related to regulating the practice of mediation are also presented in this section.

Part II of this chapter presents the views of respondents regarding the regulation of mediation and includes some of their concerns with respect to changes that they see taking place. Similar to what can be found in the literature, respondents are not in agreement on whether the field should be regulated. This should not be surprising given the various ideologies of mediation discussed in the previous chapter. Should regulation occur, however, the opinion of respondents is that all stakeholder groups should be involved in shaping these regulations. They also believe regulations should be seen as guidelines, and they should be national, minimal, flexible,

inclusive, and performance-based. This section is more descriptive than analytical. It begins to set the tone for the insights that emerge from this dissertation – that there are many conflicting and converging views about the nature and the future of mediation.

I. Sociological Theories of Professions

While there is little consensus among sociologists on what makes a professional (Freidson, 1983), there does seem to be agreement that professionalization is a feature of the occupational structure in advanced industrialized societies (Larson, 1977), and that professionals are growing in number (Brint, 1994). Before World War II only one percent of all employed people in the United States were college educated and classified as professional workers compared to twelve times that many today (Brint, 1994:3). The most highly educated of all strata, today's professionals are considered distinct from business executives and managers and include most doctors, natural, social and computer scientists, engineers, certified public accountants, economists, lawyers and some clergy.

Professions have been around since the 13th century; their modern history developed with the emergence from the dominance of the church and guilds in the late medieval period (Brint, 1994). The clergy were the first profession to organize, law was next having emerged during the second half

of the 12th century, then medicine organized during the 15th century.

Professions are considered different from other occupational forms of work because of their autonomy and control over the work that they do, most often with the support of the state.

Professionalization refers to the progress of an occupation toward professional status. Most theorists seem to agree that professionalization is linked to social production and certification of knowledge. It is both a social and an economic institution and one that encourages strong identification with work (Brint, 1994). Views of professionalization have changed over time and been studied in different ways. Early theorists adopted a structural-functional and trait-approach which emphasized ideal-type characteristics and social reproduction (Parsons, 1939; Carr-Saunders and Wilson, 1933; Hughes, 1958; Greenwood, 1957; Millerson, 1964). Professions were distinguished from occupations based on their systematic education and knowledge, and whether the work was viewed as being in the interests of the social good. Combining naturalism and typology, researchers examined the life history of a particular occupation, reviewed what were then considered essential traits, and, based on an “ideal-type” in Weber’s sense, decided whether it really was a profession. One of the classic studies by Carr-Saunders and Wilson (1933) investigated more than thirty vocations that were granted or claimed professional status. The authors came up with characteristics typical of

professions by identifying what they had in common and how they differed. Later on Greenwood (1957) argued for set of attributes of a profession: systematic theory, professional authority, sanction of the community, regulative codes of ethics, and a culture. Later still, Goode (1972) identified professions as a community within society by virtue of eight characteristics: 1) once in it few leave, 2) members are bound by a sense of identity, 3) shared values, 4) role definitions are agreed upon and the same for all, 5) common language, 6) community has power over its members, 7) clear social limits, and 8) controls the next generation through selection, training and socialization (p. 17).

Many non-professional occupations have the same characteristics as professional groups, but to lesser degrees. Greenwood (1957) and Pavalko (1971; 1972) saw these attributes distributed along a continuum with the undisputed professionals at one end (doctors, lawyers), the less developed and less prestigious scattered in the middle (clerical, sales crafts) and the least skilled at the other end (truck drivers, cleaning staff). Pavalko's scale allows professions to be defined according to differences of degree, rather than of kind. Thus, established professions would have most if not all of the attributes, would-be professions would have some of the characteristics, and non-professions would have none of the attributes.

Critics of the trait-based approach found fault with its atheoretical character. They also rejected the fact that it accepted professionals' definition of themselves. And they argued that reliance on ideal-type definitions make it difficult to compare cases (Johnson, 1972; Freidson, 1971). That such models implicitly accept that there are, or have been, "true" professions exhibiting to some degree all of the essential elements is said to be more idealistic than realistic (Johnson, 1972). Freidson (1971) believed it a mistake to take for fact what professionals said to be true. He suggested that what professionals say to justify their privileged might be better taken as political ideology and not an intrinsic difference. Another criticism of the trait approach is the absence of attempts to articulate the relationships among the traits. For example, theorists did not look for a direct causal link between expert knowledge and authority (or any other trait for that matter), nor did they look for links resulting from elsewhere. Critics also questioned trait-based theorist's conclusions because they mostly studied Anglo-American culture at points in the historical development of the profession (Johnson, 1972).

Classic trait-based theories were followed by process-approaches thought to be more sensitive to social change. Accepting professionalization as a natural process, theorists focused on the sequence of events that led to becoming a profession rather than static traits (Caplow, 1954; Wilensky, 1964; Ritzer, 1977). Caplow (1954) identified four steps in the development of a profession, Wilensky (1964) identified five steps, and then Ritzer (1977)

formulated a six-step process. His steps included: 1) full-time occupation, 2) change of name, 3) development of professional associations, 4) training schools, 5) code of ethics, and 6) political agitation to win popular support (p. 46-48). Process theorists were criticized, however, on the basis that process simply replaced structure.

In 1964, the work of two sociologists, Wilensky and Millerson, prompted theorists to posit that professionalization was a matter of power. They argued that although many occupations aspired to control their training and work, it was only professionals who succeeded due to their ability to control areas of uncertainty and organize for collective validation. Using a trait-based approach, they were the first to connect traits with political concerns. Later, Johnson (1972), Larson, (1977), Klegon (1978), Freidson (1971; 1983) and Ritzer and Walzack (1986) strongly rejected the trait approach and argued that self-preservation was a more accurate reflection of how their power and authority was used. This shifted the study of professions to issues of control and dominance. Claims of dedication to service in the public interest were challenged. Claims to high ethical standards were thought only to protect the privilege of professionals. And claims of formal knowledge were linked to power. In its extreme form, the power approach to theory assumes no qualitative differences between professionals and non-professions except that the professions have greater power. The less extreme variant argues that the power of the profession allows it to create the

traits necessary to be a profession or convince others that they possess the required traits. Thus, the claim to professional status²⁵ is seen as a political process where certain social conditions allow occupations to claim and maintain autonomy and influence. Advocates of the power approach theory believed that professionals gained their stature not by actually acquiring certain characteristics, but by convincing others they had. By seeing monopoly rather than control of relationships, power theorists moved the focus of debate from the forms of professionalization to its functions. They posited that the establishment of codes of ethics served the function of excluding outsiders rather than allowing a natural evolution in the development of a profession. Professions came to be seen as self-serving rather than altruistically serving society at large. Power approach theories still dominate much of contemporary professions literature.

Modern professions are distinguished from professions of yesteryear in two important ways. First, today's professions are being challenged on what were once considered the hallmarks of a profession - placing the social good before self-interest and claiming expert knowledge. Second, they have a relationship to the political market. Today's professionals are often salaried employees in organizations who, because they submit to a bureaucratic

²⁵ Claims to professional status are often accompanied by codes of ethics, associations, claims of trustworthiness, performance of important social services, and holding the qualifications to do the work.

system of managerial control, have lost much of their autonomy. Even though there is a wide variation in organizational employment the character, of the professional is diminished with standardized procedures and centralized authority (Carr-Saunders, 1955). Interestingly, most professionals in the 1990's are employed in nonprofit and public sector work (Murphy, 1990; Brint, 1994). This is true for no other major socioeconomic group. Another important aspect of today's professionals is that they no longer think of themselves as more important to society than other occupational groups (Brint, 1994). Instead, their sense of identity is developed through a sense of shared education and high level of expertise.

Contemporary approaches to the study of professions include political and economic theories (Brint, 1994; Torstendahl and Burrage, 1990), class theories (Freidson, 1986), and systems theories (Abbott, 1988). Brint defines the essential characteristics of professions as a form of organization that has nothing to do with public service, ethical standards or collegial control, and he suggests that profit making has taken precedence over public welfare. Brint's characterization of a modern professional is based on American studies, others do not have such harsh depictions (Carr-Saunders, 1955). Brint points to the de-regulation climate of the 1960's in the United States as the point in time when professional work began to be viewed as a commercial activity. During these years bans on advertising, standard fees for service and the expectation of pro bono work were abandoned. In turn, this changed

an important component of the professional environment - that of social trusteeism. He, like others, believes that it is through professional associations and the regulatory state that professions gain control over how their work is to be accomplished. Brint supports the notion that professions are the new form of middle-class labor (1994:25). Carr-Saunders links the change in the character of a profession as a “movement toward specialization in general” (1955:282) and a “disintegration of the traditional professional concept” (p.286). Class theorists see higher education as the key to the formation of a “new class” thus professionals constitute a class by virtue of having higher education that they depend on for a living. Broadly defined, the new class is an undifferentiated, broad white-collar class who do “clean” work (Freidson, 1986:42). In new class theories, the claim to public service and possession of specialized formal knowledge is used to distinguish them from other occupational work. The ideology of professionalism and the demand for autonomy are characteristic of the new class. In spite of common life-styles, this new class does not act as a class and members have competing interests.

Systems theory sees all aspects of the socio-cultural system directly or indirectly related in a causal network. Looking at professions a part of a system of professions can be largely attributed to the work of Andrew Abbott (1988). Abbott questions the evolution and interrelations of professions, and believes groups control their skill in two ways: 1) abstract knowledge and 2) technique

(such as in a craft). Abbott's main thesis is that professions compete by taking over each others' tasks. Rothman (1984) refers to such an activity as "encroachment". In his article on the deprofessionalization of law, he points to the law professions' history of competition with accountants, bankers, realtors and other professionals who sought to enhance their prerogative and rewards by expanding into new areas previously the domain of law professionals. Kronus (1976) defined the same phenomena as a problem of "boundary maintenance". In Abbott's view, to study the professions is to examine the tasks of professions, the groups that carry them out, and the changing links that bind them to one another. Professional work is tied directly to a system of knowledge that formalizes the skills on which the work proceeds. The ability of a profession to sustain its jurisdiction lies partly in the power and prestige of its academic knowledge. Academic knowledge accomplishes three tasks - legitimation, research and instruction, which in turn influence the vulnerability of professional jurisdiction from outside interference. Professions emphasise theory rather than practice, for they control the former much more than the latter. Although not arguing for a systems approach in the sense that Abbott proposes, Haug (1973) predicted a "tug of war" as older professions try to hang on to what they had and new workers try to lay hold of a piece of the action. Just as older professions argued they were the experts, newer groups profess to know and understand the work area. For Abbott, these claims of work are described as claims over jurisdiction. Nonetheless, even though old

professions may fall prey to new ones, the argument is that professions themselves are never totally eliminated (Abbott, 1988; Murphy, 1990).

To summarize, the study of the professions asks important questions. When and how knowledge affects social structure? What social conditions determine who will control what kinds of knowledge? It is grounded in historical comparisons that allow us to account for variation and for the dynamics of change. "Post-revisionist" theories suggest "it is not the existence of knowledge that is crucial, but how it is socially organized" (Collins, 1990:18). This leads Murphy, to define a profession as "a new governing class whose power is based on the control not of the means of production, but of the means of knowing in a post-industrial system increasingly founded on technology" (1990:71).

The ability to mediate, as in other professions, concerns complex human relationships. A mediator's work is not based solely on scientific knowledge or technically specialized skills. Instead their knowledge is largely tacit and their skills are potentially available to others. This means that the basis upon which they claim authority to practice is regularly open to challenge. Thus, mediators are forced to gain credibility by projecting an impression of professionalism. They try to foster the impression that they are experts, they manage their rapport to build trust with the parties, and they legitimate their efforts by mobilizing data (Kolb, 1985).

The right to claim expert knowledge and lay claim over areas of work is at the heart of the credentialing debate in mediation. Fueling the debate is the fact that there is still little agreement about core values or knowledge areas, there is also not a system of language that is generally understood by those who work as mediators²⁶. Thus far, legislative restrictions have not been sensitive enough to the various mediation approaches currently being used in the field. This in turn, constricts rather than enriches mediation practice (Waldman, 1996). The following presents some of the debates about, and activities directed toward, regulating the practice of mediation.

The Regulation of Mediation

The debate over the regulation of mediation has been going on for the last decade or more²⁷. Recent focus has been on the issue of credentialing²⁸, along with how and what to require when it comes to certifying mediators. The discussion has focused less directly on the issue and value of regulation per se. Instead, the controversy has been generated by talk of restricting entry into a field, which has traditionally prided itself on accessibility, and on grassroots people-skills. What started in the mid-1960's as a move to "de-

²⁶ This is a major insight of this research – that while mediators use common words to describe their work, they do not always mean the same thing.

²⁷ In 1987, the Commission on Qualifications of the Society of Professionals in Dispute Resolution (SPIDR) was formed to study the question of what qualifies someone to be a dispute resolver.

²⁸ I use the term credentialing to refer to accreditation, certification, and licensing as forms of self-regulation that imply the setting of standards and measurement of conformity by an organization or institution. I include these activities when I use the terms regulation and professionalization.

professionalize" legal institutions for problem-solving and dispute settlement appears to many critics to have come full circle.

This debate within mediation reflects a range of interests and practices at work.

At one extreme are the neighbourhood centres espousing voluntarism, self-help and peer relationships. At the other end are highly trained professionals who want to make a decent livelihood carving out a niche in the professional world of help somewhere between career diplomats, organizational consultants, lawyers and therapists. Clustered along both ends are differing views of charging fees and differing perspectives on credentialing (Kraybill and Lederach, 1992).

Discussions of credentialing for practicing mediators evoke strong reactions, both positive and negative. While applauding the field's growth in stature, some find the discourse about credentialing troubling. They fear that elitism may threaten personal and social empowerment. Proponents argue that mediation demystifies and de-institutionalizes formal settlement mechanisms. They believe that through mediation the resolution of conflict is drawn away from "professionals" and returned to those most affected by it, thereby empowering participants and stimulating social transformation. The fear is that the apparent, and some would say inevitable, move to professionalize the field may place individual and collective empowerment at risk as "grass-roots" and volunteer mediators are marginalized because they do not meet the requirements of a "professional" mediator.

In a previous study (Picard, 1994), Pavalko's occupation-profession continuum was used to analyze the activities of the contemporary mediation movement. This study found that mediation had advanced considerably in all of Pavalko's trait characteristics to varying degrees. When placed on his continuum, four of the eight traits (relevance to basic social value, motivation, sense of commitment, and community) fell along the professional end. Less clear were the remaining four traits (theory, training, autonomy, code of ethics). Although each trait had made considerable advancement and were at varied points along the occupation-profession continuum, they were judged to lie toward the non-professional, rather than the professional end of the continuum. Given that Pavalko admits that it is difficult to determine which trait is more important and that no one profession would exhibit all of the dimensions to a high degree, the study concluded that mediation was a "profession in the making" (p. 157). Carr-Saunders (1955) would refer to contemporary mediation as a "would-be profession" bent on claiming recognition for the expertise that its members hold. Both theories lead to the speculation that standardization and a system of certification for mediators will be established in the future. As an emerging profession multiple and complex activities are likely to be going on within the field. This research found this to be true.

A number of questions arise with the move to be seen as a profession. Should standards be set, and if so, by whom? What qualifies a person to practice as a mediator? How do we assess mediator competency? What

initial and ongoing training is required? Who should govern the credentialing of mediators? There is still no consensus on the answers to these questions. Depending on the forum, there are guidelines describing mediator qualifications and some standards to govern the process, but usually they are advisory and not mandatory²⁹. Some mediators argue that it is premature to focus on questions of credentials and that doing so will hinder the development of the field. Others believe that, while the licensing of mediators by the state has yet to occur, legislators, judges and government agencies are already deciding who may and may not mediate through program policy and procedure decisions. The issues are contentious, and for good reason. The creation of an organized group or subculture which would govern and limit access to the field warrants intense scrutiny. The fear that mediation may become exclusive and elitist appears justified when we look at what has happened in the legal and health professions, to name only two.

Fueling the call for the setting of credentials is growing concern regarding several views about mediation. First, that mediation is thought to be “easy”. Second, that non-mediator trainers can teach mediation skills. And third, that offering mediation is more important than the quality of service

²⁹ See generally, Family Mediation Canada (FMC), “Practice Guidelines and Family Mediator Certification Process,” 1997; Academy of Family Mediators (AFM), “Standards of Practice for Family and Divorce Mediation,” 1995; Society of Professionals in Dispute Resolution (SPIDR), “Ethical Standards of Professional Responsibility,” 1986; National Association for Mediation in Education (NAME), “Recommended Standards for School-Based Peer Mediation Programs,” 1996; Arbitration and Mediation Institute of Ontario Inc., “Rules of Procedure for the Conduct of Mediators,” (nd).

that is offered (Herrman, 1993). These ideas raise concerns about how to stop individuals without “approved” credentials and with little or no hands-on mediation experience from practicing as mediators or mediation trainers. Those advocating for setting criteria for practicing mediators argue that credentials would protect the consumer and the integrity of mediation. Opponents maintain that inappropriate barriers for entry into the field would be created and dissemination of peacemaking skills in society at large hampered. Currently, none of the various commissions struck to study and report on these and other related questions have had their recommendations implemented by the field as a whole.

The fear of creating a monopoly lies at the heart of the credentials debate. Certification and licensing would have significant implications not only for mediators who deal with family, corporate, public policy and international disputes, but also for those working in neighbourhood centres, schools and other community-based programs. There is the concern that services now offered by these groups will no longer be recognized as legitimate, causing public favour and funding to be lost. Non-adversarial dispute settlement options, it is argued, would be available only to the elite and the wealthy - one of the problems with formal justice systems which mediation innovators set out to change.

If mediation becomes a “profession”, as defined sociologically, critical theorists predict occupational closure; in other words a "formalization of informalism" (Pirie, 1994). This predication underlies this study's interest in examining what mediation means today. The professionalization of mediation underlies this work for two other reasons. First, it is a contemporary and contentious topic. Every principal association in North America has undertaken studies, formed committees and presented reports on the subject³⁰. Should mediators have professional degrees? What training do they need? How will we know if a person is qualified to mediate? Although advanced degrees are not viewed as legitimating mediator performance, instead performance-based standards are being emphasized by the majority of associations, the tendency by government and legal institutions has been to require them³¹. In the case of lawyers, stipulations are being placed on length of time in legal practice³².

³⁰ See generally, Honeyman, “On Evaluating Mediators,” *Negotiation Journal*, 1990; the Society of Professionals in Dispute Resolution (SPIDR), *Qualifying Neutrals: the Basic Principles., Report of the SPIDR Commission on Qualifications*. 1989, and *Ensuring Competence and Quality in Dispute Resolution*, 1995; Edelman, “A Commentary on Family Mediation Standards”, *Mediation Quarterly*, 1986; Morris and Pirie, *Qualifications for Dispute Resolution: Perspectives on the Debate*. 1994; Waldman, “The Challenge of Certification: How to Ensure Mediator Competence While Preserving Diversity,” *University of San Francisco Law Review*, 1996; NIDR, *Performance-Based Assessment: A Methodology for use in Selecting, Training and Evaluating Mediators*, 1995; English, *Family Mediation Canada Standards and Certification Project*, 1993; Hart, “Draft Model Guidelines for Court-Connected Mediation Programs,” a paper presented to the Canadian Bar Association, 1998; Shaw, Singer and Povich, “National Standards for Court-Connected Mediation Programs,” *Family and Conciliation Courts Review* Vol. 31 No. 2, 1993:156-225.

³¹ For example, some American states now require advanced degrees including Alabama, Virginia, Florida, and some parts of California. If not a lawyer, mediators can be a psychiatrist, a certified public accountant, or have a Master's degree or better from any of the social or behavioural sciences.

³² In Canada, the Law Society of British Columbia requires three years experience. In the United States, the state of New Hampshire requires trial experience of ten years. In Florida, for trial court level matters over \$15,000 a mediator must be a Florida attorney in good standing with at least 5 years membership in the Florida Bar; for Family Circuit Court they must be a licensed attorney from any jurisdiction for at least 4 years (or they can be a psychiatrist, a certified public accountant, or have a Master's degree or better from any of the social or behavioural sciences).

Requiring a degree to practice as a mediator even though there is no evidence to support that formal education is required to be a competent neutral and knowing that they would create barriers of entry to the field, fits classic patterns of professionalization. Is what we see happening the beginning of occupational closure and elitism? Second, there are many prominent and thoughtful people in the field who see professionalization as a natural and progressive activity and it is easy to be convinced by their arguments. Proponents posit many benefits to professionalization including being able to ensure quality service, maintain the integrity of the process, and protect the consumer. Referring to mediation as a profession would accord it dignity, confer practitioners with a higher degree of respect, and provide financial benefits. The danger lies in defining mediation too narrowly, thus constricting rather than enriching mediation practice, and defining it before the complexities of its present nature are fully known.

Two points can be made about the debates on regulations that have formed to date. The first has to do with the tenor or the nature of the discourse. That tenor has taken on a distinctly narrow and “legalistic” tone, one which focuses on agents, techniques and processes, and the access to them, not on the wider purposes or goals of those processes or techniques. Importantly, it uses legal arenas of dispute resolution as the reference point against which the practices and agents of mediation are assessed. The second point is that in the absence of any consensus by the practitioners and

in the absence of an explicit regulatory schemes, informal credentialing has been occurring through the practices of the state, notably in mandated mediation programs such as Ontario's³³. The danger is twofold. First, that the direction of the field will be decided in large part by the dictates and needs of the state, of the legal profession, and of the formal legal institutions which mediation was intended to supplant. Second, that formal regulatory schemes, when they arrive, will follow the practices and directions already in place. This second point requires some elaboration.

It is clear from the North American experience in recent years that there is increasing interest on the part of various governments and of the legal profession in alternate processes of dispute resolution in general and in mediation in particular. In Canada, legislation providing for the use of mediation is relatively new and most of it is silent on the issue of qualifications of mediators. The first to pass "enabling" legislation was the government of the Yukon Territory, in 1992. This legislation allowed for mediation in environmental disputes. In June of that same year, the *Canadian*

³³ Ontario has a model of mandated mediation in civil matters that favours the evaluative approach, which focuses on entitlements, efficient case management, advice, and links to and from the formal court system. While there is no one standard as to qualifications, credentials, training, models of mediation, performance standards and so on, what is evident in the operational scheme is the focus on attaining quick settlements and avoiding costly trials. Larger goals of a facilitative, more relational focus on needs, experience and transformation are nowhere to be found. Under the legislation, mediators are provided free to the parties for a three-hour session; if a settlement is not reached, then the parties either pay themselves for further mediation or go to court. A "good" mediator is one who can get a settlement, and because the parties' lawyers are effectively choosing the mediators from a roster of mediators, those who are favoured (and who will therefore survive in business) are those who opt for an evaluative model of mediation³³. Facilitative and transformative model concerns, which are needs-based and focus on the parties reaching a solution themselves are lost.

Environmental Assessment Act was given final reading; it provided for the use of mediation in a variety of situations and outlined the procedure for the appointment of a mediator (Diepeveen, 1992). Canada's *Divorce Act* requires lawyers to mention mediation to their clients, and the federal *Young Offenders* legislation encourages the use of alternative measures, which in some provinces results in referral to mediation programs. Legislation passed in Ontario in 1990 made mediation of no-fault benefit disputes mandatory. Consequently, the Ontario Insurance Commission set up a special division, the Dispute Resolution Group, to be responsible for the delivery of fair, fast, cost-efficient and effective methods of resolving disputes relating to benefits awarded between insured persons and insurers. In January of 1992, the Ontario government proclaimed a new *Arbitrations Act*, which encourages business people to use alternative dispute resolution as a way of settling disagreements without the expense and delay of litigation. And in 1995, the Ontario government passed a practice direction setting out new procedures to set up ADR centres in Toronto and Ottawa. None of this legislation defines who can mediate. There is a strong argument to be made that this may change, given the American precedent where legislators are deciding who can mediate, who certifies those eligible to mediate, and the standards for mediating particular types of cases.

Arguments in favour of regulating mediation have much to do with ensuring quality of service and consumer protection. Arguments against the

regulation of mediation stem from fears that many of the early visions of mediation will be lost. While the jury is still out on the need for regulation per se, practices and procedures are being put in place by state-run mediation programs that may by default construct a regulatory scheme for certain types of disputes. The concern, of course, is that these precedents reflect the needs of state, not the need of the disputing parties, nor the needs of society at large, and are too restrictive thus, hinder the development of the field. They also threaten the grassroots nature of the work that many mediators are engaged in doing. Furthermore, it is likely that regulatory schemes would develop from “custom”. In this case, custom is likely to be defined on the basis of state-run programs, not from the range of models that exist elsewhere.

This next section presents mediation trainer-practitioners views about the regulation of mediation. As will be seen, the mediators in this study are no more in accord about the creation of norms than those found in the literature. The section also highlights some of the concerns of respondents as a result of activities they perceived to be taking place within the field.

II. Respondents Views About Regulating Mediation

In light of the current debates about regulating the practice of mediation it seemed pertinent to gather data in this study on how efforts to standardize were viewed by respondents. It also seemed warranted to ask

questions regarding some of the concerns of respondents with respect to changes they see happening within mediation. The information that follows was collected by way of the final survey questionnaire through a series of open-ended and rank-order questions. The results of these questions are reported on now rather than in the data analysis chapters of this dissertation because of their connection to the topic of this chapter. Also because of the correlation between the results and what has been painted of professionals in the extant literature.

Respondents are not in agreement about whether the practice of mediation should be regulated. When asked whether they agreed or disagreed with the idea of licensing of mediators, almost equal numbers of respondents strongly agreed (21%) as strongly disagreed (20%) with the idea³⁴. Family mediators were more in accord with the idea of licensing than any other group; three-quarters (75%) of them agreed with the idea. This was in contrast to respondents from the workplace (64%) and business (59%) sectors who did not agree with the idea of requiring mediators to be licensed. Community trainer-practitioners were split on the question. Perhaps it is not surprising to find family mediators so supportive of licensing. Since 1986, Family Mediation Canada has devoted considerable attention to the topic of certification. In April 1993, the Board of established a “Standards and

³⁴ The overall split was 52% in agreement with the licensing of mediators and 48% who disagreed with licensing.

Certification Project” to work toward developing a code of ethics, standards of practice and training and continuing education for family mediators. In 1996, Practice, Certification and Training Standards were adopted and have subsequently been implemented. As a result of these activities, family mediators are quite familiar with the idea of controlling who is eligible to practice in the field. Such cannot be said of individuals who work in the workplace, business or community sectors as organized and systematic talk about standards and certification is considerably more recent.

Individuals with business backgrounds are the most opposed to licensing (69%), while those with law (59%) and social science (55%) backgrounds tend to be slightly more in agreement than disagreement with the idea. Men (58%) are slightly more in agreement than women (46%). While neither the background nor the gender alone of an individual have a strong impact on their views about licensing, clustering their background and gender with how long they have been mediating do show considerable differences. Whereas three-quarters of newcomer³⁵ men favour the idea of licensing, less than half of veteran men do not (Table 2). A similar pattern occurs for women mediators – two thirds of this group agree with licensing while only one-third of veterans have the same opinion.

³⁵ Newcomers are those with less than 6 years of experience mediating while veterans have 6 or more years of mediation experience.

Table 2. Views on Licensing, Years and Gender

	NEWCOMER MEN	VETERAN MEN	NEWCOMER WOMEN	VETERAN WOMEN	TOTAL
DISAGREE	21% (3)	54% (13)	38% (6)	63% (15)	48% (37)
AGREE	79% (11)	46% (11)	63% (10)	35% (8)	52% (40)
TOTAL	100% (14)	100% (24)	100% (16)	100% (23)	100% (77)

77 valid cases; 11 no responses

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Newcomer lawyers and those with business and social science backgrounds agree with the idea of licensing whereas the reverse is true for veterans (Table 3). Most veterans with business backgrounds disagree with the idea of licensing mediators as do more than half of veteran lawyers and veterans with social science backgrounds. Thus, the longer individuals have been mediating the less likely they are to be in favour of controlling the field through the licensing of mediators.

Table 3. Views on Licensing, Years and Educational Background

	Newcomer Law	Veteran Law	Newcomer Social Science	Veteran Social Science	Newcomer Business	Veteran Business	Total
DISAGREE	25% (3)	60% (6)	33% (5)	52% (14)	33% (1)	80% (8)	48% (37)
AGREE	75% (9)	40% (4)	67% (10)	48% (13)	67% (2)	20% (20)	52% (40)
TOTAL	100% (12)	100% (10)	100% (15)	100%(27)	100% (3)	100% (10)	100% (77)

77 valid cases; 11 no responses

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Why is it that experience in the field leads one to believe there is less of a need for restrictions? Perhaps it reflects that over time fears about the lack of regulation become less founded. Or, could it be that the veterans' fear that they would not meet the "new requirements" a better-educated group might try to impose? Both these speculations need further study.

Respondents seem to be in more agreement on other questions relating to the regulation of mediators. Most (84%) agree that if standards are set they should be performance-based. There is also agreement (87%) that no single organization should dictate standards and that mediation associations alone should not decide who is qualified to mediate (77%). A large number of respondents (94%) agree that the number of licensed mediators should not be controlled. As well, most (80%) agree that a market-based approach is not sufficient to protect consumers.

On the topic of training, there is also considerable agreement. Most (70%) trainer-practitioners in this study believe that mediators do not need university or college training. Those who think that mediators do require university or college training come from the community and family sectors. Almost all respondents (96%) believe that a law background is not a prerequisite for becoming a mediator. The majority (75%) of respondents think that mediation trainers should be accredited, however, they do not

agree that the content of mediation training courses should be regulated - almost equal numbers of respondents said “yes” as said “no” to this question.

Opinions about training are strongly influenced by how long an individual has worked as a mediator. Whereas all (100%) male respondents with less than six years experience agree that the field is overpopulated with minimally trained mediators, only sixty-one percent of men with six to ten years experience and only half (50%) of men with more than ten years experience agree with this statement. While not as strong, a similar pattern occurs with women respondents. Two thirds of women (64%) with less than six years experience agree with their male counterparts that mediators are under trained. This is in contrast to women respondents with six to ten years' experience who disagree (58%) with this statement. Interestingly, women and men trainer-practitioners with more than ten years experience are not of like minds on this subject. Whereas half of the men in this category disagree with the statement that mediators are under trained, sixty-seven percent of women agree with it. Might it be that mediators with less experience are concerned that those with less education or training but who have more experience are getting work as mediators?

Addressing Standards and Accreditation

Trainer-practitioners were asked how they would like to see the issue of standards and accreditation addressed in Canada. The most common

response (34%) reflected the belief that the mediation community should be involved in setting broadly defined national guidelines and professional standards of practice. Little difference occurred between men (37%) and women (32%) respondents. One woman respondent suggested that:

[Standards] should be national and multi-profession based (i.e., no monopoly). Collective determinism would allow the possibility for parties to choose the background of the mediator taking for granted that all mediators are trained and accredited according to professional standards. [49/F/F/SS]³⁶

While respondents think mediation associations should take leadership in the establishment of standards, it is not always for the same reasons. Some respondents were concerned that if mediators themselves did not set the standards, other interest groups or government bodies would set them for them. Other respondents were concerned by the lack of accountability. For others, guidelines were seen as helpful to consumers. Still others believe standards will provide a means by which they can measure their competence.

Other themes emerged. Respondents said that standards should be inclusive and not restrictive; that they need to recognize that dispute resolution occurs in a broad range of contexts; that they should be minimal and flexible; and that they should be established jointly with all mediation associations, user groups, and policy makers. To cite three examples:

This is a major issue of which I believe there are no simple answers. I feel that there should be some broad standards

³⁶ Attribution codes refer to Case 49 / Female / Family sector / Social Science background.

established by a working committee, composed of governments, association and mediators representatives [with broad input]; standards should not be so restrictive as to protect established mediators but prohibit trained but inexperienced mediators; most importantly, it should not be controlled or under the direct influence of lawyers. Certain lawyers make fine mediators but many are much too prescriptive, etc. [71/M/B/SS]

Another respondent offered her views on how to address the question of standards and accreditation.

I would like to see us balance the need to set standards, with the recognition that dispute resolution occurs within a broad range of contexts. Defining a single set of standards could limit and stifle the ideals of neighbourhood empowerment and volunteerism. And yet without some sort of regulation, the field is wide open to anyone wishing to call themselves a mediator, with all the implied problems that situation causes to consumers and to the mediation field as a whole. I would like to see us recommend a set of guidelines for policy makers, trainers, associations etc. that help to organize the discussion of what in fact are the ingredients of "competence" for practitioners in the context within which they work. That is, give mediators needed training and expertise in specific areas and applications of mediation. [143/F/W/SS]

And a third respondent suggested that we educate the consumer so they can make informed decisions.

[I think we should] put resources towards public education and informed consumers, then let the market decide as is the reality in the real world, licenses/standards put consumers at a disadvantage as they tend to abdicate their responsibilities to make an informed decision [11/M/B/B]

The view of respondents' views toward regulating the field of mediation presented above depicts them as having strong and differing opinions about the direction mediation should take regarding this issue. As will become

apparent in other chapters of this dissertation they also have pluralistic and contrary understandings of mediation. It is, thus, not surprising that they would have different opinions about the direction of mediation. This is further evidenced in following section which overviews their concerns about the field.

Concerns about the Field

Mediation trainer-practitioners were asked to identify their concerns about what is happening within the field of mediation. Responses were coded into eight factors: 1) lack of work, 2) incompetence, 3) domination, 4) regulation, 5) training, 6) under use, 7) style and 8) inappropriate use. The three most frequently occurring responses were “domination” (23%), “incompetence” (21%), and “inappropriate use” (13%). Many respondents identified two or more different factors.

The coded category “domination” included fears that lawyers would take over mediation. It also included the notion that domination by any one group would exclude others and cause individuals to claim jurisdiction over certain areas causing mediators to become competitive. Respondents spoke about their fears of “*mediation cliques*” [319/M/B/L], and “*guild-like turfing behaviours*” [140/M/W/SS] forming. They also spoke of “*lawyers taking over with little or no mediation training*” [176/F/W/SS]; of there being “*a danger that various interests groups within the field will engage increasingly in the power struggle over issues of regulations and qualifications, licensing*” [290/M/W/B]

and, a fear that mediation would become “*top-down service delivery rather than community-based*”[354/F/F/SS].

Both men and women respondents have concerns about “domination” (Table 4). So too do those who have worked as a mediator ten or more years - over half (52%) of this group identified the factor “domination” as a concern. This concern lessens as the number of years an individual has worked lessens. Of those with six to ten years’ experience only thirty-five percent (35%) identified “domination”, and even fewer (29%) of those who began to work as mediators within the last six years identified “domination”.

Table 4. Concerns of Respondents and Gender

CONCERNS	MEN	WOMEN
Lack of Work	15% (6)	20% (9)
Incompetence	43% (17)	24% (11)
Domination	35% (14)	38% (17)
Regulation	10% (4)	22% (10)
Training	18% (7)	9% (4)
Underuse	20% (8)	4% (2)
Style	10% (4)	11% (5)
Inappropriate Use	10% (4)	29% (13)
None	0% (0)	2% (1)
TOTAL	47% (40)	53% (45)

Percentages based on number of responses; more than one response may have been given. 85 valid cases; 3 missing cases.

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

The numbers also vary when respondents' concerns are examined by the dispute sector in which they most commonly mediate (Table 5).

Table 5. Concerns of Respondents and Dispute Sector

CONCERNS	COMMUNITY	FAMILY	BUSINESS	WORKPLACE
Lack of Work	23% (5)	14% (3)	21% (5)	13% (2)
Incompetence	23% (5)	48% (10)	21% (5)	44% (7)
Domination	23% (5)	38% (8)	46% (11)	44% (7)
Regulation	18% (4)	5% (1)	17% (4)	19% (3)
Training	5% (1)	14% (3)	25% (6)	6% (1)
Underuse	18% (4)	14% (3)	8% (2)	6% (1)
Style	9% (2)	10% (2)	17% (4)	6% (1)
Inappropriate Use	36% (8)	10% (2)	8% (2)	25% (4)
None	5% (1)	0% (0)	0% (0)	0% (0)
TOTAL	27% (22)	25% (21)	29% (24)	19% (16)

Percentages based on number of responses; more than one response may have been given. 83 valid cases; 5 missing cases.

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

The most frequently occurring factor for the business and workplace sectors was “domination”. For those in the workplace sector, however, the category “incompetence” had a similar number of responses. The second most frequently occurring response after “domination” in the business sector was “training”. “Training” includes comments made about the lack of research and lack of attention being paid to developing a knowledge base and linking theory with practice. It also included responses about the lack of

apprenticeship opportunities, assessment tools, and performance related evaluation. This respondent's comment reflects the sentiments of others.

Dispute resolution as a field, is relatively new arising in response to a number of factors including overcrowded courts and disenchantment with traditional legal dispute processing mechanisms. There is a growing awareness of the essential importance of examining dispute resolution theory and methodology for cultural bias. We are a diverse, multicultural nation. Does dispute resolution theory, training and practice fit this reality? [143/F/W/SS]

Respondents working in the family sector are also concerned about “domination”, however, they are more concerned about the number of unqualified and incompetent mediators. Close to half of those who answered this question identified the factor “incompetence” as a concern. Community mediators, on the other hand, are concerned about the lack of attention being paid to cultural issues and the institutionalization of mediation (“inappropriate use”). Respondents from the community sector had three other concerns: 1) “domination” - the fear that lawyers are taking over, 2) “incompetence” - the lack of qualified mediators, and 3) the “lack of paid work”.

The factor “incompetence” included comments about there being too many unqualified mediators and trainers; that many mediators were inexperienced; and, concerns about the notion that “anyone” can mediate. Respondents expressed views about “*inexperienced or unqualified mediators doing damage, and there being errors due to lack of content knowledge*” [360/MF/B], and about how “*unqualified mediators are undermining the*

integrity of what could become a noble profession” [195/M/B/L]. For some respondents, incompetence was a reflection that incompetent mediators “*do not model the skills of mediation*” [221/F/W/L], and that “*many mediators have not done enough work at integrating the principles of mediation (respect, awareness, honesty, genuineness) into their own lives before they turn to fix other’s*” [114F/C/SS]. “Incompetence” was of particular concern to family and workplace mediators (Table 5). It was the most frequently occurring response for respondents with a business background (50%). It was more important to men than women (Table 4), and it was more frequent a response for respondents with six to ten years’ experience.

One-third of the community sector commented on the “inappropriate use” of mediation (Table 5). In fact, this factor was the most frequently occurring response for this group. “Inappropriate use” as a conceptual category includes concerns about the lack of attention being given to cultural and ethnic issues; that mediation has come to be viewed as a panacea and as a result cases are going to mediation that should not. Other “inappropriate use” concerns have to do with the institutionalization and mandating of mediation. One respondent stated that “*organizations are using conflict resolution as co-optation for those with less power*” [176/W/SS]. Individuals in the workplace sector are also concerned about “inappropriate use”. Of those who answered this question, one-quarter of the responses indicated this to be the case. For workplace mediators, “inappropriate use” was the

second most frequently occurring concern. For them, “domination” and “incompetence” were of more concern. These figures are high when compared to family and business mediators. Only ten percent (10%) of family mediators and eight percent (8%) of the business sector mediators identified “inappropriate use” as a concern.

In addition to the three most frequently occurring concerns - “domination”, “incompetence” and “inappropriate use”, respondents also expressed concerns about “regulation” of the field, however, their concerns differed. Whereas some respondents felt that there was too much regulation, others thought that there was too little. For example, comments were made that there was an *“over emphasis on certification”* [147/F/W/SS], and that there was a *“rush to regulation, qualification and credentialling [in other words] too many shoulds”* [52/F/?/SS]. One respondent stated, *“my fear is that we over credentialize the profession and mediators become quasi lawyers”* [243/F/W/SS]. On the other hand, those in favour of regulating the field were concerned that due to a lack of standards *“anyone can put out a shingle and call him or herself a mediator”* [312/F/C/SS]. Another respondent with the same concern stated that because of *“lack of controls -- anyone can hang up their shingle -- with or without the necessary skills [which] really worries me because mediation can be destructive if not properly processed”* [327/F/C/L]. The least number of responses identifying “regulation” as a

concern came from the family sector (5%); from men (10%), from respondents with a business background (8%), and from respondents with more than ten years experience (10%).

The category “underuse” reflects respondents’ concerns about the lack of acceptance of mediation, the lack of understanding about what mediation is, and the resistance to its use. More specifically one business respondent was concerned by *the “lack of legitimacy and acceptance in public processes at upper government levels”* [297/M/B/B]. Others are concerned about *“the confusion in the public about its nature and how it differs from other dispute resolution processes”* [170/M/F/SS], and *“the lack of acceptance in the legal community”* [48/M/W/SS]. Men are much more concerned about “underuse” than women (Table 4). Trainer-practitioners with more than ten years experience are also more concerned about “underuse” than those who have been working fewer years. Of those with more than ten years experience who answered this question nineteen percent (19%) listed “underuse” as compared to nine percent (9%) of respondents with less than six years experience and seven percent (7%) of respondents with six to ten years experience. Of those individuals working in the community sector who answered this question, eighteen percent (18%) identified “underuse” as a concern compared to fourteen percent (14%) of respondents from the family section, eight percent (8%) from the business sector and only six percent (6%) of the workplace sector (Table 5).

Two other concerns were coded from the responses and are worth mentioning even though there were not all that many responses. “Style” relates to a concern about the move towards more evaluative, directive and rights-based styles of mediation. One respondent expressed her concern about there being “*pressure to mediate in short time frames through a settlement orientation, [resulting in] inadequate attention to relationship, reports and screening for domestic violence and power imbalance*” [177/F/SS]. Another respondent is concerned that “*some mediators are practicing a “head bashing” solution focused style [of mediation] thus participants have described very negative experiences*” [257/F/F/SS]. Individuals with five or less years experience were the least concerned about this factor (5%), while individuals in the business sector had some concerns (17%), as did respondents with law backgrounds (20%).

The category “lack of work” includes responses about it being hard to make a living as a mediator, that fees are low, and that too many people are being trained. On this latter point, one respondent said there are “*too many mediators for the volume of mediation required [which] leads to possible deterioration of skills when called so infrequently*” [144/M/C/L]. Another respondent was more blunt about there being too many mediators being trained saying that “*everybody and his dog are mediators*” [189/F/C/SS].

It can be said that mediation trainer-practitioners in Canada have mixed opinions with regard to regulating mediation and that they have a number of concerns about various goings-on within the field. Some of them relate to a perceived take over by the legal community. Andrew Abbott (1988) would link this activity to the legal profession defending its jurisdiction against new ways of handling social conflicts, and against new professionals expanding into areas previously reserved for law. The fear of course is that domination by the legal community would exclude others and cause mediation to become a more elitist and competitive work form.

Conclusion

This chapter has provided an overview of various sociological theories of professions along with an overview of activities taking place in relation to the regulation of mediation. Just as social science theory has changed, so too have theories of professionalization. In the period from about 1930 to 1950, theorists used structural functional, trait and process theories. During the new political climate of the 1960's they argued that professions imposed definitions of needs and services on clients thus shifting the focus to issues of power, control and dominance. By the end of the 1970's, the study of professions focused on the inherently political nature of internal professional activity, and the significance of professionalism on the wider political social structure. In more recent years researchers turned to theories of the state, political, market, system and social change theories to understand

professions. Trait-based theories would link the activities taking place within mediation to those of an emerging profession. Systems theory would conclude from the same set of activities and emphasize that there is a “turf-war” taking place between those who have traditionally claimed the right to do conflict work and those who are trying to infringe on this work claim.

The discussion of respondents’ views about regulating the field of mediation depicts mediators at this point in time as having strong and differing opinions about the direction mediation should take. In fact, there is as much disagreement about whether mediators should be licensed as there is agreement. If regulation is to occur, the opinion of respondents is that the mediation community, in conjunction with user groups and government, should set broadly defined national guidelines that are minimal, flexible, inclusive, and performance-based. Respondents in this study also commented on the apparent perception that “anyone can mediate”, giving rise to the fear that an increasing number of mediators might have insufficient training and experience. Community mediators are concerned about the lack of attention being paid to cultural and ethnic issues, while others are concerned about the trend to use more evaluative and entitlement-based styles of mediation. Finding different views and different concerns is not surprising given the many understandings of mediation found in the literature, and as will be seen, with mediators in this study. Perhaps one of the more striking insights from the analysis of mediators’ views is that with experience

fears about the lack of regulation become less prevalent. While we cannot know if this would be true of the larger population, it should tell us that we would not want to listen to only one set of voices, especially those more recent to the field. In fact, the findings in this chapter suggest that there is not a consensual voice about what the future of the field should hold nor does there appear to be one that is emerging.

In the following chapter the sample of mediators found in this study are described. It examines their personal demographics as well as differences in their incentives to mediate by gender, educational background, the dispute sector in which they work and the length of time they have been mediating, all of which give us a snapshot of current day mediation trainer-practitioners. As will be seen mediators are a diverse group.

Chapter Four

Profiling Mediation Trainer-Practitioners in Canada

Introduction

This chapter paints a portrait of mediation trainer-practitioners in Canada during the late 1990's³⁷. Personal demographics, education, work status, fee structure, and incentives to mediate are compared and contrasted using four contextual variables: 1) gender; 2) dispute sector; 3) educational background; and, 4) number of years working as a mediator.

Three general conclusions have been drawn from the analysis presented in this chapter. Firstly, individuals who work in this occupation are a diverse group and characteristic of other mediators in Canada. Secondly, what attracts an individual to work as a mediator has changed over the last number of years. And thirdly, how long an individual has worked as a mediator is more likely to be an indicator of what drew them to work as a mediator than their gender, the dispute sector in which they work, or their educational background. To illustrate this, respondents who have worked as

³⁷ The information is based on a sample of 88 mediation trainer-practitioners from across Canada who completed an eighteen-page written questionnaire consisting of mostly open-ended questions. The data set was compiled from the following sources: 1) the Network: Interaction for Conflict Resolution 1997 membership list; 2) a 1996 list compiled by Family Mediation Canada; 3) a list of names suggested by the Canadian Foundation for Dispute Resolution; 4) the 1997 Arbitration and Mediation Institute of Ontario Directory of Members; 5) the Ontario Bar Association 1996 list of ADR practitioners; 6) the Alberta Arbitration and Mediation Society 1997 Directory; and, 7) the Mediation Development Association of British Columbia. These sources were supplemented with data contained in the 1995 Department of Justice report entitled, *Dispute Resolution in Canada: A Survey of Activities and Services*. Any individual who self-identified as a mediation trainer and practitioner was included in the sample.

mediators ten or more years are highly motivated by the ideological goals of social change and empowerment. Respondents who have more recently come to do the work of a mediator are more likely to be drawn to mediation for personal career goals. Finding the work personally challenging and satisfying is what sustains the interest of most respondents', whether newcomer or veteran, in continuing to work as mediators.

For the most part, the findings presented in this chapter are descriptive. More complex analysis, which examines the combinations and patterns of differences, are carried out in Chapters 5, 6 and 7. The principle goal of this chapter is to present the characteristics of Canadian mediation trainer-practitioners as a group. It is worth noting once again that eligibility for inclusion in the sample for this study required that individuals be both practicing mediators and mediation trainers. No other study in the extant literature used a similar study group.

While the above requirement may set respondents apart from the general mediation population in Canada³⁸, based on the results of previous research there appears to be considerable similarity between the two groups. Kruk (1998), for example, found family mediators to have considerable life and professional experience; to be on average forty-six years of age; and, the

³⁸ The population of mediators in Canada includes anyone who practices as a mediator in an organizational or institutional setting.

majority of family mediators to have either a masters level degree or law degree. Almost two-thirds of the mediators in Kruk's study work in private practice; the others work in court or community based programs. Less than ten percent (10%) of family mediators worked full-time as mediators – most devote only about one third of their time to the practice of mediation.

Research carried out by the Network: Interaction for Conflict Resolution and the Department of Justice Canada (1995) also found that dispute resolvers favored private practice and that many viewed their dispute resolution activities as a sideline to their main source of income.

Respondents in the study being reported on here were also found to be mostly self-employed and working full time, devoting about one-quarter of their professional work to mediation activities. Similar to family mediators in Canada (Kruk, 1998), almost equal proportions of men and women work as trainer-practitioners. They offer mediation services in a range of dispute sectors, and the majority mediate in more than one sector. No notable demographic differences were found to exist in this sample of mediators when compared to the other two Canadian studies reported above.

There does not appear to be an existing profile of Canadian mediation trainers. Finding that they are demographically similar to the general mediation community is a useful insight. There is no reason, however, to

expect that they would be different given that new occupations commonly train “their own”.

What follows is a detailed description of the eighty-eight individuals who participated in this study. Each were working as mediation trainers and practitioners in Canada in 1998. The first section of the chapter examines personal demographics including age, gender, background, education, training, experience, and work status. The second section examines what attracts individuals to become mediators and what sustains their interest in the work. Knowing the incentives for working as mediators may provide insights into the current practice of mediation and allow us to make predictions about mediation in the future.

I. Personal Demographics

Age, Gender and Background

Highlights

- ❑ *Most respondents are in their mid to late forties.*
- ❑ *Most were born in Canada, as were their parents.*
- ❑ *As a group, lawyers are the youngest.*
- ❑ *Individuals with business backgrounds are the oldest.*
- ❑ *A relatively equal number of men and women work as trainer-practitioners.*

Trainer-practitioners tend to be in their forties and fifties (Table 6). The mean age is forty-eight years and the range is thirty to seventy years.

Table 6. Age Groups

AGE GROUPS	FREQUENCY (n)	VALID PERCENT
30-39	10	12%
40-49	48	55%
50-59	23	26%
60-70	6	7%
Total	87	100%

87 valid cases; 1 missing case

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Respondents with a business background tend to be slightly older than the rest of the sample (Table 7). Lawyers tend to be the youngest. These findings are not that surprising given that the Canadian Bar Society only endorsed the use of ADR in 1989³⁹ while alternative dispute resolution processes have been used in commercial and community disputes for some time.

Table 7. Age Groups and Educational Background

AGE GROUP	LAW	SOCIAL SCIENCE	BUSINESS	TOTAL
30 to 39	8% (2)	13% (6)	15% (2)	12% (10)
40 to 49	73% (19)	52% (25)	31% (4)	55% (48)
50 to 59	19% (5)	29% (14)	31% (4)	26% (23)
60 to 70		6% (3)	23% (3)	7% (6)
TOTAL	100% (26)	100% (48)	100% (13)	100% (87)

87 valid cases; 1 missing case

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

³⁹See the Canadian Bar Association, Report of the Canadian Bar Association Task Force on Alternative Dispute Resolution: A Canadian Perspective, 1989.

Almost equal proportions of men (47%) and women (53%) in this study work as mediation trainer-practitioners. The gender split in Ontario and Alberta is relatively even while in British Columbia slightly more than half (62%) of trainer-practitioners are women.

Most (80%) of the trainer-practitioners in this study were born in Canada, as were many of their parents (65%). Another ten percent were born in the United Kingdom while the remaining respondents were born in Europe (5%), the United States (3%), the Caribbean (1%), and in South America (1%). When asked if they identified with a minority group, three-quarters (76%) of respondents said “no”. Those who answered “yes” to this question were asked to indicate the group to which they most identified. The distribution was as follows: Jewish (6%), French Canadian (3%), women (3%), First Nations (2%), and physically disabled (2%).

Provincial Breakdown

Highlights

- ❑ *Close to half of the respondents live in Ontario.*
- ❑ *Another third live in British Columbia and Alberta.*
- ❑ *There is representation in the sample from all provinces except Prince Edward Island, New Brunswick, and the Territories.*

Close to half of the respondents in this study are from Ontario (Table 8). Another third live on the West Coast, either in British Columbia or Alberta.

Table 8. Questionnaire Distribution and Return by Province

PROVINCE	MAILOUTS	PERCENT	RETURNS	PERCENT
ALBERTA	36	10%	16	17%
BRITISH COLUMBIA	63	17%	18	20%
MANITOBA	19	5%	6	7%
NEWBRUNSWICK	4	1%	0	0%
NEWFOUNDLAND	7	2%	1	1%
NOVA SCOTIA	6	2%	1	1%
NORTH WEST TERRITORIES	0	0%	0	0%
ONTARIO	190	51%	38	43%
PRINCE EDWARD ISLAND	4	1%	0	0%
QUEBEC	21	6%	4	5%
SASKATCHEWAN	17	5%	4	6%
YUKON	0	0%	0	0%
TOTAL	370	100%	88	100%

88 valid cases; 0 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

These numbers are not all that surprising given that slightly more than half of the questionnaires were mailed to Ontario residents (Table 8). Few questionnaires were sent to trainer-practitioners living in Quebec⁴⁰. The numbers also reflect the fact that Ontario and the West Coast have been hubs for mediation activity in Canada for some time. This was confirmed in the Department of Justice study, which reported that the provinces of Ontario,

⁴⁰ The instrument used to collect the data was in English only limiting the number that could be sent to French speaking Canadians in Quebec. There were a number of requests for a French version of the questionnaire. A similar study should be carried out in French.

British Columbia and Alberta had the most dispute resolution activities (1995:45). Furthermore, British Columbia formed one of the first professional mediation associations in 1984. *Family Mediation Canada* was incorporated a year later, as was *The Network: Interaction for Conflict Resolution*. Both of these national organizations are located in Ontario.

Dispute Sectors

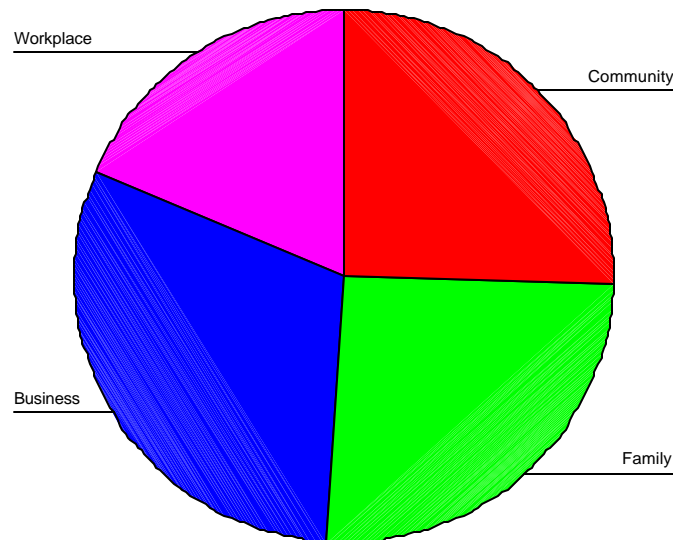
Highlights

- ❑ *Respondents work in four dispute sectors: community, family, workplace, and business.*
- ❑ *Most trainer-practitioners work in more than one dispute sector.*
- ❑ *Men more typically work in the business sector and women in the community sector.*
- ❑ *For both men and women, family mediation is their second most active sector.*

Mediation trainer-practitioners work in various conflict arenas. This was also noted in the Kruk (1998) and Justice (1995) studies. Based on the responses of those who completed the research questionnaire, the various types of disputes were organized into four distinct sectors: 1) business, 2) family, 3) community, and 4) workplace (Diagram 1). The *Business Sector* comprises the largest proportion of respondents – thirty percent (30%). It includes trainer-practitioners who handle commercial, construction, public policy, environmental, landlord-tenant, motor vehicle insurance, small claims, and other civil disputes. The *Family Sector* makes up twenty-six percent (26%) of respondents. They handle custody, access, property and other

issues relating to separation and divorce, as well as other family related conflict situations. The *Community Sector*, which includes victim-offender, school and church programs, and First Nations issues, also comprises twenty-six percent (26%) of respondents. The *Workplace Sector* accounts for eighteen percent (18%) of respondents and includes disputes that arise between union and management and within organizations, as well as human rights complaints.

Diagram 1: Distribution by Dispute Sectors



Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Most members of the study group mediate in more than one dispute sector. For example, community mediators mediate in schools and universities, they mediate criminal and civil court cases as well as church

disputes; they rarely mediate labour disputes, public policy or environmental issues. Respondents who work in the family sector mediate some business, workplace and community disputes but they rarely mediate criminal cases, labor disputes, or public policy issues. Individuals who work in the business sector tend to be the most eclectic in their practice. They mediate workplace-based issues, civil court cases, public policy, labour and environmental issues, and in the educational and community sectors. They rarely, however, mediate family/divorce cases. Respondents in the workplace sector mediate community, business, family and educational disputes.

Male mediators more typically mediate in the business sector and they work least often in the community sector (Table 9). The reverse is true for women mediators.

Table 9. Dispute Sector and Gender

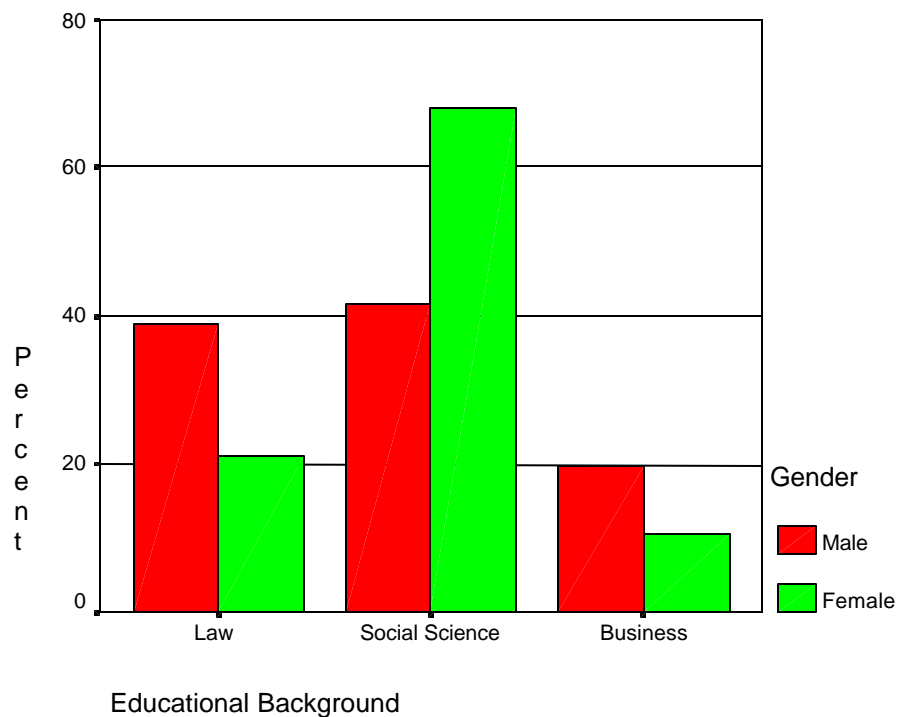
SECTOR	MALE	FEMALE	TOTAL
Community	15% (6)	35% (16)	26% (22)
Family	23% (9)	28% (13)	26% (22)
Business	45% (18)	17% (8)	30% (26)
Workplace	18% (7)	20% (9)	18% (16)
TOTAL	100% (40)	100% (46)	100% (86)

86 valid cases; 2 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Some of the differences in where men and women more commonly mediate may be accounted for by the fact that more than half (58%) of the men have a law (39%) or business (19%) background (Diagram 2). This is in contrast to only twenty-one percent (21%) of women with law degrees and eleven percent (11%) with business backgrounds. Almost two-thirds (68%) of the women in this sample have social sciences backgrounds. For both women (28%) and men (22%), mediating family/divorce disputes is their second most active dispute area.

Diagram 2: Gender and Educational Background



Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Two-thirds of respondents with business backgrounds and one-half of those with law backgrounds work in the business sector. Individuals with social science backgrounds are more eclectic - one-third work in the community sector, one-third in the family sector, one-quarter in the workplace sector. Only twelve percent (12%) work in the business sector. This study also shows provincial differences in the use of mediation services (Table 10).

Table 10. Dispute Sector and Province

DISPUTE SECTOR	ALBERTA	BRITISH COLUMBIA	ONTARIO	OTHER	TOTAL
Community	25% (4)	17% (3)	25% (9)	38% (6)	26% (22)
Family	19% (3)	33% (6)	22% (8)	31% (5)	26% (22)
Business	44% (7)	22% (4)	36% (13)	13% (2)	30% (26)
Workplace	13% (2)	28% (5)	17% (6)	19% (3)	19% (16)
TOTAL	100% (16)	100% (18)	100% (36)	100% (16)	100% (86)

86 valid cases; 2 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Education, Mediation Training and Experience

Highlights

- Two thirds of respondents have started or completed a graduate degree.*
- Only 7% of the sample do not have university degrees.*
- More men than women have law degrees.*
- More women than men have graduate degrees.*
- Most individuals received their mediation training within the last 10 years.*
- Most were trained in Canada.*
- Two-thirds of the sample have worked as a mediator 7 or more years.*
- Lawyers are the most recent group to become mediators.*
- Mediators with business backgrounds have worked the longest.*

Mediation trainer-practitioners are well educated - two-thirds (66%) have completed or done some graduate studies, or have completed a law bachelor degree. Only seven percent (7%) of respondents do not have university degrees. Thirty-three percent (33%) of respondents have master's degrees, while twenty-three percent (23%) have law degrees.

Two-thirds of respondents with social science backgrounds are women (Table 11). Men comprise two-thirds of those with law backgrounds and two-thirds of individuals with business backgrounds.

Table 11. Educational Background and Gender

	LAW	SOCIAL SCIENCE	BUSINESS	Total
MALE	62% (16)	35% (17)	62% (8)	47% (41)
FEMALE	39% (10)	65% (32)	39% (5)	53% (47)
Total	100% (26)	100% (49)	100% (13)	100% 88

88 valid cases; 0 missing cases

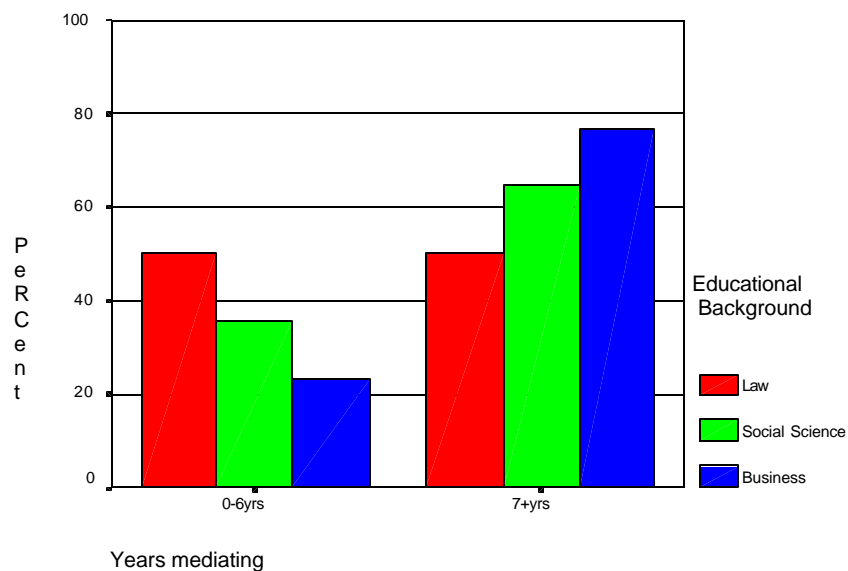
Source: C. Picard, *A Survey of Mediation in Canada*, 1998

The majority of respondents (70%) received their mediation training within the last ten years. As well, most (77%) of the study group attended a mediation course held in Canada that was offered by the private sector or professional associations. Few (11%) trainer-practitioners were introduced to mediation in university.

Respondents have been working as mediators on average nine years; the mode is ten years. Two-thirds (62%) have worked as mediators seven or more years. Respondents have worked as trainers an average of six years with a mode of two years. Only one-third (38%) of respondents have worked seven or more years as a trainer.

Mediation trainer-practitioners with law backgrounds are the most recent group to do this work; half of them have worked six or less years. On the other hand, respondents with a business background have worked as mediators the longest – more than three-quarters (77%) have worked seven or more years. They are followed closely by trainer-practitioners with social science backgrounds as two-thirds (65%) of the sample have also worked as mediators seven or more years (Diagram 3).

Diagram 3: Background and Years as a Practicing Mediator



Women and men have worked as mediators relatively the same number of years. Close to two-thirds of women (61%) and two-thirds of men (63%) have been mediating seven or more years.

Work Status

Highlights

- ❑ *Only 1/4 of respondents' full-time work is spent mediating.*
- ❑ *More men work full-time than women.*
- ❑ *Family mediators work more often than other mediators.*
- ❑ *Family mediators also train the most frequently.*
- ❑ *Most trainer-practitioners are self-employed.*
- ❑ *Community mediators are the exception as close to half of them work as salaried employees.*

Most of the respondents in this study work full time (83%), however, mediation does not comprise all of their activities. While almost everyone (95%) mediated within three months of completing the study questionnaire, less than one-quarter (20%) work as mediators on a full-time basis. In fact, almost half (45%) spend less than twenty-five (25%) percent of their time mediating. This figure is similar to the Kruk study, which found that Canadian family mediators spend only one-third of their time mediating (1998:12).

Respondents spend even less time training. Two-thirds (63%) spend less than one-quarter of their time working as trainers. Only fourteen (14%) percent spend more than half of their paid time as mediation trainers. Seventy (70%) percent delivered fewer than ten courses in a two-year period.

Family trainer-practitioners mediate the most often (Table 12). This should not be surprising given that as an occupational sector they are more organized than any other sector. The formation of *Family Mediation Canada*⁴¹ in 1985 helped to promote the use of mediation in a family context. The passing of many provincial and federal laws supporting the use of mediation has also helped family mediation flourish. The majority of mediators in the community, business and workplace sectors mediate less than five times per month.

Table 12. Monthly Mediations and Dispute Sector

	COMMUNITY	FAMILY	BUSINESS	WORKPLACE	Total
Less than 5 times a month	80% (16)	41% (9)	72% (18)	63% (10)	64% (53)
6-10 times a month	15% (3)	14% (3)	20% (5)	25% (4)	18% (15)
11-15 times a month	5% (1)	23% (5)	8% (2)	13% (2)	12% (10)
16-20 times a month		9% (2)			2% (2)
More than 20 times per month		14% (3)			4% (3)
TOTAL	100% (20)	100% (22)	100% (25)	100% (16)	100% (83)

83 valid cases; 5 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

⁴¹ *Family Mediation Canada* is an interdisciplinary association of lawyers, social workers, human services and health care professionals working together to provide for cooperative conflict resolution relating to separation, divorce, and other family conflict situations. Today all provinces and territories have provincial mediation associations.

A similar pattern, albeit more muted, occurs when the number of training courses delivered over the past two years is cross-tabulated with the dispute sector in which they are most active. Once again, family mediation trainer-practitioners train the most often - thirty-nine (39%) percent of the sample have trained ten or more times during a two-year period. They are followed closely by trainers in the community sector as one-third (33%) also delivered ten or more courses, whereas only one quarter of the workplace (27%) and business (25%) sectors delivered the same number of courses.

The majority of mediation trainer-practitioners in the study group are self-employed (66%). Fewer than twenty percent (19%) of respondents who work full-time are salaried employees. Being self-employed is particularly true if respondents work in the business sector as three-quarters (77%) work for themselves. Similarly, family mediation trainer-practitioners are self-employed either on a full-time (55%) or part-time (14%) basis. Sector difference is most noticeable when respondents work in the community sector - almost one half of respondents (46%) are full-time salaried employees. There is also a greater likelihood that respondents with a social science background (31%) will work for someone else than those with a background in law (8%) or business (0%). Fewer women (45%) than men (63%) are full-time self-employed trainer-practitioners.

Fees

Highlights

- ❑ *Respondents derive their income by charging a fee for service on a sliding scale basis.*
- ❑ *On average, mediators charge \$130 per hour to mediate.*
- ❑ *They charge on average \$1000 per day to train.*
- ❑ *Individuals with law or business backgrounds charge the highest fees.*

The vast majority of trainer-practitioners in this study derive their income by charging a fee-for-service. Fewer than five percent of the respondents mediate as part of a salaried job. Slightly more than half of the respondents use a sliding scale in their fee structure, both as mediators (52%) and as mediation trainers (57%). The use of a sliding scale when charging for mediation does not appear to be connected to gender, dispute sector, or educational background.

Gender, sector, and educational background do, however, influence the use of a sliding scale when charging for training. Trainers in the community (76%) sector and the workplace (69%) sector use a sliding scale more often than trainers in the business (50%) or family (44%) sectors. Trainers with a background in the social sciences (61%) use a sliding scale more often than trainers with business backgrounds (42%). And, women trainers (68%) use a sliding scale more so than men (46%) trainers.

There is considerable difference in the fees mediators charge (Table 13). On average, respondents charge \$130.00 per hour for mediation services; the mode is \$150.00 per hour. The lowest fee charged by mediators in this study was \$20 per hour; the highest fee was \$300 per hour for a range of \$280. Once again, these findings are similar to those found by Kruk (1998:13) in his study of Canadian family mediators. He found that family mediators charge on average \$122 an hour and their fees range from \$10 to \$350 per hour.

Table 13. Hourly Mediation Rates

	Frequency (n)	Valid Percent
Less than \$100/hour	21	28%
\$100-149/hour	23	31%
\$150-200/hour	20	27%
More than \$200/hour	10	14%
Total	74	100%

74 valid cases; 14 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

For their training services, respondents, on average, charge \$943 per day; the mode is \$500, the median is \$775. There is a wide spread between the lowest (\$90) and highest (\$2500) fee charged for training. The range of mediation training fees charged is \$2410.

Respondents with a business background charge the most to mediate followed closely by those with a law background (Table 13). This is in stark contrast to mediation trainer-practitioners with social service backgrounds, almost half of whom charge less than \$100 an hour to mediate. Similarly, trainers with law and business backgrounds charge the highest training fees – half of those with law backgrounds charge \$1000 or more per day to train as do forty-six (46%) percent of trainers with business backgrounds. The majority (57%) of trainers with backgrounds in the social sciences charge between \$500 and \$999 a day for their training services.

Table 14. Hourly Mediation Rates and Educational Background

	LAW	SOCIAL SCIENCE	BUSINESS	Total
Less than \$100/hour	8% (2)	43% (16)	23% (3)	28% (21)
\$100 to \$149/hour	25% (6)	35% (13)	31% (4)	31% (23)
\$150 to \$200/hour	46% (11)	16% (6)	23% (3)	27% (20)
More than \$200/hour	21% (5)	5% (2)	23% (3)	14% (10)
Total	100% (24)	100% (37)	100% (13)	100% (74)

74 valid cases; 14 missing cases

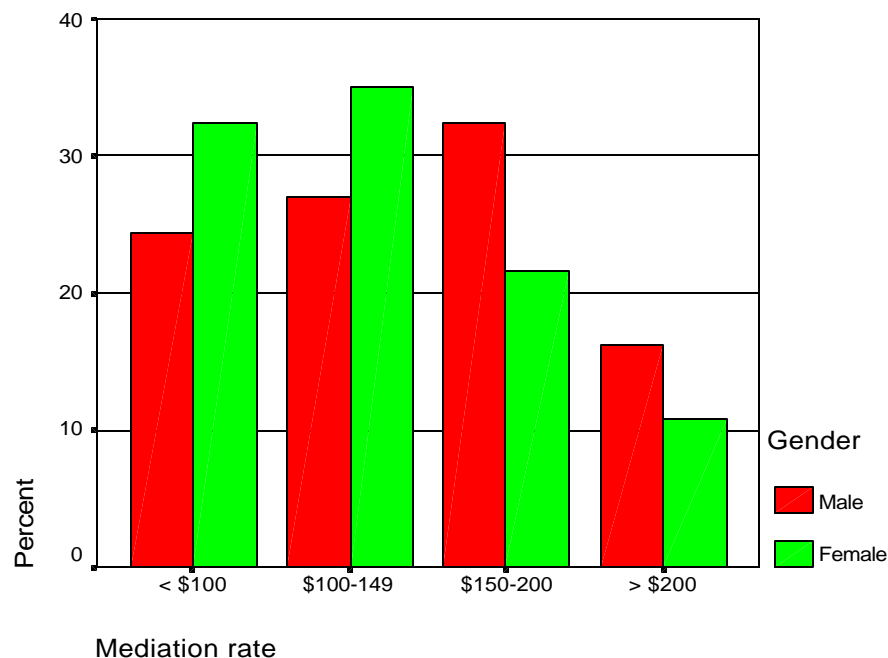
Source: C. Picard, *A Survey of Mediation in Canada*, 1998

This difference in fees charged for training continues to be striking across the different dispute sectors. Once again, individuals in the business sector charge the highest training fees. Thirty-three (33%) percent of trainers

working in this sector charge more than \$1500 per day; thirty-eight percent charge between \$1000 and \$1500 per day. In comparison, eighty percent (80%) of trainers in the community sector and sixty-four (64%) percent of family mediation trainers have daily rates of between \$500 and \$999.

Characteristically, male respondents charge higher fees to mediate than do their female counterparts. Half (49%) of the men in the sample charge \$150 or more per hour to mediate compared to only one-third (32%) of women (Diagram 4). This finding is particularly evident in the family sector where men charge significantly higher fees than women (Table 15). In the business and workplace sectors gender is not linked to higher fees.

Diagram 4: Mediation Fees and Gender



Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Table 15. Hourly Mediation Rates, Dispute Sector and Gender

		COMMUNITY	FAMILY	BUSINESS	WORKPLACE	
MEN	Less than \$100/hr.	50% (2)	25% (2)	18% (3)	29% (2)	25% (9)
	\$100 to 149/hr.	25% (1)	13% (1)	24% (4)	57% (4)	28% (10)
	\$150 to 200/hr.	25% (1)	63% (5)	35% (6)		33% (12)
	More than \$200			24% (4)	14% (1)	14% (5)
	Total	100% (4)	100% (8)	100% (7)	100% (7)	100% (36)
WOMEN	Less than \$100/hr.	56% (5)	39% (5)	14% (1)	14% (1)	33% (12)
	\$100 to 149/hr.	33% (3)	31% (4)	29% (2)	57% (4)	36% (13)
	\$150 to 200/hr.	11% (1)	31% (4)	29% (2)	14% (1)	22% (8)
	More than \$200/hr.			29% (2)	14% (1)	8% (3)
	Total	100% (9)	100% (13)	100% (7)	100% (7)	100% (36)

74 valid cases; 14 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

To sum up, mediation trainers are depicted as having diverse backgrounds, education, and experience. If this sample is at all representative of the larger mediation community (there is also nothing to suggest that it is not), as an occupation mediation does not appear to be dominated by any one gender nor by any one professional group. This may change, however, as this study shows that lawyers have recently been drawn to work in this field. That lawyers may soon dominate the field and cause it to become more business-like is a fear shared by many respondents (Chapter 3). In this next section, what attracts individuals to become mediators and

what sustains their interest is presented, along with how these are connected to gender, educational background, dispute sector and when an individual began working as a mediator.

II. Incentives to Mediate

Individuals in the study group were asked to identify, in open-ended questions, what motivated them to become a mediator and what sustains their interest in mediation. Using grounded theory method, six distinct codes were created from the responses to the question about why they became mediators: 1) personal experience, 2) court reform, 3) social change, 4) job satisfaction, 5) career, and 6) values. These same six categories were used to code the answers to the question of what sustains respondents' interest in doing mediation, with one exception - the "personal experience" factor was changed to an "outcomes" factor. This was due to the fact that there were virtually no comments from respondents about having had a bad experience with court or being exposed to the idea through courses. Instead, they made many comments about mediation being an effective, expedient, and cost-efficient process with positive outcomes.

The two most frequently occurring responses for why respondents wanted to become mediators were "social change" (Table 16) and "job satisfaction". "Social change" referred to a desire for social change and

wanting to help others, while “job satisfaction” had to do with finding the work personally satisfying. The next factor most often identified was “court reform”. It had to do with wanting to improve the legal or other adversarial dispute resolution systems. The “values” factor included responses from individuals who felt congruence between mediation and their personal beliefs and values, or mentioned having a strong belief in the process of mediation. The “personal experience” factor referred to having had a bad personal experience with court or other formal processes or having been exposed to ideas about mediation through courses or training. And lastly, the “career” factor involved mediation being seen as an opportunity for advancement, or a requirement for a job.

Table 16. Reasons Respondents Were Attracted To Become Mediators

REASONS RESPONDENTS WERE ATTRACTED TO BECOMING MEDIATORS	NUMBER OF RESPONSES	PERCENTAGE OF RESPONSES
Bad experience with court or other adversarial process	17	12%
Interested in court reform and improving other adversarial processes	21	15%
Desire for social change and transformation and wanting to help others	38	27%
Finding the work personally satisfying	30	22%
Opportunity for career advancement or required for the job	13	9%
Congruence between mediation and personal beliefs and values	20	14%
Total number of responses	139	100%

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Many (65%) trainer-practitioners reported that they were attracted to the work of a mediator for more than one reason⁴². Similarly, slightly more than half (53%) identified more than one incentive for continuing to work as a mediator while one-quarter (27%) indicated three incentives⁴³.

An analysis of respondents' incentives to mediate, along with their reasons for continuing to work as mediators, follows. As will become evident, whether an individual was motivated by altruistic or personal development goals is connected to how long ago that person began working in the field. The discussion begins with an analysis of what initially attracted respondents to mediation.

A. Initial Attraction to Mediation

Highlights

- ❑ *Respondents reported being attracted to mediation for two primary reasons: 1) because of the potential to empower individuals and transform society and 2) because it provided personal growth and job satisfaction.*
- ❑ *Lawyers said they were most motivated by the idea of reforming the courts.*
- ❑ *Mediators who started mediating ten or more years ago said they were most motivated by factors relating to empowerment and social change.*
- ❑ *Mediators more recent to the field were more likely say they were motivated by personal growth and job satisfaction.*

⁴² Forty-nine (49%) percent of respondents listed two incentives for working as a mediator, while an additional fourteen percent listed three different factors.

⁴³ One of the risks of self-report data is that subjects may answer in ways other than what they know to be true to avoid being negatively perceived. While care must be taken not to take at "face value" what has been reported, there is much to be learned in an exploratory study such as this about what respondents think they did or think they should say.

Social Change and Individual Empowerment

Trainer-practitioners were drawn to the occupation of mediation for various reasons. For some respondents mediation was believed to be a way to empower others to resolve their own conflicts. For others, it offered a means of promoting peace and justice. And for still others, it served as a vehicle to make a positive difference in society. These categories of motivations were coded as “social change” factors. Respondents, for example, talked about wanting the *“opportunity to assist others in rendering difference in an empowering respectful way”* [147/F/W/SS]⁴⁴, wanting to *“enhance peace”* [49/F/F/SS], and having *“a desire to make school a peaceful environment”* [9/F/C/SS]. Individuals whose answers were coded as “social change” also said:

Since high school I have been interested and concerned about social change – my early employment was in the area of community development and community change as a family mediator. This focus on “change” is now directed to families and the changes necessary when separation occurs.
[225/M/F/SS]

Mediation affords parties an opportunity to address their underlying concerns in an expeditious, productive, and sometimes transformative manner, and often results in a customized resolution to a dispute which is much more satisfying and enduring for the parties involved. [195/M/C/L]

[I want] to improve the process and outcomes of public planning and policy setting, to include and empower the public and interest groups involved. [297/M/B/B]

⁴⁴ Attribution codes include (in the following order): case number/gender/dispute sector/educational background. The codes for “gender” are: M (male), F (female); for “dispute sector” they are: F (family), C (community), B (business) W (workplace); and for “educational background” they are: L (law), B (business), SS (social science).

Having a desire to contribute to individual and social transformation is a motivating factor for most respondents, both men and women. It is also a strong motivator for individuals who have social science backgrounds. Visions of social change and individual empowerment are, however, less of a motivator for those who began working in the field recently. This change may be a consequence of the recent growth and institutionalization of mediation.

Job Satisfaction and Personal Growth

Respondents were also drawn to mediate for reasons of personal growth and job satisfaction. Few trainer-practitioners appear to have been drawn to mediation for financial gain alone. Responses such as finding the work challenging, rewarding, and contributing to personal growth were coded under the factor “job satisfaction”. Respondents talked about their “*wish to grow*”, the “*joy*” that comes from resolving conflict and helping others, and that mediation provided them with an opportunity for “*self-learning*”, “*change*”, and “*personal development*”. Other comments included:

[Mediation is] *rewarding work in terms of career satisfaction and it is consistent with my values.* [40/F/F/L]

I took retirement early as a physics teacher. I wanted to continue “academically” and in a people skill oriented climate. [356/M/F/B]

[I had an] *interest in developing strategies to deal with my own interpersonal conflicts.* [48/M/W/SS]

[Mediation] *helps me gain insight into my own life and relationships, become a better person, free myself from dependencies, learn anger management, etc.* [327/F/C/L]

Individuals with five or less years as practicing mediators were the most motivated by job satisfaction and personal growth, as were respondents working in the business sector.

The four sets of contextual factors being used throughout this study - educational background, gender, dispute sector and the length of time an individual has been working as a mediator, are examined to determine their links to respondents' reasons for becoming mediators. As will be seen, there is a connection between *when* an individual began to work in this occupation and *why* he or she became a mediator. Finding a shift in what seems to be attracting individuals to work as mediators is an important discovery and might account for some of the changing form of mediation.

Educational Background

Perhaps not surprisingly, lawyers are most drawn to mediate by "court reform" (48% of responses). The second most frequently occurring response for this group was "job satisfaction" (40% of responses). Individuals with a social science background, on the other hand, were most attracted by the potential for social change and individual empowerment - the "social change" factor (57% of responses). The second most frequent response for them was also "job satisfaction" (40% of responses).

Interestingly, respondents with a business background did not appear to be attracted by any one factor. Instead, most frequently the response for this group was split between two factors - “job satisfaction” (31% of responses) and congruence with their personal “values” (31% of responses). The second most frequently occurring response was also split between two factors – “social change” (23% of responses) and “court reform” (23% of responses). It seems then, that educational background is associated with what draws an individual to work as a mediator.

Dispute Sector

The reasons an individual is attracted to mediate is also connected to the sector in which they work, especially if they work in the business sector. Respondents from this sector were motivated firstly by “job satisfaction” (42% of responses) followed by “social change” (33% of responses). They were also motivated by “personal experience” (29% of responses). To cite one civil mediator whose response was coded as a “personal experience” factor:

I was defending the environment in a civil litigation case and I had a blinding moment of clarity – it doesn’t work. I quit my job and got a master’s degree in environmental dispute resolution.
[318/F/B/SS]

In contrast to individuals in the business sector, respondents from each of the other three sectors most frequently responded that “social change” factors motivated them to work as mediators (community (50%), family (48%) and workplace (50%) of responses).

Gender

Gender also has little association with what individuals reported attracted them to work as a mediator. Both men (43% of responses) and women (47% of responses) frequently mentioned “social change” as what drew them to mediation, followed by “job satisfaction”. This changes, however, the longer an individual has been working as a mediator. As will be seen, veteran men and women tend to be more highly motivated by “social change” ideas than newcomers.

Experience

The number of years an individual has been mediating has a striking connection to what they say drew them to work as mediators. Individuals who entered the field more than ten years ago were highly attracted, upon entering, by the ideological goals of empowerment and social change (Table 17). Individuals who have been working six to ten years follow them. Those who were least drawn by “social change” at entry were respondents with five or less years working in the field. This latter group was attracted to mediation for more personal or job satisfaction reasons; more than half of their responses were coded as “job satisfaction”.

This pattern, that the longer individuals have been working as mediators the more likely they were initially attracted to mediation by visions of social change and transformation is apparent in the following analysis of

contextual variables. To increase cell size, analysis was carried out with respondents reasons to mediate regrouped into three categories – 1) social change, 2) satisfaction, and 3) both social change and satisfaction.

Table 17. Attractions to Mediate and Years Mediating

REASONS RESPONDENTS WERE ATTRACTED TO MEDIATE	5 or less years	6 to 10 years	More than 10 years	Total
Experience – bad experience with court or other adversarial process	18% (n4)	20% (8)	24% (5)	21% (17)
Court reform – interested in court reform and improving other adversarial processes	9% (n2)	35% (14)	24% (5)	25% (21)
Social change – desire for social change and transformation and wanting to help others	23% (5)	43% (17)	67% (14)	43% (36)
Job Satisfaction – finding the work personally satisfying	55% (12)	25% (10)	33% (2)	35% (29)
Career – opportunity for career advancement or required for the job	18% (4)	20% (8)	5% (1)	16% (13)
Values - congruence between mediation and personal beliefs and values	27% (6)	25% (10)	19% (4)	24% (20)
Total number of responses	27% (22)	48% (40)	25% (21)	100% (83)

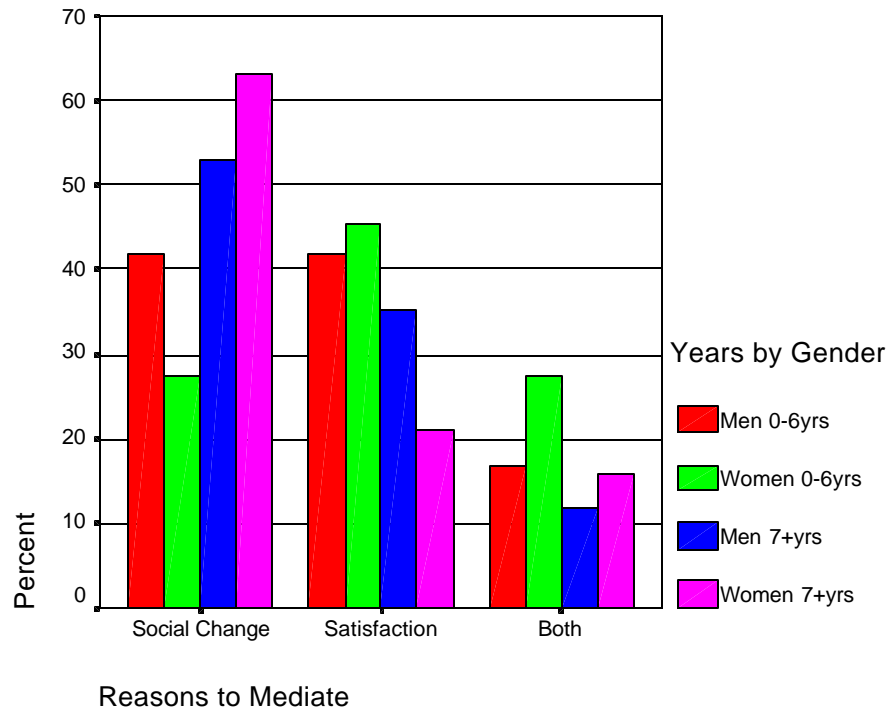
Percentages based on number of responses; more than one response may have been given. 83 valid cases; 5 missing cases.

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Newcomer⁴⁵ men are attracted most by “job satisfaction” (47% of responses), as are newcomer women (44% of responses). Conversely, veteran men (44% of responses) and women (58% of responses) are attracted most by the factor “social change” (Diagram 5).

⁴⁵ Newcomers refer to those individuals with six or less years as practicing mediators while veterans refers to those with seven or more years in the field.

Diagram 5: Reasons to Mediate, Gender and Experience



Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Newcomers with law or business backgrounds are attracted to mediation by “job satisfaction” as well as by “court reform”, and less so by “social change”. Whereas veteran mediators with social science backgrounds are highly attracted to mediation by “social change”, newcomers with similar backgrounds are more attracted by “job satisfaction” (Table18).

Veterans in each of the four dispute sectors were drawn to work as mediators by visions of “social change”. Newcomers in the community were also drawn to mediation for “social change” ideals. Veterans in the workplace

sector were also equally drawn to mediation for “job satisfaction” reasons and veterans in the business were equally drawn to mediation because of a “personal experience”.

Table 18. Attractions to Mediate, Experience and Educational Background

REASONS RESPONDENTS WERE ATTRACTED TO MEDIATE	Newcomer Law/Business	Veteran Law/Business	Newcomer Social Science	Veteran Social Science
Experience – bad experience with court or other adversarial process	18% (3)	23% (5)	6% (1)	24% (7)
Court reform – interested in court reform and improving other adversarial processes	38% (6)	36% (8)	6% (1)	21% (6)
Social change – desire for social change and transformation and wanting to help others	31% (5)	27% (6)	41% (7)	69% (20)
Job Satisfaction – finding the work personally satisfying	38% (6)	36% (8)	53% (9)	24% (7)
Career – opportunity for career advancement or required for the job	13% (2)	9% (2)	18% (3)	21% (6)
Values - congruence between mediation and personal beliefs and values	25% (4)	23% (5)	29% (5)	21% (6)
Total percentage of responses	49% (16)	43% (22)	51% (17)	57% (29)

Figures represent percentage of total number of responses. 84 valid cases; 4 missing cases
Source: C. Picard, *A Survey of Mediation in Canada*, 1998

While many trainer-practitioners may be drawn to mediation because of the potential for social change, it is not what they report keeps them working as mediators.

B. Sustaining A Mediator's Interest in Mediation

Highlights

- ❑ *Job satisfaction and personal growth are the factors reported to most sustain a mediator's interest.*
- ❑ *This finding is not associated with gender, dispute sector, background, or entry into the field.*

Job satisfaction and the personal growth that comes with doing the work are what sustain the interest of most mediators. Fulfillment comes from the challenge of the work, knowing that clients are satisfied, the opportunity for self-improvement, and the connection between the work and personal values. These comments are not limited to trainer-practitioners in this study - dispute resolution professionals in the Department of Justice study (1995)⁴⁶ gave similar responses.

Respondents repeatedly mentioned how mediation helps them to grow and learn. For example, they wrote:

As I practice and continue to perfect my skills and knowledge through training, I become more secure, more confident, more serene, more congruent, and happier. [327/F/C/L]

The self-learning which has helped me to better understand my own values, thoughts, feelings, and actions. [230/M/W/SS]

⁴⁶ In the Justice study respondents were asked what gave them the most satisfaction in their work. Some of the more common answers included: the satisfaction of helping people, achieving win/win solutions, watching people grow as they discover their own inner resources, and feeling pride in being the catalyst for repairing relationships or preventing damage to parties. They also expressed satisfaction from getting paid, receiving thanks from clients and getting feedback for a job well done (p. 41-42).

I learn something new everyday; I achieve a greater understanding and greater awareness of my own values; the continued growth. [143/F/W/SS]

People never cease to amaze me. I am always learning and growing by each session I am involved in. [152/F/W/SS]

My interest is sustained in mediation because I see it as a lifelong skill, which can enhance personal and professional relationships. [325/M/C/SS]

They also made mention of the challenge and personal satisfaction that come with helping individuals and doing good work. They indicated this through comments such as:

I love the work. I have introduced myself to many people, representatives and parties alike, and it is gratifying to see people retain me repeatedly and to generally express very positive things about how I mediate. [319/M/B/L]

[I value] the satisfaction of knowing that my intervention helped to increase understanding, tolerance, and goodwill. [205/F/F/L]

[I am sustained in this work by] the challenge of bringing together a number of parties to reconcile differences and productively resolve their conflicts. [69M/B/SS]

Respondents wrote about the congruence between mediation and their personal values and beliefs. Their comments included, “*I value these communication techniques as life skills*” [267/F/W/SS]; “*I have a strong belief in our mission*” [92/M/B/L]; and, “*I have a natural orientation to being a peacemaker*” [44/F/B/L].

In addition to talking about the personal and professional satisfaction that comes from doing the work, respondents also mention “outcome” and “social change” factors as sustaining their interest. “Outcome” focused discourse includes references to expediency, cost-effectiveness, fairness, and better results; a discourse commonly found in court-connected programs.

Examples of “outcome” focused discourse include:

I continue to see it as a very effective tool for resolving motor vehicle claims in significant volumes at substantial savings. [115/M/B/L]

[Mediation] is expedient and cost effective. [41/F/W/SS]

The process is fair and there are quick solutions. [111/MB/B]

The “social change” discourse is similar to what early proponents set out as the tenets of mediation - transformation, peace, justice, and social change. These too are visions that help to sustain respondents’ interest in mediation. For example, they wrote:

I am continually amazed by its [mediation’s] power and effectiveness as an instrument of healing and peacemaking at a very deep, genuine, and lasting interpersonal level. [41/F/W/SS]

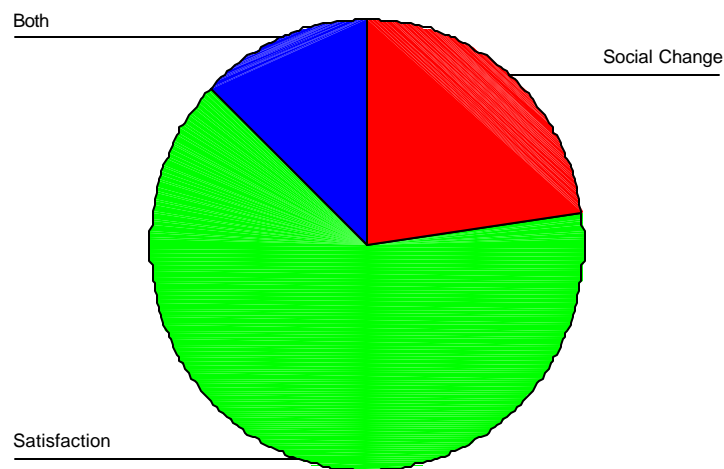
[I have] a desire to make a positive difference in the world. [131/M/W/L]

My interest in peace keeps me working to assist with helping others achieve and learn about conflict resolution. [354/F/F/SS]

The privilege to witness and participate in the transformational changes people experience in understanding others and resolving conflict. [307/F/F/SS]

Finding the work personally challenging and satisfying is what sustains most respondents (Diagram 6). This factor, coded as “job satisfaction”, was the most frequently mentioned factor at forty-one (41%) percent of responses. It was followed by “social change” at twenty percent (20%) of responses, then “career” (15% of responses), “outcomes” (14% of responses), “values” (9 % of responses), and finally, “court reform” (2% of responses). Once again, to increase cell size and aid analysis, sustaining factors have been regrouped into 3 categories – 1) social change, 2) satisfaction, 3) both social change and satisfaction.

Diagram 6: Factors That Sustain a Mediator’s Interest



Source: C. Picard, *A Survey of Mediation in Canada*, 1998

This finding, that “job satisfaction” sustains most respondents’ interest in mediation followed by “social change”, is a pattern which continues irrespective of gender, educational background, or dispute sector. Newcomer and veteran mediation trainer-practitioners follow this same pattern.

Conclusion

The analysis in this chapter lends support to the notion that mediation is changing. No longer does it appear that those who work as mediators primarily view mediation as a “social revolution”. Instead, mediation for some individuals seems to have become an occupation that has appeal because it provides satisfaction to the worker. There are a number of speculations that could be offered on why these changes might be taking place. Two are offered. First, sociological research on social movements repeatedly shows that as informal or “fringe” groups become more mainstream their ideological visions also become more mainstream in order for them to survive. The literature (Chapter 2) and the analysis in this chapter suggest that some of the early goals espoused by advocates of mediation may be being replaced by a more contemporary discourse that claims satisfaction, expediency and cost reduction. The desire to be seen as more “professional” has caused mediation to become more institutionalized and routinized. The changing nature of mediation may also indicate “colonization” of mediation by the state. All of which lead to the question of whether we are going to need an “alternative to mediation” if we are to realize social transformation as

mediation is espoused to do. A second speculation on the changing form of mediation is that mediation has become a more accepted and legitimate work form for those who work as mediators. In turn, they are inclined to answer questions about what appeals to them about mediation using the language of “job satisfaction” and “personal development” even when their basic goals (i.e., social change and transformation) have remained the same. To say this another way, if one’s aim in becoming a mediator is social transformation, then job satisfaction becomes a part of social transformation. Both these speculations need further study.

This chapter focused on “who” is mediating. The analysis showed that gender, educational background, dispute sector, and years as a practicing mediator were linked to differences in where mediators work, their work status, the fees they charge, and their reasons for becoming mediators. Thus, these four contextual variables continue to be present in the analysis that follows throughout this dissertation.

What does it mean for the future of mediation that the more recent a respondent has begun to work as a mediator the stronger the likelihood that they report being drawn to work in this field for personal growth and job satisfaction? How widespread is this apparent change? And, how might this change influence their understanding of practice? The first two questions will not be answered in this study, however, they do require further research.

This latter question is examined in relation to respondents' understanding of their role, style and orientation to mediation practice in the ensuing chapters.

An examination of how mediators conceptualize what they do follows. As will be seen, variations in understandings of the mediator role are linked to the four contextual factors being examined in this study. They are also more varied than we might expect to find based on the extant literature.

Chapter Five

Common Language, Different Meaning

Introduction

This chapter examines trainer-practitioners' understanding of their role as mediators. It builds upon the previous chapter, which found that mediators are a diverse group. Furthermore, the expectation that mediation is not a monolithic process, and that variation in mediation practice is connected to an individual's perception of his or her understanding of their role as a mediator guided the research. These latter two expectations were confirmed by the research results.

When mediators describe their work as "an art and not a science", they refer to their role in the process. This focus on role suggests that mediation strategies are dependent upon the mediator's perspective of his or her part in the process as well as their perspective about the other players. A mediator's perspective informs him or her about which tactics, and in which order, to use in the resolution process (Kolb, 1983:23). Role expectation by the mediators is central to the type of mediation process they employ (Mcfarlane, 1999).

Chapter 5 shows that variations in interpretation of the mediator role are linked to internal and external contexts, and those differences are manifest in the understanding respondents have about their work as mediators. For instance, while most respondents describe their role as

“facilitative” they do not always attribute the same meaning to the word. In some cases “facilitative” is connected to the management of process, in others it is about enhancing communication between the parties, and in still others it has to do with resolving a dispute. Finding this convergence in language but divergence in meaning is an important insight from this study. Even though the form of mediation has been contested⁴⁷, little research has been done to probe the meanings of these forms. And even less research has been done to link them to contextual factors. This insight also heightens our awareness about the need to understand more fully what mediators mean when they talk about their work. This need is increased as mediation continues to grow and diversify. No longer can we be content to think about mediation as a single-model process, nor in terms of dichotomous models that position one conceptualization against the other. This chapter presents mediation as a complex and varied social activity and deserving of more complex and fluid constructions of its goals.

Parts of the analysis in this chapter, and in later ones, were done with mediators clustered into groups based upon the similarities and differences in their characteristics found in Chapter 4. These clusters are 1) newcomer men with law or business backgrounds; 2) newcomer women with law and

⁴⁷ For a discussion of these contested views see Chapter 2 which overviews the work of Silbey and Merry, 1986; Bush and Folger, 1994; Kolb and Associates, 1994; Riskin, 1996; and, Waldman, 1996.

business backgrounds; 3) veteran men with law and business backgrounds; 4) veteran women with law or business backgrounds; 5) newcomer men with social science backgrounds; 6) newcomer women with social science backgrounds; 7) veteran men with social science backgrounds; and, 8) veteran women with social science backgrounds. Newcomers are individuals with six or less years practicing as a mediator. Veterans have seven or more years experience as practicing mediators.

The rationale for clustering respondents in this manner is based upon a number of factors. Firstly, the sample size in this study is not large and ungrouped data would result in cell sizes being so small that they would be rendered meaningless. Secondly, relationships between ungrouped data would be difficult to assess and reporting on them would be cumbersome. Thirdly, while mediators may not be homogeneous they do have some similar characteristics and it is sensible to group like individuals into clusters for analytical purposes. For example, individuals with six or less years of experience were found to be more similar to each other than colleagues with more years of experience. Similarly, individuals with law and business backgrounds were found to have many of the same characteristics so they were clustered into one group.

Once again, the method of grounded theory has been used to code the data and SPSS was used to generate theoretical specificity and identify

patterns. The chapter begins with an examination of the role of the mediator. As will be seen, gender, dispute sector, educational background and length of time mediating are associated with variations in role. What will also become apparent in respondents' descriptions of their role and orientation to mediation is that while they might use a common language, they oftentimes mean different things by it.

I. Conceptualizing the Mediator Role

Highlights

- ❑ *Most respondents understand themselves to have more than one role as a mediator.*
- ❑ *The majority conceptualize their main role as that of facilitation.*
- ❑ *There are three understandings of the facilitator role - "facilitating process", "facilitating communication", and "facilitating resolution".*
- ❑ *Women more often describe their role as "facilitating communication"; men more often describe their role as "facilitating process". Only a very few respondents describe their role as "facilitating resolution".*

The majority of respondents in this study conceptualize their role as that of facilitation. When asked in an open-ended question format how they describe their role to parties in the opening stages of mediation, eighty-nine (89%) percent of respondents had at least one of their responses coded as "facilitator"⁴⁸. This finding is not surprising as it has been said that mediation in its "purest" form is facilitative (Menkel-Meadow, 1995). A facilitative model

⁴⁸Eight other role categories were coded from the responses, however, none of these categories accounted for more than ten percent of total responses. They included "monitor" (9% of responses), "advisor" (5% of responses), "coach" (4% of responses), "normalizer" (2% of responses), "agent of reality" (1% of responses), and "recorder" (1% of responses). Given these low percentages, further analysis of each code was dropped.

of mediation has also been associated with a particular set of process-related activities and it is often contrasted with more substantive and outcome-focused goals (Riskin, 1996).

While for the most part respondents depict their role as largely facilitative, they do not see this role as singular⁴⁹. The next most frequently occurring role response after “facilitator” was “neutral third party”⁵⁰ (29% of responses). More than half of respondents (52%) conceptualized their role in this way. Veteran respondents with business backgrounds used the term “neutral third party” the most often (78% of responses).

Given that “facilitator” was the most common understanding of role for all respondents, examination of what individuals mean by “facilitator” seemed appropriate and in keeping with interpretive research practice. As suspected, deeper analysis showed that respondents did not always attribute the same meaning to their role as “facilitative” mediators. In addition, variations in understanding were connected to the contextual factors under investigation in this study - dispute sector, gender, the number of years they have been mediating, and educational background. Axial coding (Neuman, 1994) was

⁴⁹ Two-thirds (65%) of respondents identified two roles and close to half (42%) identified three distinct roles when asked to describe their role to parties in the opening stage of a mediation.

⁵⁰ Respondents rarely described what they meant by “neutral-third party”. Those that did, emphasized that they were not a judge; that they were neutral and impartial; that they would not make decisions or determine right and wrong; that they would not give legal advice; and, that parties would come up with their own solutions.

used to expand the data, open up analytical possibilities and make connections between concepts. This next section discusses the “facilitator” role in greater detail beginning with some descriptions of the “facilitator” role given by individuals in the sample.

Mediator as Facilitator

The “facilitator” role category includes descriptive terms and metaphors such as *guide*, *conduit*, *catalyst*, *bridge-builder*, and *assistant*.

One respondent described her role as a guide who:

insures a respectful exchange of perspectives and who explore needs and concerns that must be addressed if the issues are to be resolved; I will ask questions, summarize and generally guide the discussion; I will ensure that the emotions are acknowledged and yet not allowed to escalate to inhibit the process or become disrespectful. [41/F/W/SS⁵¹]

Other individuals describe their “facilitating” role in the following ways:

[I am] an impartial facilitator; I assist in guiding process, maintain channels of communication and help parties to explore settlement options. [195/M/B/L]

My role is to act as a guide or helper making it possible for people to tackle problems together who otherwise were not able to do so on their own; my task is to help people gather what they need to make their own decisions or agreements. [290/M/W/B]

My role is to help the parties communicate with each other, to enable them to hear each other and understand each other's positions and perspectives, needs and interests. [255/F/F/L]

⁵¹ Attribution codes refer to case number / gender / dispute sector / educational background.

[I] provide a structure and climate for respectful and productive discussions and assist parties to identify and obtain information they need to discuss the issues; [I] re-establish contact between the parties, provide a face-to-face forum [neutral] for discussions and provide an impartial presence that is supportive of negotiators; [I] facilitate the exchange of information within a structured framework, [I] help to identify common interests and objectives and develop options for agreement. [143/F/W/SS]

As can be seen from the above few quotes a variety of tasks are associated with the facilitative role. Some include the exploration of needs and concerns, the acknowledging of emotions, the heightening of understanding, the guiding of process, the exploration of options for settlement, as well as making possible joint-problem solving, empowerment and self-determination. This very cursory look at the variation in respondents' interpretation of the facilitator role led to a fuller exploration of their understanding of this role and ultimately the intent of mediation.

The first question used to interrogate the meaning of the role factor "facilitator" was - what is it that respondents are facilitating? This examination led to the creation of four sub-categories of the "facilitator" role category: 1) "facilitate process", 2) "facilitate communication", 3) "facilitate communication and process", and 4) "facilitate resolution".

As a conceptual category, “facilitate process” reflects an emphasis by respondents on activities specific to managing the process of mediation. For example, one respondent said,

my role is that of process facilitator, [I do] not contribute to the substantive discussion but I do insure that the group moves through the process. [69/M/C/SS]

This is in contrast to individuals who did not mention process and instead focused on communication within mediation, creating the conceptual category “facilitate communication”. The following is an example of comments coded as “facilitate communication”,

I remind parties that my role is to help them communicate and see the problem from each other’s perspective”. [80/F/C/B]

The category “facilitate communication and process” included responses where emphasis was placed on the management of process and communication between parties. To cite one respondent,

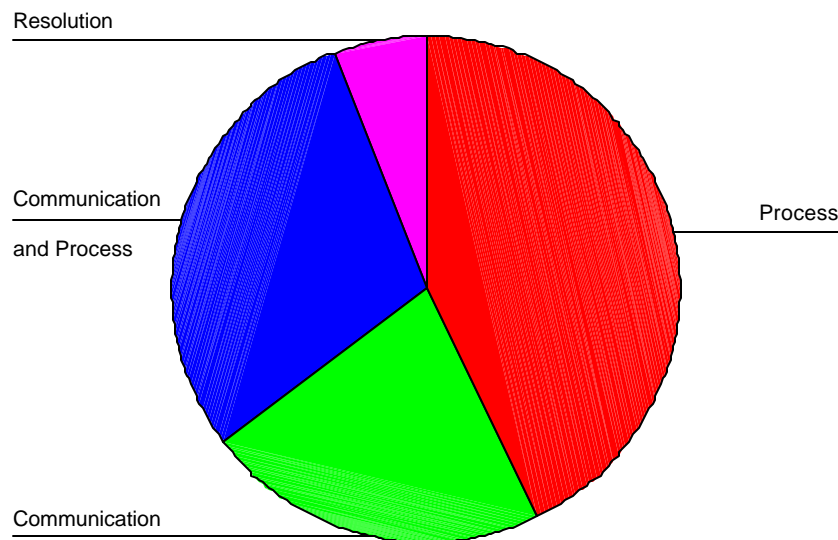
my role is to assist with communication (and I talk about how that will happen), and to manage the conflict, [I am] director of the process not the content”. [354/F/F/SS]

The conceptual category “facilitate resolution” included responses where emphasis was placed on reaching a settlement more than on attending to process issues or the exchange of information. An example of this type of response is,

I am here to assist you to reach decisions about the matters in issue between you, the two of you will be making the decisions. [355/F/F/L]

A frequency analysis carried out on those who answered this question showed that slightly more than one-third (35%) of respondents understood their role as facilitating “process”. One quarter (26%) of respondents saw their role as facilitating both “communication and process”, while seventeen (17%) percent conceptualized their role as facilitating “communication” alone. Only five percent (5%) of respondents identified their role as facilitating “resolution” (Diagram 7).

Diagram 7: What Mediators “Facilitate”



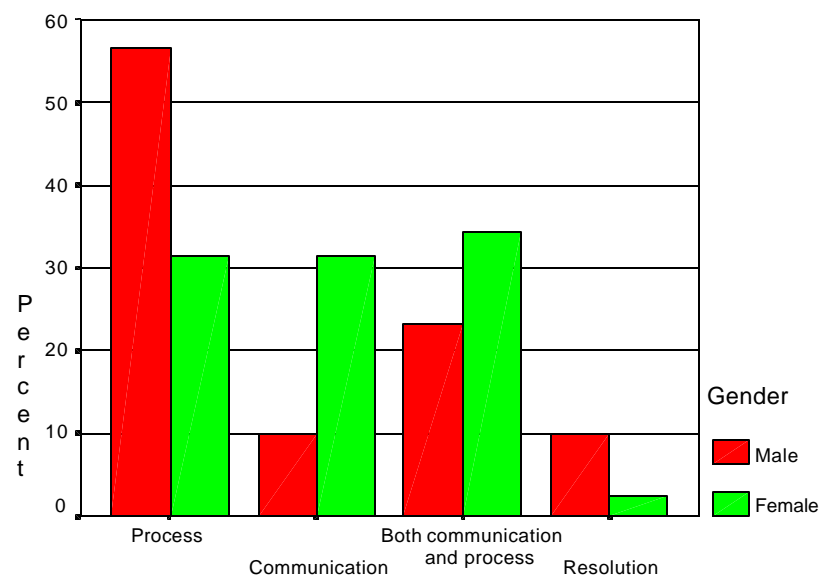
Source: C. Picard, *A Survey of Mediation in Canada*, 1998

The “Facilitator” Role and Contextual Variables

Before presenting this analysis, a cautionary note is in order. Some respondents answered the question about their role using only the phrase “neutral third party” (10% of responses) or “facilitator” (6% of responses). Given the absence of explanation for “neutral third party” and the “facilitator” role, these cases could not be included in the ensuing analysis. This reduced the sample from eighty-eight to sixty-nine cases. Even with this reduction in number of cases, insights have been generated from the patterns that emerged. Further study is needed to confirm these insights.

Gender appears to be linked to differences in how respondents understand their “facilitative” role as mediators (Diagram 8).

Diagram 8: Facilitate Role and Gender



What Mediators Facilitate

Women respondents tend to identify their role as facilitating “communication” or “communication and process” more than facilitating “process”. The reverse was found to be the case for male mediators. This finding correlates with other studies that have found gendered perceptions of the mediator role. To cite one example, Weingarten and Douvan (1985) found that female mediators envisioned their role as collaborative and described themselves as a bridge between parties, while male mediators described mediation as a game and envisioned their role as acting on the parties (p.78). Studies have also shown that gender influences mediator behaviour (Gourley, 1994).

Dispute sector also has some connection to the way respondents understand their “facilitative” role as mediators (Table 19). Individuals who work in the business sector showed the strongest connection - more than half of this group conceptualized their role as facilitating “process”.

Table 19: Facilitator Role and Dispute Sector

	COMMUNITY	FAMILY	BUSINESS	WORKPLACE	TOTAL
PROCESS	41% (7)	35% (6)	53% (9)	33% (5)	41% (27)
COMMUNICATION	35% (6)	12% (2)	18% (3)	27% (4)	23% (15)
COMMUNICATION AND PROCESS	24% (4)	35% (6)	24% (4)	40% (6)	30% (20)
RESOLUTION		18% (3)	6% (1)		6% (4)
TOTAL	100% (17)	100% (17)	100% (17)	100% (15)	100% (66)

66 valid cases 66; 22 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Mediators from the community sector also identify their role as facilitating “process”. Community mediators, however, also understand their role as facilitating “communication”. Family and workplace mediators were mixed in their descriptions describing their role typically as facilitating “process” or both “communication and process”.

Educational background is also related to how an individual understands his or her “facilitative” role (Table 20). Almost half of the individuals with law or business and social science backgrounds were coded as facilitating “process”.

Table 20. Facilitator Role and Educational Background

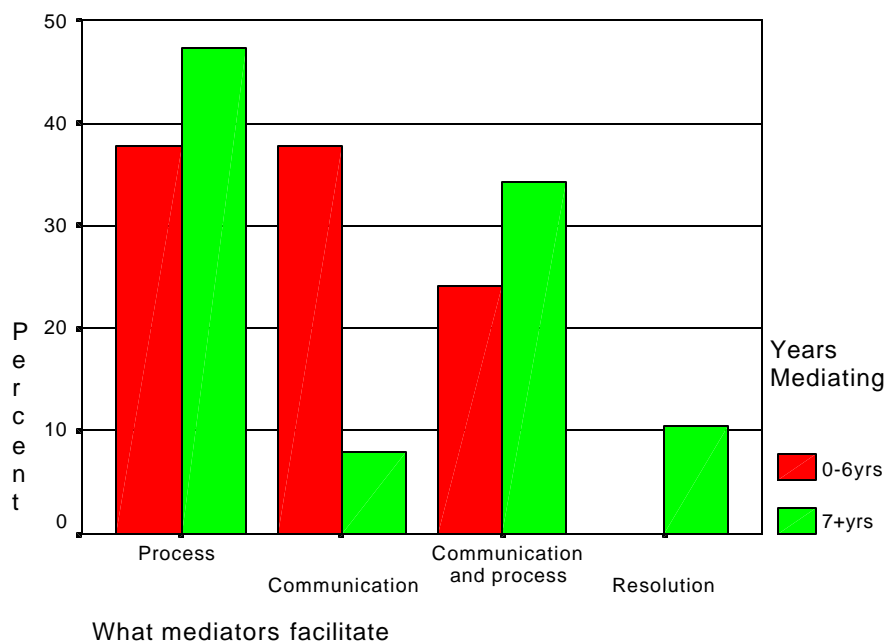
	LAW	SOCIAL SCIENCE	BUSINESS	TOTAL
PROCESS	40% (8)	44% (18)	43% (3)	43% (29)
COMMUNICATION	25% (5)	20% (8)	29% (2)	22% (15)
COMMUNICATION AND PROCESS	30% (6)	32% (13)	14% (1)	29% (20)
RESOLUTION	5% (1)	5% (2)	14% (1)	6% (4)
TOTAL	100% (20)	100% (41)	100% (7)	100% (68)

66 valid cases 66; 22 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

The number of years respondents have been mediating is also connected to how they understand their “facilitator” role. One-third of newcomers conceptualize this role as “process” (38%) or “communication” (38%). And, close to half of the veteran respondents (47%) conceptualize the role as facilitating “process” (Diagram 9).

Diagram 9: Facilitator Role and Experience



The “Facilitator” Role and Clusters of Contextual Factors

Newcomer⁵² women in the community, workplace and business sectors have a strong tendency to describe their facilitator role as “facilitating communication” (Table 21). In the family sector newcomer women do not conceptualize their role in this way. They were divided between the “facilitate process” and “facilitate communication and process” role definitions, with the remaining quarter describing their role as “facilitating communication”. Veteran women do not see their role as “facilitating communication”. In all four sectors, these women had a stronger tendency to understand their role as “facilitating communication and process” or “facilitating process” alone.

⁵² Newcomers are individuals with less than 6 years of experience and veterans are those with 6 or more years of mediation experience.

Table 21. What Mediators Facilitate, Dispute Sector, Experience and Gender

		COMMUNITY	FAMILY	BUSINESS	WORK PLACE	Total
Newcomer Men	Process	67% (4)	50% (1)	50% (2)		54% (7)
	Communication	17% (1)		25% (1)		15% (2)
	Communication and process	17% (1)	50% (1)	25% (1)	100% (1)	31% (4)
	Total	100% (6)	100% (2)	100% (4)	100% (1)	100% (13)
Newcomer Women	Process		40% (2)		20% (1)	19% (3)
	Communication	100% (4)	20% (1)	100% (2)	60% (3)	63% (10)
	Communication and process		40% (2)		20% (1)	19% (3)
	Total	100% (4)	100% (5)	100% (2)	100% (5)	100 (16)
Veteran Men	Process		33% (1)	63% (5)	60% (3)	56% (9)
	Communication				20% (1)	6% (1)
	Communication and process			25% (2)	20% (1)	19% (3)
	Resolution		67% (2)	13% (1)		19% (3)
	Total	0	100% (3)	100% (8)	100% (5)	100% (16)
Veteran Women	Process	43% (3)	29% (2)	67% (2)	25% (1)	38% (8)
	Communication	14% (1)	14% (1)			10% (2)
	Communication and process	43% (3)	43% (3)	33% (1)	75% (3)	48% (10)
	Resolution		14% (1)			5% (1)
	Total	100% (7)	100% (7)	100% (3)	100% (4)	100% (21)
	TOTAL	100% (17)	100% (17)	100% (71)	100% (15)	100% (66)

66 valid cases; 22 missing cases.

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Turning to look at newcomer and veteran men in the four dispute sectors shows a similar pattern of shifting their understanding of role over time (Table 21). Whereas half of newcomers in the family sector described

their role as “facilitating process” and the other half as “facilitating communication and process”, two thirds of veterans in this sector conceptualized their role as “facilitating resolution”. Similarly, newcomer men in the workplace sector reported that they understood their role as “facilitating communication and process” while veterans described it as “facilitating process”. In the business sector both newcomers and veterans described their role as “facilitating process”. Veterans, however, had a stronger tendency to do so than newcomers.

It is not clear what this shift in conceptualization of the mediator role is revealing; further study is called for. It is, however, important to note that the longer individuals have been working as mediators the less they tend to conceptualize their role as facilitating “communication”. Speculating on the reasons for this. It may be that the changing profile of those who now work as mediators (see Chapter 4) is having an effect on how the role of a mediator is constructed. It may also be that mediators change their view of their role as they work in different sectors and gain experience.⁵³ Then again it may be that mediators are more “idealistic” in the beginning of their practice and over time become more practical. Or, it may also be indicative of a similar trend found to be happening in the United States where the problem-

⁵³ This possibility seems to get confirmed in Chapter 7. In this Chapter it was found that more experienced mediators had more pluralistic understandings of mediation than respondents with fewer years of experience.

solving approach is being emphasized at the expense of more communicative and transformative mediation approaches (Bush and Folger, 1994). This latter thought prompted further analysis of the “facilitator” role.

II. Outcome and No-Outcome Meanings

Deeper examination of “facilitator” role descriptions revealed that some respondents made reference to *resolution, settlement, or closure* of the conflict situation while others did not. This caused me to investigate if there were particular groups that favoured the use of what were labeled “outcome” meanings or “no-outcome” meanings. It was suspected that the use of “outcome” and “no-outcome” meanings might be linked to differences in how respondents understood their “facilitator” role and to contextual factors. Following this train of thought, patterns in the use of “outcome” and “no-outcome” meanings by the four contextual factors used throughout this study, and by meanings attributed to the “facilitator” role were examined. Before looking at this analysis, however, it is useful to note that a frequency analysis showed that two-thirds of the sample (64%) did not use “outcome focused” meanings when describing their role as facilitative (Diagram 10). This supports the earlier finding that few respondents understand their role as facilitating “resolution” alone. It suggests that Canadian trainer-practitioners view their work more broadly than settlement-oriented.

Diagram 10: Outcome and No-Outcome Meanings



Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Outcome and No-outcome Meanings and the “Facilitator” Role

Not surprisingly, there was a connection between respondents understanding of their facilitation role and their use of “outcome” focused meanings. All respondents who identified their role as facilitating “resolution” used “outcome” focused meanings. Respondents who understood their role as facilitating “communication” used “outcome” focused meanings the least often – only twenty percent (20%) had their responses coded as “outcome” focused⁵⁴. It is not surprising to find that how mediators “talk” about their work would differ based on their understanding of their role as a mediator. Others have also found that a person’s view of mediation informs his or her use of

⁵⁴ Slightly less than two-thirds (61%) of the respondents who were coded as understanding their facilitative role as “process” used non-outcome meanings, as did slightly more than half (58%) of those who were grouped in the “process and communication” facilitative role category.

particular discourse (Tracy and Spradlin, 1994). It has also been demonstrated that one's social reality influences how mediation is understood and acted upon (Littlejohn, Shailor and Pearce, 1994). This latter study found that mediators' social realities not only guide their interactions in mediation, they were consistent with the mediation training they had received (p. 78). This connection to training is particularly relevant given that mediation trainers comprise the sample in this study. It suggests that examination of a mediators training style and materials may reveal aspects of their ideological views about mediation. Finding such diverse understandings of mediation, and finding that understandings are connected to contextual factors has a number of uses. Three are suggested. First, consumers may be better able to select the type of mediation trainer they want given the assumptions and goals they may aspire to, or given the sector in which they will primarily work. Second, mediators who adopt a particular understanding of mediation may be assigned to particular cases, or, trainers to particular students. And thirdly, this information may help in setting policy for mediation training and trainers.

Examples of "outcome" focused meanings included references to goals such as reaching *conclusions*, *working it out*, and *making informed decisions*. More specifically, respondents said:

[Mediators] *are to work with the parties to help them stay focused on their problem so they can come to a mutually satisfactory conclusion whatever that might be.* [11/M/B/B]

I am there to help each party reach a satisfactory solution.
[64/M/B/B]

My role is to help them make informed decisions, I control the process; they control the content. [201/F/F/L]

The above statements are in contrast to those below in which respondents did not use “outcome” meanings when describing their role⁵⁵.

My role is to help the parties communicate with each other, to enable them to hear each other and understand each other's positions and perspectives, needs and interests. [205/F/F/L]

[I am] a facilitator who will help parties come to a better understanding of the dynamics leading up to their conflict.
[57/F/C/SS]

My role is to facilitate your negotiation. While I am a professional accountant, I am not acting in that role. From time to time I may provide information, however, my primary role is to help you understand each other by asking appropriate questions. [360/M/F/B]

Outcome and No-outcome Meanings and Contextual Factors

There were a number of contextual patterns in the use of “outcome” and “no-outcome” focused meanings. For example, men (43%) tended to use “outcome” meanings more than women (33%). Community mediators used “outcome” meanings the least often (24%), while workplace mediators used it the most often (50%)⁵⁶. Both veterans (63%) and newcomers (61%) used “no-outcome” meanings more often than “outcome” meanings. The

⁵⁵ Four respondents’ mentioned that “they were not decisions makers” and that “parties decided for themselves”. Reference to “decision making” in these instances was coded as “no-outcome”.

⁵⁶ Workplace mediators were followed by family mediators (40%) then individuals working in the business sector (33%).

same was found in relation to educational background – individuals with law or business (68%) and with social science (59%) backgrounds used “no-outcome” more so than “outcome” focused meanings.

Patterns of difference became stronger when the data were clustered, continuing to support the finding that variations in the meanings attributed to mediation are contextual. To illustrate this point, three-quarters of newcomer men working in the business sector used “outcome” meanings when conceptualizing their facilitator role. Veteran men in the workplace sector also had a strong tendency to use “outcome” focused meanings (68%). Veteran women in this sector and in the family sector were evenly split between “outcome” and “no-outcome” meanings.

This line of inquiry supports the assumption that there is a connection between respondents’ conceptualization of their role as mediators and contextual factors such as gender, background, dispute sector and when respondents began practicing as mediators. The insight that emerged from the analysis is that although the majority of mediators in this study understand their role as one of facilitation, the “facilitator” role does not have the same meaning for everyone. As a general comment and not to stereotype, women mediators tend to conceptualize the “facilitator” role as having to do with “facilitating communication” more than “facilitating process” and they use “no-outcome” meanings to describe this role. On the other hand, male mediators

conceptualize the “facilitator” role as “facilitating process” and they describe the “facilitator” role using “outcome” meanings more than “no-outcome” meanings. These findings of gender difference are not strongly supported in the extant literature as there are mixed views about whether or not men and women perceive and react to conflict differently (see Chapter 2). Further study on the influence of gender and conceptualizations of mediation is needed. One of the notable insights from this analysis is that gender patterns of difference are linked to the length of time respondents are involved in mediation. This suggests that how mediation is understood may change with experience or with age. This is another area needing further investigation.

Another striking finding from the analysis carried out in this chapter is that while mediators may be using the same words they do not always mean the same thing. This is particularly interesting given that the study sample are all trainer-practitioners and they were chosen because of their assumed familiarity with “standard” mediation discourse. How much more different might the conceptualizations of non-trainer mediators be? To investigate further, re-examination of the question in the data collection instrument that asked respondents to define the term that most reflected their orientation to mediation was carried out. The discussion that follows exemplifies this convergence of language and divergence in meaning.

III. Common Words, Different Meanings

As set out in Chapter 2, there are many ways that mediation is understood and acted upon. One of the dichotomies that has been presented locates mediators as being either facilitative or evaluative (Riskin, 1996). According to Riskin, evaluative mediators' approach to mediation is to assess, predict, propose and press for settlement. When I examined how respondents who "label" themselves as having an *evaluative* orientation to mediation defined the term on the questionnaire, I found contrasting definitions within the sample and with the definition given by Riskin. Whereas one respondent focused on the *content* of the mediation session, another respondent focused more on *relations* to define the evaluative orientation; no respondent defined the term evaluative in a similar fashion to Riskin. In the first instance, which emphasized evaluation of content, the evaluative orientation was defined as:

evaluating the positions, attitudes, options, the problems impeding or helping the mediation; carefully evaluating the situation as it unfolds. [32/M/B/L]

In contrast, the other respondent defined evaluative in more relational terms saying that it:

enabled the parties to be self aware, to be aware of perceptions and feelings of others, to look at common goals, to make choices based on all factors. [300/M/C/L]

Continuing with this line of inquiry, a similar comparison with the *facilitative* orientation was carried out. This approach to mediation practice, according to Riskin (1996), is one where the mediator helps parties

understand and define the problems they wish to address as well as facilitate a discussion of underlying interests rather than positions. Contrasting this definition with the ones respondents gave below also displays an overlapping of terms but divergence in meaning. Even with just a cursory look, five different conceptions of the facilitative orientation are apparent – education, settlement, communication, process and self-determination. One respondent accentuated the educational function of the facilitative orientation this way,

[it] starts from the assumption that there is no cookie cutter model that can be superimposed on conflict; it is a field of counseling, no two clients are alike. Teaching mediation as a flexible and educational experience would seek the disputants input in process design, allow the disputants to educate the intervenor and each other about their perspectives, and about ways they can effectively communicate to address issues of significance to them. [143/F/W/SS]

In another case, the facilitative orientation meant creating the opportunity to reach settlement:

the role of the mediator is to provide opportunities for the parties to negotiate their own settlement. [40/F/W/SS]

In this next example of what the facilitative orientation means emphasis is placed on communication:

I facilitate communication and facilitate each party changing how they see the problem. [57/F/C/SS]

For many respondents, the facilitative orientation found meaning in overseeing the process of mediation. To cite one respondent,

[I] guide the process, deal with what comes up around the table, do what's necessary to move on, where movement is frustrated [I] find out why, caucus. [209/F/F/SS]

And finally, as an example of understanding the facilitator role as self-determining one respondent said,

[I] create an environment -- physically and through questions which permit parties to be aware of their own needs to arrive at their own solution. [144/M/C/L]

As further evidence of the insight that the terms used by today's mediators do not always have the same meaning, I looked at the definitions for the *transformative* orientation given by respondents. Bush and Folger's (1994) definition of transformative mediation is one of the more recent and contested found in the literature. In their view, transformative mediation requires that participants in mediation be empowered to resolve their dispute, and be able to recognize what the other party is going through. While some respondents in this study did have similar understandings to those of Bush and Folger, others offered different meanings for the word transformative as evidenced in the following. Some respondents defined transformative as having the potential to change institutional structures; this understanding correlates with understandings of early mediation proponents (Wahrhaftig, 1982; Shonholtz, 1984). The following is a good example of this understanding:

[Transformative mediation provides] the opportunity to transform social process and systems into user-friendly satisfying and empowering experiences. [22/F/C/B]

In another instance, emphasis was placed on the relational aspects of mediation as seen in this comment:

'[I] work on shifting the relationship between the parties [by] seeing each other's pain. [131/M/W/L]

Another meaning attributed to the transformative orientation was directed toward personal transformation. One respondent said:

that the parties involved in the conflict will be transformed in some way by the process of mediation, in the way they may behave in the future (problem-solve, communicate, etc.); from adversarial and confrontational to cooperative and integrate that even worst situations can be transformed into positive outcomes. [271/F/C/SS]

In a fourth instance, a respondent understood transformative as a spiritual event:

the person or people in essence experience a spiritual shift and would look at other conflict situations through different glasses. I as the mediator focus and believe in the essential goodness of the disputants. [312/M/C/L]

To further illustrate, when I examined other definitions of the same term this divergence in meaning continued to be present. While it is not pertinent that I demonstrate all of the variations in terms, I would like to highlight a few more examples. The *settlement* orientation was defined, as might be expected, with an emphasis on resolution,

I help parties resolve their immediate problem. [191/M/B/L]

It was also described in more process-related terms,

process expectations, agenda setting, the sufficiency of information for decision-making, generating options, facilitating professional input, resolutions. [200/M/F/L]

And, it was conflated with the transformation orientation,

it means that my primary focus for mediation is on settlement. I really can't differentiate between the settlement and transformative. I disagree with Folger and Bush that they are either/or. They are in my mind both equally important and appropriate focuses. [360/M/F/B]

Definitions of the term *humanistic* were also varied. In one case a respondent understood this to mean that she should feel what the parties feel

[I] relate to people as individuals with a specific involved interest in their problem and a desire to feel what they feel. [9/F/C/SS]

Another respondent simply defined it as being people focused, "*people relationship oriented*" [243/F/W/SS]. And a third respondent described the humanistic orientation in more global terms,

humanistic means to me that people when they are fully known and honored by themselves for who they are, are divine beings capable of anything. Mediation at its best serves notice to people about who they really are and calls on them to begin to be that in a world that sorely needs them. [282/M/B/L]

What is to be drawn from the confusing usage of these mediation terms, and what are the implications for the field? Perhaps one of the most obvious implications is that we can no longer presume to know what people mean when they talk about mediation. Thus, it will be important to continue to examine, at the micro level, how men and women understand mediation.

And as a follow-up question, how these understandings are reflected in their practice. A further implication of there not appearing to be a common language used by the mediation community is that it complicates the task of setting standards which define what is good mediation and what is not.

Conclusion

The analysis in this chapter suggests that there are many understandings of mediation and that an individual's background, experience and characteristics are shaping understandings of mediation. This may account for some of the ambiguity that surrounds the mediator role and preoccupies the field with debates about a best and a right way to mediate. Although mediation is not usually constructed as a single entity, attempts at drawing out the plurality of practice have not paid sufficient attention to the context within which the act of mediation occurs, or to the contextual experiences of mediators themselves. This work suggests that it is important to do so, and it highlights the need for further study in this direction.

This chapter also brings to the fore the insight that while mediators may use the same language they do not necessarily mean similar things. As the field moves to "professionalize" itself it will be measured on the extent to which it has a defined body of knowledge (Pavalko, 1971), and by default, a defined language system. The need to construct a common language will no doubt draw the attention of those wishing to regulate the field. Understanding

that mediation has a variety of meanings to those that both practice and teach mediation lends insight into the complexities of this task.

In the next chapter differences in meaning continue to be examined. This time how respondents describe their mediation style, why they change their style and how variations in style are linked to contextual factors is the focus of analysis.

Chapter Six

Mediation Styles

Introduction

In this chapter attention is turned from how individuals conceptualize their role as a mediator to how they describe their style of mediation. Once again, of interest were how understandings of style might vary and how they were linked to contextual factors. Divergence in meaning with commonly used terms was also under examination. In this latter quest, a similar pattern to the discussion in Chapter 5 - that respondents did not always attribute the same meaning when using the same word, was found. Differences in how male and female mediators described their style were also striking. Men tended to use more problem-solving characterizations while women used more relational terms. That being said, half of the women and half of the men in this study describe their style as facilitative. Another of the other insights from the analysis of mediator style was that respondents report they typically change their style of mediation depending, for the most part, upon the nature of the parties.

The literature cites many differences in mediation styles that have their basis in an individual's ideological views. Two examples of differing sets of ideologies are represented in the following discussion. Communicative mediators assume that "relationship is the primary context of interest in mediation and that a communication perspective is essential to understanding

the generative synergy of communication and relationship; the interrelation of relationship and communication is a central foci of the mediation process” (Jones, 1994:27). Settlement mediators, on the other hand, operate from an individualist set of ideologies and “want to find a substantive outcome that will result in a deal; substantive matters organize their practice” (Kolb, 1994:471). This emphasis on communication or settlement to distinguish different approaches to mediation has been characterized in various bi-polar typologies that have been discussed throughout this dissertation, most notably in Chapter 2.

The descriptions of mediator styles collected in this study were organized into three broad types for coding purposes: 1) facilitative, 2) problem-solving and 3) relational. The facilitative⁵⁷ style code included responses that emphasized the management of process. The problem-solving style code emphasized the settlement of disputes. Both these style descriptions resemble the settlement style described by Kolb (1994). The relational style code is similar to Jone’s (1994) communicative style as respondents made considerable reference to communication and rapport-building. Similar to the findings in Chapter 5, which examined respondents’

⁵⁷ The “facilitative” style is not to be confused with the “facilitative” role found in Chapter 5. While I would have preferred to use different labels to distinguish style and role, the word *facilitative* was used in the descriptions provided by respondents to questions about role and style to such an extent that it would have been inappropriate to use other labels. This serves to strengthen the conclusion that mediation terms are used interchangeably but with different meanings attached to them.

conceptualization of their role, there is not a single meaning associated with respondents' descriptions of their style.

The majority of the sample indicated that their styles have been influenced by their "experience as a mediator" (90%) and their "life experience" (82%). To a lesser degree, "continuing education and training" (65%), "initial training" (60%), and "professional background" (57%) also influenced the development of their style. This finding is consistent with what has been written about how mediators ground their approach in ideological views (Bush and Folger, 1994), and research which shows that mediators are influenced by past experience, instruction and training (Wall and Lynn, 1993). Religion and experience as a disputant in mediation were deemed to have little or no impact on their style.

While most authors would agree that no mediator is fixed in one approach to the exclusion of the other, there does seem to be a general assumption that individuals can be characterized as having one mediation style which impacts most regularly on their practice choices. This chapter challenges this idea because it shows that, in their minds at least, respondents believe they use different styles of mediation depending upon the circumstances of the conflict situation. One respondent put it this way:

[I] tend to respond to the personalities of the disputants. If I assess they need more structure because of emotions being high I give them structure. If I sense a need to be more

facilitative I will. If my first choice of transformative mediation does not seem to help us move I will settle for settlement.
[312/F/C/SS]⁵⁸

One of the noteworthy findings in this chapter on style is that most (79%) respondents report that they typically use more than one style of mediation. The characteristics of the disputing parties are what most frequently cause respondents to change their style - one third (34%) of responses indicated this reason⁵⁹. Characteristics of disputants include such factors as age, gender, language, human needs, and the number of participants in the mediation session. This finding did not differ when cross-tabulated with gender, educational background, dispute sector or length of time mediating, with one exception. Newcomer males indicated that the “dynamics” (57% of responses) of the mediation session would cause them to change their style; their second most frequently occurring response was “nature of the participants” (43% of responses).

I. Differentiating Mediation Styles

Respondents were asked to describe in an open-ended question format their typical style of mediation. Six coded factors were generated from the responses given by respondents using the method of grounded

⁵⁸ Attribution codes refer to case number/gender/dispute sector/educational background.

⁵⁹ “The next most frequently occurring response was “dynamics” (18% of responses), followed by the “nature of the dispute” (14% of responses), and “impasse” (12% of responses). Dynamics” refers to what is going on in the mediation room, time constraints, communication patterns, and the preparedness of the parties or their counsel. “Nature of the dispute” includes reference to issues

theory. The categories included 1) directive 2) facilitative 3) relational 4) non-directive 5) problem-solving and 6) transformative. A frequency analysis showed that the “facilitative” factor (48% of responses) was by far the most frequently occurring response. It was followed by “problem-solving” and “non-directive” factors (each had 15% of responses). Describing their style as “facilitative” is consistent with many respondents’ description of their role as a mediator.

To increase cell size and enable further analysis of how respondents describe their style of mediation, the six coded factors were recoded into three factors. The new categories became: 1) problem-solving (includes the directive and problem-solving factors), 2) facilitative (includes the facilitative factor), and 3) relational (includes the relational, transformative and non-directive factors). Each of these three styles is described below. It is worth noting at the outset that respondents’ descriptions of their style shows a similar pattern of convergence in language but divergence in meaning to that which was found in the analysis of the facilitative role in Chapter 5.

The Facilitative Style

The majority of respondents who had their definition of style coded as “facilitative” actually used the word *facilitative* in their description, however,

(financial or involving children), purpose of the session, or degree of conflict. “Impasse” refers to the inability to move forward, as well as use of threatening, controlling or other poor behavior.

they did not always attribute the same focus to this style of mediation. In some instances the facilitative style appeared to have an educative goal, in others it was more personally and emotionally attentive, and in still others it had more to do with the management of process. This latter focus on process was included in respondents' descriptions more often than any of the others, suggesting that mediators who describe their style as facilitative understand this style to be one which attends to process. Three examples of defining one's style with process-focused meanings follow:

[I] follow the process which I have first explained; go with the flow afterwards if needed, but always come back to the process to look for common goals; look to the content and the relationship at the same time. [25/F/F/SS]

[I am] facilitative in surfacing issues; challenging (through questions) in exploring the issues; hands off when the parties are dialoguing in non-blaming ways. [230/M/W/SS]

[I am in] control of process but facilitate information sharing and discussion; facilitative, not evaluative but interventionist [267/F/W/SS]

This definition can be contrasted with ones where individuals believe their style to be more emotionally attentive – both in their personal manner and in relation to the parties.

[I] guide process firmly but allow parties to deviate from stated agenda when it means the real issues are outside the agenda; carefully manage the emotional climate and power displays; verbalize my insights; understanding, trust and integrity are goals for me. [41/F/W/SS]

[I am] easy going, relaxed, calm; oftentimes facilitative but ready to be directive [325/M/C/SS]

Two examples of attributing an educative goal to the facilitative mediation style are:

[I am] very facilitative but will educate the parties about choices and alternatives often. [170/M/F/SS]

[I am] an empathetic teacher who is trying to facilitate the students learning [6/M/F/SS]

Then again, some respondents included many of these goals in their description of the style of mediation as evidenced in the following description:

[I am] facilitative. [I] focus on both problem solving and techniques associated with problem solving as well as relationship building and the development of empathy between the parties. [I am] genuine and non-directive. [143/F/W/SS]

It is apparent that for mediators the word “facilitative” has several meanings. In Chapter 5, we saw that it was used to conceptualize the mediator role, and now in this chapter it is being used to describe a style of mediation (Table 22).

Table 22. Contrasting the Facilitative “Style” with the Facilitative “Role”

FACILITATIVE “STYLE”	FACILITATIVE “ROLE”
<p>Process Attention is focused on controlling the process.</p>	<p>Process Attention given to managing process.</p>
<p>Personally Attentive Attention is given to being personally attentive and to dealing with emotions.</p>	<p>Communication Attention given to enhancing communication and understanding between parties.</p>
<p>Educate Attention is given to educating the parties through provision of information and modeling of behaviours.</p>	<p>Resolution Attention given to reaching a settlement and resolution to the dispute.</p>

In conceptualizing their “role” as facilitative, respondents used it to emphasize attending to process, to communication, and to resolution. Similarly, when describing their “style” as facilitative, respondents were also referring to process-related acts. In addition to attending to process, respondents had a tendency to describe their “facilitative” style as being emotionally and personally attentive, and serving an educative function. They talked considerably less about communication and even less, if at all, about resolution. As with role definition, we find diversity in how respondents understand their actions. Looking at what they said, lends further support to the notion that while mediators use similar words, they often mean different things by them.

The Problem-Solving Style

The “problem-solving” style category included reference to problem solving and settlement. The following is an example of a settlement focused problem-solving style.

[I am] settlement based - process related to specified issues on agreed agenda reaching resolution. [200/M/F/L]

Quite interestingly, respondents also combined “problem-solving” with being therapeutic when describing their style.

[My style is a] combination of problem solving and therapeutic -- most of my clients want to find solutions/make decisions and they may want to process some feelings (or doing so helps with solutions.) [354/F/F/SS]

[I am] *problem-solving, solution focused; when necessary will use a more therapeutic approach until parents are ready to mediate issues.* [7/M/F/SS]

The above examples indicate a tendency for respondents to attribute different emphasis regarding the ‘problem-solving’ style. That being said, it does seem true that the emphasis is toward the settlement of problems.

The Relational Style

Respondents who were coded as having a relational style mentioned more “people-focused” activities than “problem-focused” tasks. They may have also made reference to “*magical moments*” in mediation, to *being transformative*, and to *making a personal connection to the parties* in the mediation. Examples of conceptualizing one’s role in relational terms follow.

[I am] *as neutral and balanced as possible, calm, continuously optimistic, curious, focused, inspiring hope, unhurried, trying to find the rhythm and place and space of participants* [101/M/C/SS].

[I am] *conversational, [I] focus on relationship and underlying “wounds”, [I am] low key, [I use] humor when appropriate* [131/M/W/L]

The above two are examples of how respondents understand their style as understand as needing to make a personal connection with the parties. A transformative understanding of the relational style is contained in the following example:

[My style is] *transformative*, [I] *aim to find magical moments where true understanding of the other point of view is reached and where parties passionately suggest they would do things differently next time; build in opportunities for empathy*" [312/F/C/SS].

And finally, having a style that helps parties to understand each other is another emphasis of the relational style:

getting underneath what they say and eliciting meaning, depth, layers and helping them help each other [318//F/B/SS]

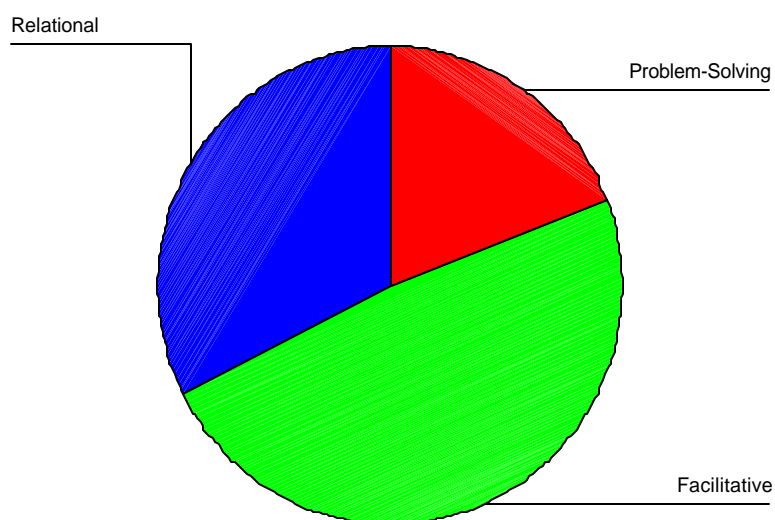
The relational style emphasizes the personal connection between the mediator and the parties to the mediation. It also is attentive to transformation by helping parties achieve understanding.

Looking at these three broad categories of mediator styles leads us to reach similar conclusions to that which has been found in other parts of this dissertation, namely, that there is not a single understanding for many of the words used by mediators. Nor does it appear that only two opposing sets of understandings exist as might be expected based on the extant literature. Examination of how respondents' descriptions of their style are linked to contextual factors is the next item of analysis. It will show that gender, dispute sector and educational background are connected to differences in how mediators conceptualize their role.

Connecting Style to Contextual Factors

Almost half of respondents described their style as “facilitative” (48%), followed by “relational” (33%) then “problem-solving” (19%) (Diagram 11).

Diagram 11: Mediation Styles



Source: C. Picard, *A Survey of Mediation in Canada*, 1998

The majority of men used “problem-solving” concepts to describe their style. The majority of women tended to use “relational” language (Table 23). This finding concurs with Maxwell’s (1992) conjecture that there are male and female mediation styles. That being said, close to half of the men and half of the women in this study described their style as “facilitative”.

Table 23. Gender and Mediation Style

	PROBLEM-SOLVING	FACILITATIVE	RELATIONAL	TOTAL
MALE	69% (11)	43% (17)	37% (10)	46% (38)
FEMALE	31% (5)	58% (23)	63% (17)	54% (45)
TOTAL	100% (16)	100% (40)	100% (27)	100% (83)

83 valid cases; 5 missing cases.

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Analysis revealed that dispute sector also has an association to how respondents describe his or her mediation style. Slightly more than half (52%) of the respondents working in the community sector use “relational” concepts to describe their style. Men (60%) in the community this sector had a slightly stronger tendency to use “relational” concepts than women (50%). Both veterans (56%) and newcomers (55%) in the community sector used relational concepts to describe their style as a mediator. In each of the other three sectors (family, business and workplace) “facilitative” was the more common description of style. This latter tendency was more dominant in the workplace sector (68%) and least dominant in the business sector (40%). Close to half (45%) of family mediators described their style using “facilitative” concepts. When gender and years mediating are added to the equation other factors stand out. For instance, in the business sector almost two-thirds of newcomer men use problem-solving concepts to describe their style, the remainder uses more facilitative language (Table 24). This is in contrast to one-quarter of veteran men who use problem-solving language. They use

more facilitative and more relational concepts to describe their style. Veteran women are more relational than either facilitative or problem-solving, whereas newcomer women used both facilitative and relational language.

Table 24. Mediators Style, Dispute Sector, Experience and Gender

		COMMUNITY	FAMILY	BUSINESS	WORKPLACE	Total
NEWCOMER MEN	Problem-Solving		50% (1)	60% (3)		31% (4)
	Facilitative	40% (2)	50% (1)	40% (2)		39% (5)
	Relational	60% (3)			100% (1)	31% (4)
	Total	100% (5)	100% (2)	100% (5)	100% (1)	100% (13)
NEWCOMER WOMEN	Problem-Solving		20% (1)			5% (1)
	Facilitative	57% (4)	40% (2)	50% (1)	60% (3)	53% (10)
	Relational	43% (3)	40% (2)	50% (1)	40% (2)	42% (8)
	Total	100% (7)	100% (5)	100% (2)	100% (5)	100% (19)
VETERAN MEN	Problem-Solving		33% (2)	23% (3)	40% (2)	29% (7)
	Facilitative		33% (2)	46% (6)	60% (3)	46% (11)
	Relational		33% (2)	31% (4)		25% (6)
	Total		100% (6)	100% (13)	100% (5)	100% (24)
VETERAN WOMEN	Problem-Solving	11% (1)	29% (2)	20% (1)		16% (4)
	Facilitative	33% (3)	57% (4)	20% (1)	100% (4)	48% (12)
	Relational	56% (5)	14% (1)	60% (3)		36% (9)
	Total	100% (9)	100% (7)	100% (5)	100% (4)	100% (25)
	TOTAL	100% (21)	100% (20)	100% (25)	100% (15)	100% (81)

81 valid cases; 7 missing cases.

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Educational background also appears to have an association with style. Whereas one-third (30%) of respondents with law or business backgrounds used “problem-solving” language, one third (35%) of

respondents with social science backgrounds used “relational” language to describe their style. That being said, both groups used “facilitative” concepts the most often.

As has just been seen, differences in respondents’ descriptions of their style are linked to gender, sector and educational background. As a general comment and not to stereotype, women working in the community sector and those with social service backgrounds tend to conceptualize their style of mediation to be “relational” more so than other groups. These findings are not surprising given what sociological studies of gender say about the relational nature of women (Gilligan, 1982). Others have also written that women are inclined to enhance integration between disputants (Dewhurst and Wall, 1994), that there are gendered perceptions of the mediator role (Weingarten and Douvan, 1995), and that there are male and female mediation styles (Maxwell, 1992).

II. The Use of Caucus

Carrying on with this discussion of mediation style, one of the distinguishing and contested characteristics of a mediator’s style today is the extent to which they hold private meetings, called caucuses, in relation to joint sessions. It seemed prudent in this analysis of mediator styles to ascertain differences in respondents reporting on their use of caucus, as well as links to the four contextual factors used throughout this research.

The value of using caucus sessions is a subject of controversy (Pruitt, 1995), and various writers have touched upon reasons for, and against, the use of private sessions (Blades, 1984; Kolb, 1983; Markowitz and Engram, 1983). Some mediators prefer to hold most of the mediation in caucus because they believe that parties will be freer to speak, that it helps to keep emotions from escalating, and that they can be more directive in moving parties to an agreement. Other mediators keep the parties together for as long as possible and use it as a strategy only when parties appear stuck and unable to move forward in the negotiation process. Still other mediators discourage any use of caucus because they believe it denies the parties the opportunity to learn to engage in creative discussion of their differences and joint problem-solving. A good example of these differences is that, whereas labor mediators caucus with the parties as a strategy to build trust, family mediators avoid the use caucus for fear that private meetings would create mistrust (Markowitz and Engram, 1983). This next section looks at how the use of caucus might be connected to differences in how mediators understand their role, and to how they describe their style.

Frequency of Caucus, Role and Style

The majority (88%) of respondents use a caucus model of mediation. Groups with the highest incidence of reporting they “frequently” caucus (as

opposed to “rarely” or “occasionally”) include men (38%)⁶⁰, especially newcomer men (55%); respondents with law or business backgrounds (35%)⁶¹, and those in the business sector (50%)⁶². When contextual variables are clustered, other patterns emerge⁶³ (Table 25). The business sector is the only sector where both newcomer and veteran men and women “frequently” caucus. In the workplace sector we find the reverse – both veteran and newcomer men and women report that for the most part they caucus “rarely”.

Table 25. Frequency of Caucus by Clusters

SECTOR	NEWCOMER MEN	VETERAN MEN	NEWCOMER WOMEN	VETERAN WOMEN
FAMILY	R 50% O F 50% (n2)	R O 75% F 25% (n4)	R 40% O 60% F (n5)	R 17% O 83% F (n8)
BUSINESS	R O 25% F 75% (n4)	R O 50% F 50% (n2)	R 9% O 55% F 36% (n11)	R 20% O 20% F 60% (n5)
WORKPLACE	R 100% O F (n1)	R 50% O 50% F (n4)	R 40% O 20% F 40% (n5)	R 75% O F 25% (n4)
COMMUNITY	R 33% O 33% F 33% (n3)	R 43% O 57 F (n7)	R O F (n0)	R O 86% F 14% (n7)

Code: R=rarely; O=occasionally; F=frequently. 72 valid cases; 16 missing cases.

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

⁶⁰ Eighteen percent (18%) of women said they caucus “frequently”.

⁶¹ This is in contrast to nineteen percent (19%) of respondents with social science backgrounds.

⁶² The breakdown in the other sectors is workplace (21%), family (12%) and community (12%).

⁶³ While the cell size in the clustered groups is small, the patterns that do emerge are worth noting and exploring in future research.

The use of caucus is also connected to how respondents understand their role. More than half (57%) of mediation trainer-practitioners who report that they caucus “frequently” understand their role as “facilitating process”. The same is true for those who (46%) who caucus “occasionally”. Individuals who “rarely” caucus understand their role as “facilitating communication” (39%), or “facilitating communication and process” (39%).

There is also a connection between frequency of caucus and reported descriptions of style (Table 26). Of those respondents who say they “rarely” caucus, two-thirds describe their mediation style as “facilitative”. They were followed by respondents who describe their style using more “relational” terms. Respondents who caucus “occasionally” also describe their style as “facilitative” and “relational”. Respondents who caucus “frequently” are mixed in the use of concepts to describe their style. They are also the only group to use “problem-solving” terms when describing their style of mediation.

Table 26: Mediator Style and Frequency of Caucus

STYLE	RARELY	OCCASIONALLY	FREQUENTLY	TOTAL
PROBLEM-SOLVING	7% (1)	15% (5)	37% (7)	19% (13)
FACILITATIVE	67% (10)	47% (16)	32% (6)	47% (32)
RELATIONAL	27% (4)	38% (13)	32% (6)	34% (23)
TOTAL	100% (15)	100% (34)	100% (19)	100% (68)

68 valid cases; 20 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

These findings show that mediators who report that they caucus “frequently” have a tendency to define their “facilitative” role as “facilitating process” and to describe their style of mediation as “problem-solving”. On the other hand, individuals who “rarely” caucus are more apt to describe their “facilitative” role as “facilitating communication” and describe their style as “facilitative”. It can be drawn from this that respondents use caucuses more frequently if they see mediation as a problem solving process than if they see it as a vehicle for improving communication. This conclusion is consistent with distinctions made in the literature about problem-solving approaches versus communicative approaches. This discussion moves to why individuals call a caucus and how this relates to contextual factors.

Reasons for Calling a Caucus and Contextual Factors

Respondents report that they use a caucus for three general purposes: 1) to generate information (50% of responses), 2) to manage the mediation process (34% of responses) and 3) to deal with emotions and safety issues (17% of responses)⁶⁴. Unlike Markowitz and Engram’s (1983) findings, which compared labour dispute mediation with divorce mediation, mediators in this study did not mention building credibility and trust with the parties as a reason to caucus. Both men (74% of responses) and women (70% of responses)

⁶⁴ The category “manage process” includes reasons such as breaking impasse, confronting parties and improving communication. “Emotional issues” includes reference to power and safety concerns, as well as emotions. “Generating information” included reference to checking-in with parties, gathering, providing and clarifying information, as well as parties requesting to meet with the mediator.

said that they mostly caucus to “generate information”. They also reported that they caucus for different reasons. Close to half (40%) of the responses given by women indicated that they caucus for “emotional or safety issues” while only six percent (6%) of men’s responses indicated this as a reason they call a caucus; men are more likely to caucus to “confront parties” (38% of responses).

Both veterans (80% of responses) and newcomers (60% of responses) say they caucus to “generate information” (Table 27). Newcomer men, however, said that they would caucus to “manage the mediation process” (68% of responses). Veteran men (86% of responses) and women (74% of responses) as well as newcomer women (65% of responses) say they caucus to “generate information”.

Dispute sector is linked to why individuals use caucus. Community (71% of responses) and family (56% of responses) mediators say they caucus to “manage process”, whereas business (96% of responses) and workplace (77% of responses) mediators report that they caucus primarily to “generate information”. As might be expected given the nature of the cases they mediate, family mediators more so than any other sector report that they caucus to deal with “emotional issues”.

Educational background is also connected to their use of caucus. The most frequently occurring response in each of the three educational contexts was “information generating”. Individuals with social science backgrounds were, however, more likely to caucus for “emotional or safety issues” (36% of responses) than individuals with law (13% of responses) or business backgrounds (9% of responses). This latter finding is linked to gender. More of the responses from women (50% of responses) with social science backgrounds indicated that they would caucus for “emotional or safety issues” than responses from men with law (7% of responses) or business (0%) backgrounds. That being said, women with social science backgrounds (50% of responses) commented more frequently that they would caucus for “emotional or safety issues” reasons than women from the legal (22% of responses) or business sectors (20% of responses).

Table 27. Reasons for Calling a Caucus

REASONS TO CAUCUS	GENDER	DISPUTE SECTOR	EDUCATIONAL BACKGROUND	EXPERIENCE
PROCESS	Men	Community Family		Newcomer Men
GENERATE INFORMATION	Both	Workplace Business	Business Law Social Science	Newcomers Veterans Newcomer Men Newcomer Women
EMOTIONAL AND SAFETY ISSUES	Women	Family	Social Science Women	

Source: C. Picard, A Survey of Mediation in Canada, 1998

Conclusion

Mediators in this study describe their style of mediation differently, and these differences are linked to contextual factors. Male respondents have more of a tendency to use “problem-solving” concepts to describe their style of mediation while women respondents use more “relational” terms. “Relational” language is also more prevalent among community mediators; respondents working in the other three sectors tended to describe their style as “facilitative”. Respondents with law or business backgrounds used more “problem-solving” concepts to describe their style, while those with social science backgrounds used more “relational” terms.

Mediators also claim that their style changes depending, for the most part, on the parties, and to a lesser extent, the nature of the dispute, and the dynamics in the room. One might conclude from this finding that we may be able to predict an individual’s mediation style if we know the profile of the mediator and their clients. Further exploration of this conclusion is beyond the scope of this study. This topic would, however, make for an interesting area of study for another project. This insight is likely to be of use to mediation consumers wanting to engage the skills of a mediator. It is also useful information to those who assign cases to mediators. Furthermore, the information may be of use to policy makers assigned the task of deciding who can and cannot mediate in particular forums. On the other hand, finding that mediators try to accommodate different dimensions in a mediation session

might suggest that rigid guidelines about the form of mediation should not be created. Instead, it might be best to affirm the diversity of mediation practices in order to encourage that mediation services are available for a range of conflict situations and for individuals from different cultures, socio-economic classes, as well as other social groups.

In the following chapter, a framework for understanding mediation is presented. This framework was developed from the data relating to mediators' roles, orientations and styles presented in Chapters 5 and 6. This data was then organized on a matrix table (Appendix B). Chapter 7 discusses how the contextual variables interact with each other. It concludes that an individual's understanding of mediation has advanced beyond the bipolar descriptions often presented in the literature. This suggests that more elaborate analytical tools are needed to understand the increasingly complex nature of mediation.

Chapter Seven

A Framework for Understanding Mediation

Introduction

As others have quite ably set out, there are many ways to mediate (Kressel, 1972; Silbey and Merry, 1986; Bush and Folger, 1994; Kolb and Associates, 1994; Riskin, 1994). This study too reveals varied perspectives on how mediators understand mediation. Unlike the extant literature, which posits patterns of practice within dualistic indicators, this research reveals at least four interrelated patterns of understanding. Suggesting that mediators in this study do not understand their work as having only one or another set of meanings. In fact, it seems they draw on a range of meanings to conceptualize their work. While these patterns of understanding do involve poles, this research suggests these poles do not have entirely separate traits. Instead, the patterns contain elements of the same traits. In other words, mediators draw from both ends of the poles to varying degrees to conceptualize the practice of mediation. Throughout this dissertation it has been argued that mediation is complex and varied and that it is no longer sufficient to view it in dichotomous representations. In this chapter a broader framework for understanding mediation is presented.

To make comparisons, detect patterns and draw conclusions about the meanings mediators give to their work, the relations among a number of variables were organized into a matrix table (Appendix B) using a variable-

oriented approach (Miles and Huberman, 1994:91). The variables included were taken from the coded responses to questions found in *Section B: Mediation - The Practice* of the research instrument (Appendix A) used in this study. This section of the questionnaire was designed to gather information on the practice of mediation as understood by mediation trainer-practitioners in Canada. Instructions at the beginning of the section encouraged subjects to respond to each question based on what he or she actually did as a mediator and not what they thought others might do. Furthermore, when answering each question respondents were directed to reflect on situations in the area where they most often mediated as well as indicate which area this was. While it is not possible to be certain if respondents complied with this request, the fact that all but two of the sample listed a sector led me to assume that most had done as directed. Moreover, the first question respondents were asked to complete in *Section A* of the instrument asked that they indicate the dispute area where they had mediated most often during the past two years. These two questions were used to assign respondents to a particular sector for analytical purposes and lend confidence to the analysis of variation within and across the four dispute sectors used in this study.

Included in the matrix table were questions in which subjects had been asked to describe their role, style and orientation of mediation, along with questions about the use of caucus, beliefs about mediation, and coded

responses to the vignette questions using Waldman's (1996) social norm typology. The combination of responses in the display table was then used to determine a pattern of mediation meaning for each respondent.

As might be expected there is a tendency for groups⁶⁵ of individuals to use similar concepts to describe their approach to mediation. Less expected was the extent to which different concepts were used within each group, and more surprisingly, by individuals. This suggests that individuals and groups of individuals do not use only one set meanings to define their work. Some of this diversity in meaning may be accounted for by the growth and expansion of mediation into new dispute arenas over the past decade or more (Chapter 2). It is also likely a reflection of the diversification of professionals now working as mediation practitioners. As well, the emergence of mediation as a new profession (Chapter 3) has created an increasing amount of literature that posits both expanding and contrasting theories of mediation practice. That mediators appear to be diversified and flexible in their understandings of mediation suggests that the field may be becoming more flexible and diversified. If this is true, it may well be that it would be premature to designate what mediation is, and is not, for fear of restricting this diversity. It may also be that a singular definition of mediation is not possible or even

⁶⁵ Group refers to a clustering of individuals with similar characteristics such as those who work in the same dispute sector, are of the same gender, educational background or are considered to be newcomers or veterans based on the number of years they have been mediating.

desirable. Furthermore, it suggests that we may need new analytical tools to make sense of the patterns of meaning within and among groups of mediators.

The framework for understanding mediation that was constructed from the matrix table is comprised of four distinct patterns of mediation meanings. These patterns represent clusters of mediation traits, based on coded responses to a number of questions, which interact differently to produce the distinct patterns. It is important to stress that these patterns are not monolithic blocks and can be better understood as heuristic devices upon which to make comparisons more than absolute or rigid generalizations. The framework should also not be viewed as a linear progression or even a continuum that posits one against the other. In fact, a major insight from this dissertation is finding that it is problematic to depict approaches to the practice of mediation through dichotomous classification schemes as is often found in the literature⁶⁶. Understanding mediation and its complexities requires more than contrasting the opposites. It requires that the integrative nature of mediation be recognized. It also requires that we look for traits of mediation and patterns of interaction that do not locate individuals entirely at one or another pole of a dichotomy. Taking an integrative approach enables

⁶⁶ Some classification systems include broad versus narrow and facilitative versus evaluative (Riskin, 1994); problem-solving versus transformative (Bush and Folger, 1994); bargaining versus therapeutic (Silbey and Merry, 1986); settlement and communicative (Kolb and Associates, 1994).

one to glimpse a fuller range of understandings within the practice of mediation.

I. An Integrative Framework for Understanding Mediation

Simply put, an integrative framework moves beyond binary thinking. It builds upon previous findings in this study which show that mediators, and their understandings of mediation practice, are diverse. An integrative framework seeks to recognize these differences and the variations in patterns of difference. It accepts that dualistic notions of mediation are present, however, it argues that such representations are no longer sufficient for understanding the complexities of mediation practice. In fact, dualistic notions often serve to hide the diversity within mediation.

To gain insight into how mediators understand and give meaning to their work (and thus shape the practice of their work⁶⁷), an analytical tool that identifies traits of mediation meanings and patterns of interaction among these traits is presented. This tool was constructed from the compilation of responses to questions about how respondents understood their role, style and orientation to mediation and how they responded to five vignette questions. The compilation of their answers showed four distinct patterns of

⁶⁷ A number of sociological theorists stress that action is intentional and can be understood by examining meanings and motives (Weber, 1962). They hold that our conceptual construction of action shapes our practice (Bourdieu, 1987), and that the concepts we hold enter constitutively into what we do (Giddens, 1993). This study has, however, made no attempt to examine the correlation between meaning and performance.

meanings about mediation. These combinations of interactions were labeled the “pragmatic”, the “socioemotional”, the “pragmatic-socioemotional”, and the “socioemotional-pragmatic”, patterns⁶⁸.

Defining the Framework

Individuals who have a highly “pragmatic” pattern of meaning tend to define their orientation to mediation with words such as *settlement*, *evaluative* and *directive*. For the most part, they understand their role to be that of helping parties to achieve a resolution to their dispute. Based on the language they use, they appear to be task-focused and problem-oriented. Mediators who use highly “pragmatic” patterns of meaning report that they caucus frequently. Furthermore, they attend to social norms in their mediation practice by using a norm-advocating style⁶⁹.

Mediators with a highly “socioemotional” pattern of meaning express their orientation to mediation practice with terms such as *humanistic*, *transformative*, and *relational*. They understand their role to be that of helping parties to communicate and better understand each other. In

⁶⁸ Considerable time was given to finding the “right” words to define these categories. And, while they are still perhaps not the “best” words they were chosen based on my interpretation of the meanings associated with responses to the research questions. Confidence in their usage was gained after numerous discussions with respected colleagues as well as individuals less familiar with mediation. The general consensus was that while these terms were not “perfect” they did reflect what was being constructed. The term socioemotional was borrowed from Kressel and Pruitt (1989:421), however, it is being used in a broader sense than was depicted by them.

mediation they describe themselves as being more focused on the people than on the problem at hand. Mediators with “socioemotional” patterns are attentive to emotions. They say they rarely caucus, and they attend to social norms in mediation by using a norm-generating⁷⁰ style.

It is important to stress that classifying a mediator’s pattern of meaning as highly “pragmatic” does not mean they have no “socioemotional” traits, or vice versa. In fact, the data would suggest that traits from one pattern are present to a more or lesser degree in each of the other patterns. It seems that as the field has developed the tendency for mediators to move back and forth between patterns of meaning has increased and is connected to the nature of the parties and the nature of the dispute, as well as their training and experience.

Individuals classified as leaning toward the “pragmatic-socioemotional” and the “socioemotional-pragmatic” patterns use a more evenly distributed mixture of concepts when describing their role, style and orientation to mediation. For example, in one question they might use terms that would be classified as “pragmatic” then in another question use terms that would be coded as “socioemotional”. The “socioemotional-pragmatic” pattern includes

⁶⁹ Norm-advocating, as a mediation is one in which a mediator weighs disputant autonomy against social norms in order to ensure that any agreement reached concords with relevant social norms. See Waldman (1996:735) for a more elaborate discussion of the social-norm model of mediation.

individuals who were found on the matrix table to use more “socioemotional” terms than “pragmatic” terms. The reverse is the case for the “pragmatic-socioemotional” pattern. In both patterns, mediators report that they caucus occasionally, and they attend to social norms by primarily using a norm-educating⁷¹ style of mediation.

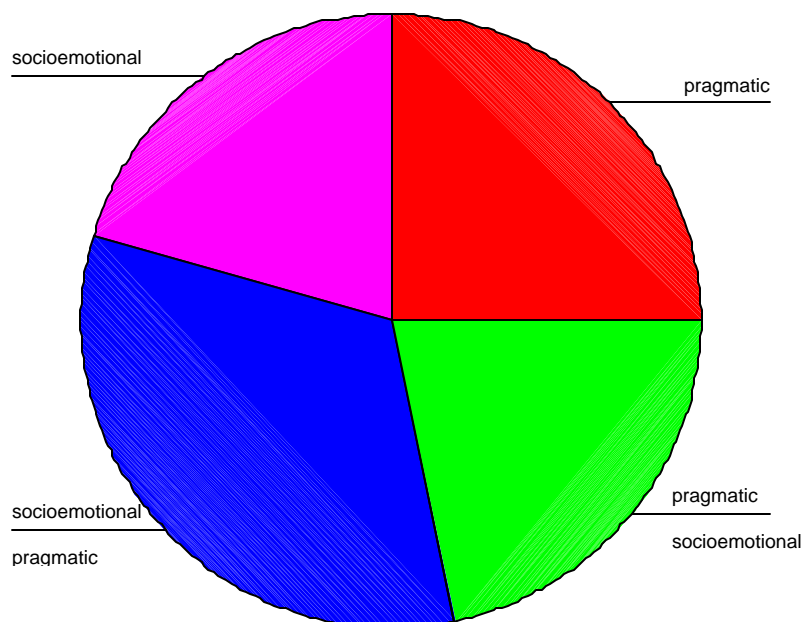
This study is not concerned with “proving” that these patterns of meanings exist. That few respondents described their work using only one pattern of meaning and that larger groups of individuals did not use a single set of meanings is considered to be of greater importance. This finding raises two important questions for future research. How prevalent is it for mediators to use more than one pattern of meaning when describing their work? And, how is this flexibility in the use of mediation concepts carried over into the practice of mediation? A question that is addressed in this research looks at how patterns of mediation meanings are linked to contextual factors such as gender, educational background, the dispute sector in which respondents work, and the length of time they have been mediating. Before reporting on these findings it is worth noting that respondents in this study were relatively evenly split between the “pragmatic” and the “socioemotional” poles having only a slight tendency toward the “socioemotional” pole. The distribution for

⁷⁰ The hallmark of a norm-generating approach is its deliberate inattention to social norms. It seeks to ensure parties have maximum control over the outcome of their dispute – autonomy dictates the mediation structure (Waldman, 1996:733).

⁷¹ The norm-educating model is premised on the belief that knowledge of social norms is a precondition to autonomous decision making (Waldman, 1996:734).

the four patterns of mediation meanings is as follows: pragmatic (25%), socioemotional (21%) pragmatic-socioemotional and (22%), socioemotional-pragmatic (33%) (Diagram12).

Diagram 12: Patterns of Meanings



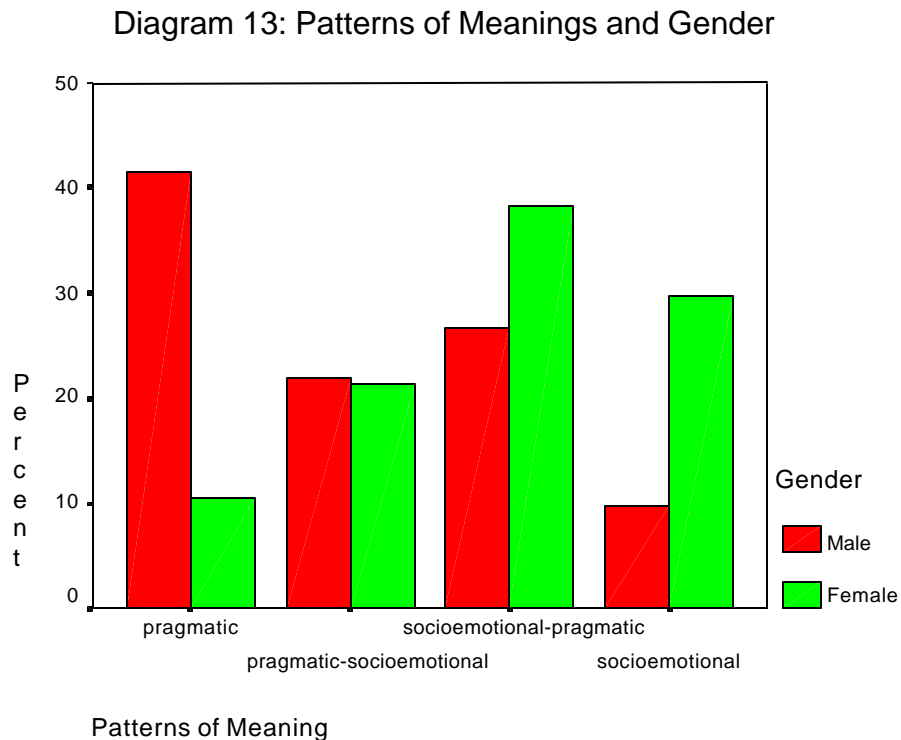
Source: C. Picard, *A Survey of Mediation in Canada*, 1998

II. Connecting Patterns of Meaning to Contextual Factors

This next section examines patterns of meaning at a basic level followed by an examination of clusters of contextual variables.

Gender

On the whole, women tend to use more “socioemotional” patterns of meaning while men tend to use more “pragmatic” traits to describe mediation. Close to half (42%) the men in the study group were categorized as highly “pragmatic” followed by one-quarter (22%) who were coded as “pragmatic-socioemotional”; less than ten percent (10%) of men were coded as highly “socioemotional”. This is in contrast to one-third (30%) of the women respondents who were coded as highly “socioemotional” (30%) and another third (38%) who were coded as “socioemotional-pragmatic”; only eleven percent (11%) of the women were highly “pragmatic” (Diagram 13). There does not appear to be any real change to this pattern if respondents are newcomers or veterans.



Educational Background

Half of the respondents with backgrounds in business were found to use highly “pragmatic” patterns of meanings. Others with the same background were evenly split between the “pragmatic-socioemotional”, “socioemotional-pragmatic”, and “socioemotional” patterns (15% each). Men with business backgrounds had highly “pragmatic” tendencies (Table 28). The women, however, tended to use more “socioemotional-pragmatic” and “socioemotional” traits. One-third of individuals with law backgrounds used “pragmatic” concepts while another third used “socioemotional-pragmatic” concepts. The others were split between the pragmatic-socioemotional” and socio-emotional patterns of mediation meanings.

Table 28: Patterns of Meaning, Educational Background and Gender

	PATTERNS OF MEANING	LAW	SOCIAL SCIENCE	BUSINESS	TOTAL
MEN	Pragmatic	44% (7)	24% (4)	75% (6)	42% (17)
	Pragmatic-socioemotional	19% (3)	29% (5)	13% (1)	22% (9)
	Socioemotional-pragmatic	25% (4)	41% (7)		27% (11)
	Socioemotional	13% (2)	6% (1)	13% (1)	10% (4)
	Total	100% (16)	100% (17)	100% (8)	100% (41)
WOMEN	Pragmatic	20% (2)	6% (2)	20% (1)	11% (5)
	Pragmatic-socioemotional	20% (2)	22% (7)	20% (1)	21% (10)
	Socioemotional-pragmatic	50% (5)	34% (11)	40% (2)	38% (18)
	Socioemotional	10% (1)	38% (12)	20% (1)	30% (14)
	Total	100% (10)	100% (32)	100% (5)	100% (47)

88 valid cases; 0 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

There is also a convincing difference between male and female lawyers (Table 28). Whereas almost half of the male lawyers were coded as highly pragmatic, less than one-quarter of the women fell into this category. The majority of women lawyers were found to be “socioemotional-pragmatic”. Respondents with social science backgrounds had mixed tendencies - slightly more than one-third (37%) used “socioemotional-pragmatic” patterns of meaning and another quarter (27%) used “socioemotional” concepts. One-quarter (25%) used “pragmatic-socioemotional” concepts while only twelve percent (12%) used “pragmatic” patterns of mediation meanings. The majority of men and women in this sector were found to be either “socioemotional-pragmatic” or “socioemotional”.

To encapsulate, men with business backgrounds tend to be highly “pragmatic”, as do men with law backgrounds (Table 29).

Table 29. Summary: Patterns of Meaning, Educational Background, Gender

	LAW	SOCIAL SCIENCE	BUSINESS
MALE	Pragmatic	Socioemotional-Pragmatic	Pragmatic
FEMALE	Socioemotional-Pragmatic	Socioemotional	Socioemotional-Pragmatic

That is not the case for men with backgrounds in the social sciences. They tend to use “socioemotional-pragmatic” patterns of meanings. Women lawyers and women with backgrounds in business were found to use

“socioemotional-pragmatic” patterns of meanings while women with social science background largely used “socioemotional” concepts.

These findings suggest that an individual’s approach is connected to his or her educational background and gender. While some scholars believe that gender influences negotiation strategies (Watson, 1994; Gray, 1994; Kolb, 1994), differences in how men and women mediate have not been broadly discussed. Further research is needed to socially identify the extent and pattern of gender differences.

Dispute Sector

In the workplace sector both men and women use predominantly socioemotional patterns of meaning (Table 30). There is no difference to this finding if respondents are veterans or newcomers to the field, nor is there a difference based on his or her educational background.

Table 30. Summary: Patterns of Meaning, Dispute Sector and Gender

	COMMUNITY	FAMILY	BUSINESS	WORKPLACE
MALE	Socioemotional-Pragmatic	Pragmatic	Pragmatic	Socioemotional
FEMALE	Socioemotional-Pragmatic	Pragmatic-Socioemotional	Socioemotional-Pragmatic	Socioemotional

Respondents working in the business sector use highly “pragmatic” patterns of meaning (42%) when describing their work as mediators. This may in part be due to the fact that two-thirds of them are men, and men in this study tend

to use more “pragmatic” concepts whereas women tended to use more “socioemotional traits. Individuals in the workplace sector use highly “socioemotional” (44%) concepts. This is also not surprising when we recall that mediators in this group do human rights and harassment mediations where relational issues are central, as well as labour management and organizational disputes. More than half (55%) of the mediators who work in the community sector use “socioemotional-pragmatic” concepts to describe their approach to mediation. As a group, family mediators use more mixed concepts in their description of roles, styles, and orientations, although they do have a slight tendency toward “pragmatic-socioemotional” patterns of meaning (32%). There is also a tendency for male family mediators to use “pragmatic” concepts more than their female counterparts (Table 26).

In the business sector the influence of gender is especially apparent (Table 31). Whereas, half of men in the business sector were coded as using highly “pragmatic” concepts, few women in the same sector used highly “pragmatic” concepts. The majority used “socioemotional-pragmatic” patterns of meaning. Thus, women working in the business sector in this sample tend to define their work using more socioemotional than pragmatic patterns of meaning. The reverse is true of men in the business sector.

Table 31: Patterns of Meanings, Dispute Sector and Gender

	PATTERNS OF MEANING	COMMUNITY	FAMILY	BUSINESS	WORK PLACE	TOTAL
MALE	Pragmatic	17% (1)	44% (4)	56% (10)	14%	40% (16)
	Pragmatic-socioemotional	33% (2)	22% (2)	22% (4)	14%	23% (9)
	Socioemotional-pragmatic	50% (3)	33% (3)	17% (3)	29%	28% (11)
	Socioemotional			6% (1)	43%	10% (4)
	Total	100% (6)	100% (9)	100% (18)	100% (7)	100% (40)
	FEMALE	Pragmatic	6% (1)	15% (2)	13% (1)	
Pragmatic-socioemotional		6% (1)	39% (5)	25% (2)	22% (2)	22% (10)
Socioemotional-pragmatic		56% (9)	15% (2)	50% (4)	33% (3)	39% (18)
Socioemotional		31% (5)	31% (4)	13% (1)	44% (4)	30% (14)
Total		100% (16)	100% (13)	100% (8)	100% (9)	100% (46)

86 valid cases; 2 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998*Length of Time Mediating*

Newcomers to mediation tend to be slightly less pragmatic in how they understand mediation than veterans (Table 32).

Table 32: Length of Time Mediating

	Newcomers	Veterans	
Pragmatic	22%	28%	25% (n22)
Pragmatic-socioemotional	18%	24%	22% (n19)
Socioemotional-pragmatic	39%	28%	32% (n28)
Socioemotional	21%	20%	21% (n18)
Total (n)	100% (n33)	100% (n54)	100 (n87)

87 valid cases; 1 missing case

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

To sum up this section on the connection between contextual factors and traits of mediation meanings, this research shows that women mediators tend to use more “socioemotional” traits while men tend to use more “pragmatic” traits when describing mediation. This finding of gender difference appears consistent with other analyses of gender differences in social thought and behavior (Gilligan, C, 1982; Tannen, 1990) and more specifically in relation to conflict and mediation (Taylor and Beinstein Miller, 1994; Weingarten and Douvan, 1985). Similar to the findings in this study, their studies showed that men tended to focus on task aspects while women were more sensitive to feelings and emotions. Social scientists are not suggesting that only one, or the other, gender practices particular sets of skills and strategies. Rather, they are saying that gender tendencies in the selection of goals and styles of behaviour exist based on ones’ view of a problem. To illustrate this point, Weingarten and Douvan (1985) found that male mediators tended to construct their role as instruments of a process aimed at seeking solutions while female mediators emphasized the process of coming to understand the parties and acceptance of difference more so than reaching agreement. Although no definitive conclusions can be drawn from either this research or the Weingarten and Douvan study, the implication from both studies is that men and women mediators tend to have different conceptualizations of mediation practice. Of course it is also possible that this difference is a reflection of how men and women are positioned in their area of work.

In addition to gender differences in the use of mediation patterns of meaning, this research also found that individuals with backgrounds in business used more “pragmatic” concepts to conceptualize mediation than those with law or social science backgrounds. And linked to this, respondents working in the business sector tend to use more “pragmatic’ concepts than individuals in any of the other sectors.

Patterns of Meaning, Clusters of Factors, and Experience

When patterns of meaning by clusters of contextual factors are examined, some interesting observations present themselves (Table 32).

Table 33. Patterns of Meaning by Clusters of Factors

SECTOR	NEWCOMER MEN	VETERAN MEN	NEWCOMER WOMEN	VETERAN WOMEN
FAMILY	P 50% SE-P 50% (n2)	P 43% P-SE 29% S-EP 29% (n7)	P 20% P-SE 40% S-EP 20% SE 20% (n5)	P 13% P-SE 38% S-EP 13% SE 38% (n8)
BUSINESS	P 60% P-SE 20% S-EP 20% (n5)	P 54% P-SE 23% S-EP 15% SE 8% (n13)	S-EP 100% (n2)	P 17% P-SE 33% S-EP 33% SE 17% (n6)
WORKPLACE	SE 100% (n1)	P 17% P-SE 17% S-EP 33% SE 33% (n6)	P-SE 20% S-EP 20% SE 60% (n5)	P-SE 25% S-EP 50% SE 25% (n4)
COMMUNITY	P 17% P-SE 33% S-EP 50% (n6)	 (n0)	S-EP 71% SE 29% (n7)	P 11% P-SE 11% S-EP 44% SE 33% (n9)

Code: P-pragmatic; P-SE–pragmatic-socioemotional; SE-P-socioemotional-pragmatic; SE-socioemotional
86 valid cases; 2 missing cases

Source: C. Picard, *A Survey of Mediation in Canada*, 1998

Notably, over time both men and women become more diversified in how they understand mediation. This is especially apparent for men mediating in the workplace sector.

Whereas all newcomers in the workplace sector conceptualized mediation using only “socioemotional” patterns of meaning, veterans used all four patterns of meaning to conceptualize mediation. As well, veteran men in the business sector used more highly “socioemotional” concepts, and veteran men in the family sector used more “pragmatic-socioemotional” patterns of meaning. There were no veteran men in the community sector to compare with newcomers. When describing mediation, veteran women in the community and workplace sectors use “pragmatic” concepts more often than newcomers. In the family and business sectors the pattern is the reverse. Veteran women use highly “socioemotional” concepts to describe their work more than newcomers. Over time women in each of the four sectors exhibit more diversified understandings of mediation.

What does this mean? Firstly, it leads us to conclude that over time mediators in this study seem to become more diversified in their understandings of mediation⁷². Women working in the community sector

⁷² It may be that this diversification in understandings of mediation is not a pattern of maturation but instead reflects differences in generational attitudes. For instance, veteran mediators may have been trained differently or with a different set of ideologies. They may have always had a different perspective of mediation from newcomers, and thus have not significantly changed as they matured as mediators. Exploration of this topic would make for “next-step” research project.

come to have more “pragmatic” understandings, as do both men and women in the workplace sector. In turn, women and men in the business sectors come to have more “socioemotional” understandings. In the family sector, women also come to have more “socioemotional” understandings while men come to have more “pragmatic” understandings. Speculating on the reasons for this, it may be that respondents have been exposed to more literature on mediation. They may have taken courses from trainers with different views. Or, their experiences as mediators may lead them to think more broadly about their work. It may also be that as mediators have more encounters with mediation they expand their mediation approach to enable them to respond to a variety of conflicts and clients. All good reasons to encourage that mediation continue to be broadly defined. A further observation is that these findings suggest something different than what Silbey and Merry (1986) tell us. They say that over time mediators become more pronounced in one style of mediation. Whatever might be found about their behaviours, in their minds at least respondents appear to broaden and diversify in their approach to mediation. In light of the small sample size, these findings cannot be generalized. There is, however, a distinct enough pattern to encourage future research to examine whether the pattern extends to the general population, and whether over time it is true that mediators become more diversified in their mediation practices. It would also be prudent to examine this question using other contextual factors, such as class, race, age, to name but a few.

Conclusion

This chapter draws the reader's attention to the amount of variety within respondents' understandings of mediation, and to how, over time or across generations, these understandings become increasingly diverse. Up until now, the extent of this diversity has been hidden in dichotomous modeling found in much of the extant research. Based on these bipolar descriptions of mediation we might expect to find two sets of understandings based on opposing views about mediation. In contrast to dualistic notions of what mediation is, this study found combinations of patterns of interaction suggesting that mediators draw on a range of mediation meanings to understand their work. It also showed that mediators were not restricted in the discourse they used. Thus, implying that it may be overly simplistic to locate meanings of mediation in one or another ideological camp. This research also shows that certain patterns of mediation meanings are connected to internal and external factors including gender, educational background, the dispute sector in which respondents work and the length of time they have been working as mediators.

Conceptualizing mediation as a dichotomous phenomenon where individuals who work as mediators are located at opposite poles may be misleading. It seems increasingly important that those who work as mediators be able to communicate to others how they understand (and in turn respond) to conflict, especially in light of the development and expansion of

mediation. It will be equally important for users of mediation to be able to comprehend the differences in types of mediation practice and types of mediators to ensure they have the best chance of having their needs met. Mediation is at a point in its development when it is constructing a language and system of knowing. Understanding how patterns of meaning relate to mediators' actions and how patterns of meaning are connected to other contextual factors will be important questions to pursue in future research.

If mediators want to improve their practice, regardless of whether or not they want it to be a profession, they will need to be much more explicit about the language they use to discuss their work. And, they will need to use more detailed examples to explain what they mean when they discuss basic concepts. Mediators will also need to learn to reflect on their practice and abstract into general theories that are based upon the realities of their practices, not ideals. Practice-based theoretical discussions could move them beyond the implicit and often taken-for-grantedness of their work. If mediators do want to create a profession they are going to need to take academic knowledge more seriously. If they do not, it is unlikely that they are going to be able to compete against others, such as lawyers, who have the legitimacy of normative and abstract knowledge.

Chapter Eight

Conclusions, Implications and Future Research

Introduction

This research has explored how mediation trainers understand the practice of mediation, how these understandings vary, and how they are linked to gender, the dispute sector in which a respondent works, educational background, and how long a respondent has worked as a mediator. It depicts mediation in the late 1990's as a dynamic, complex and evolving social activity where differences in understanding of mediation are linked to contextual factors.

This study is important because it provides new insights into mediation through the method of grounded theory. This approach to sociological study means that conclusions have been drawn from the ground up, in this instance from depictions of mediation by individuals who currently practice as mediators and teach others to mediate. The study was highly exploratory. Further study that builds upon these insights is recommended.

This final chapter of the dissertation begins with a summary of the major insights from this study and the contributions that it makes to human knowledge. It concludes with questions raised by the study, implications for policy, and suggestions for future research.

I. Major Insights and Contributions to Human Knowledge

- 1) **Current understandings of the practice of mediation by individual mediators and groups of mediators' appear to be more pluralistic, dynamic, and complex than indicated by the bipolar depictions of mediation found in the extant literature.**

The extant literature on mediation leads us to conclude that mediators can be categorized within two opposing ideological approaches to the practice of mediation. This study, however, reveals at least four patterns of interrelated traits for understanding current day mediation. To arrive at this conclusion, respondents' depictions of their role as mediators, their style of mediation and their orientation to mediation practice were coded, analyzed and interpreted using a multiple variable matrix-table approach. The results suggest that today's mediators do not understand their work as having only one or another set of meanings and that they do not hold a single view of mediation practice. Instead they draw on a range of meanings to conceptualize their work. Further to this, many mediators report that they change their style of mediation based on circumstances surrounding the dispute and characteristics of the disputing parties.

It is important to note that this research found that veteran mediators, both men and women, were more pluralistic in how they conceptualized their

approach to mediation than were newcomer mediators⁷³. It is not clear what this diversification in understandings of mediation is saying. These differences may be a reflection of differences in generational attitudes. Then again they might reflect the maturation of individuals' as mediators. What does stand out is that this finding contradicts earlier studies, which suggest that over time mediators become more set in their ways (Silbey and Merry, 1986), and that mediators have a predominant style (Riskin, 1994).

Mediation, thus, may be better perceived as a dynamic and evolving activity, and not as one that, once learned, remains static. Viewing mediation as a plurality of models need not imply an absence of common practice. It does, however, suggest that accountability of practice would happen in ways other than those traditionally constructed by other professions. To offer one example, rather than restricting who can practice as mediators, consumer protection might be addressed by educating consumers on how to select the mediation approach and the mediator best suited to their needs.

Finding that individual mediators and various groupings of mediators use a combination of meanings rather than a single meaning to depict their work suggests that they are not rigid in their views of mediation. To some extent, this both supports and challenges current thinking about mediators. In support, Kolb (1994) found that mediators were not pre-set in their ways and

⁷³ Veteran mediators have six or more years of mediation experience while newcomers have less than six years of experience.

used on-the-spot decision-making. This study suggests that mediators may have some tendencies as a result of their background and gender, but that they change their style to suit a given situation. Silbey and Merry (1986) also depicted mediators' styles as changing depending upon the interaction of the parties but they also suggest that mediator' strategies become more pronounced with experience. And, while Riskin (1996) posits that contrasting mediation approaches are not tightly contained, he also says mediators usually have a predominant orientation. As a challenge to current thinking, mediators in this study view their role in more pluralistic ways over time. Not only does this finding conflict with Riskin's and Silbey and Merry's work, it is also contrary to Bush and Folger's (1994) thinking that mediators are either settlement driven or transformative, not both. Of course, comparing the findings of this study with these other studies is problematic. This study relied upon self-report measures, not observation, and conclusions reached were based on what mediators think they do, not what they were seen to do. That being said, there is enough of a pattern to warrant attention and further study. Furthermore, interpretive sociology posits that conceptual constructions help shape our actions (Gergen and Davis, 1985; Bourdieu, 1990; Giddens, 1993)

Hypothesizing that respondents' understanding of mediation is pluralistic challenges those who study and write about mediation to move beyond either/or depictions of mediation. One of problems with bipolar theories is that they inevitably lead to debates about which theory is "right",

thus masking the merits of each. Thinking about mediation, as this study suggests, as combinations of patterns of interacting mediation traits allows the field to conceptualize mediation in more broad-based, inclusive and dynamic ways. In so doing, the mediation community is encouraged to look for and value difference and to support mediation applications that are innovative, flexible and adaptable.

There is a further contribution. Conceptualizing mediation as a combination of patterns of interacting traits encourages mediators to be broad-minded in their views of mediation. Furthermore, given that the patterns found in this study are not exhaustive suggests that other studies could use the analytic model to draw out additional traits and combinations of interacting traits. This would likely reveal that mediation is an even more complex social activity than this study suggests.

2) Variations in interpretations of the mediator role are linked to internal and external contexts.

Not only does this study call into question the validity of bipolar depictions of mediation, it also points to the need to be attentive to how context impacts on conceptualizations of mediation. For instance, this study found that the gender of a mediator is linked to differences in how mediation is conceptualized. As a general statement, but not to stereotype, women mediators tend to use more “socioemotional” concepts in their depictions of

mediation while men tend to use more “pragmatic” traits, irrespective of their educational background, the dispute sector in which they work, or the how long they have been mediating⁷⁴. Female mediators also tend to depict the facilitator role as having to do more with communication than with process or outcome, while for men it is the reverse. These tendencies are also influenced by educational background, dispute sector and experience. To illustrate, mediators working in the business sector tend to use more problem-solving language while those working in the workplace and community sectors use more relational-type language when conceptualizing their work. Those with law or business backgrounds use more pragmatic concepts to articulate their work than those with social science backgrounds who use more relational terms. And, newcomers have a slight tendency to use more socioemotional language than mediators with experience. Of course, these differences might be accounted for by contextual factors not examined in this study. There were however, a sufficient number of re-occurring patterns of gender and other difference that cannot be ignored and that call for further research. While it is true others have written about there being a gender difference in the practice of mediation (Taylor and Beinstein Miller, 1994), this topic of inquiry has received far too little attention. This study brings to the

⁷⁴ Examination of these contextual factors alone did show patterns of difference in how mediation was understood. For instance, individuals working in the business sector, those with law and business backgrounds, and veterans tended to use more “pragmatic” and “pragmatic-socioemotional” concepts to conceptualize the practice of mediation. Those working in the workplace and community sectors, those with social science backgrounds and newcomers to the field tended to use more “socioemotional” and “socioemotional-pragmatic” concepts. Family mediators showed more of a mixed pattern in these four patterns of traits.

fore the need to gather further insights on how gendered experience and other contextual factors shape, not only the meaning of mediation, but perhaps more importantly, its practice.

Mediation is not usually constructed as a single entity in the extant literature. Previous attempts to draw out the plurality of practice have, however, not paid sufficient attention to the context within which the act of mediation occurs. Nor, have they paid much attention to contextual factors relating to the mediator or the disputing parties. This study suggests that a mediators' background, experience and characteristics help to shape their understanding of mediation. It highlights the need for further study on how these and other contextual factors, such as culture, class, power, to name but a few, influence conceptions of mediation practice as well as the actual mediation event.

3) Mediators do not share a common understanding of the language they use.

Not surprisingly, most mediators conceptualize their role as one of facilitation. An important insight of this study is that they do not attach the same meaning to this term. In some instances the word is used to depict activities that include the exploration of needs and concerns, the acknowledging of emotions, and the heightening of understanding. In other instances it has to do with the guiding of process, the exploration of options

for settlement, making possible joint-problem solving, empowerment, and self-determination. Different meanings were also found to exist in respondents' definitions of their orientation to mediation. By way of illustration, in some cases the transformative orientation is understood as having to do with the potential to change institutional structures. In others it has to do with the relational aspects of the mediation, and the transforming of an individual. In still others, it is understood as a spiritual event. It follows that a mediator's understanding of their role and their orientation to mediation is likely to carry over into their mediation practice. A questions for future research would be, how do different understandings of the mediator role impact on how an individual mediates?

Does the lack of a universal language reflect a sign of professional immaturity? Or, might mediation be better imagined as drawing from a range of professionals each with their own set of assumptions and goals for mediation⁷⁵? Following this latter thought, the plurality of understandings found in this study are likely to continue to be present and even broaden as mediation continues to expand into new arenas. Efforts to ensure better understanding of the terms used by mediators may be a more useful way for policy-makers to spend their time than creating limiting definitions. It seems

⁷⁵ Morris identified many overlapping goals for mediation including those of personal, group or social transformation, social justice, social order, community solidarity, party autonomy, and party satisfaction (1997:304).

no longer sufficient to call oneself simply “a mediator”. It may be more appropriate to specify that one is a “divorce mediator”, or, “labour mediator”, or, “civil court mediator” and, so on. Of course these labels would need to be more clearly defined to reflect the particular approach and style of mediation being practiced.

To improve their practice mediators will need to be much more explicit about the language they use to discuss their work. And, they will need to use more detailed examples to explain what they mean when they discuss basic concepts. They also need to learn to reflect on their practice and abstract into general theories that are based upon the realities of their work, not ideals. Practice-based theoretical discussions could move them beyond the implicit and often taken-for-grantedness of their work. To become a profession mediators are going to need to take academic knowledge more seriously. Otherwise, it is unlikely that they will be able to compete against others who have the legitimacy of normative and abstract knowledge.

4) Individuals who work as mediators are a diverse group.

This study portrays mediators as well educated, from diverse backgrounds, mostly self-employed and spending about one-quarter of their professional time doing mediation work. They were also found to offer mediation services in a range of dispute sectors, and to commonly mediate more than one type of dispute. The sample is characteristic of practicing

mediators in other Canadian studies suggesting that trainers may be typical of the general mediation population. Further study could tell us if this is so.

Currently, mediation in Canada does not appear to be dominated by any one gender, nor by any one professional group. Gender, educational background and dispute sector are, however, linked to differences in where respondents most frequently work, their work status and the fees they charge. Once again to generalize but not to stereotype, male mediators were found to mediate in the business sector, to have law or business backgrounds, to charge higher fees and to work as mediators more often than female mediators did. On the other hand, women in this study were found to more typically work in the community and family sectors, and have backgrounds in the social sciences. This finding may relate as much to who chooses the mediator as to what the mediator chooses to do. By way of illustration, it could be that male mediators are chosen for cases involving business disputes because men in our society are generally believed to be better at business than women. The opposite could be true in the case of family mediation, as women may be considered better able to deal with family matters, especially if they involve children. Carrying this thought further, it is likely that neither a male or female mediator with a social science background would be the mediator of first choice in a large business dispute. Stereotypes in society are strong. Hence, the mediator is both “chosen for” and “chooser of ” what it is that they do.

Another insight about the demographical make-up of the sample worth noting is that lawyers are the most recent group to become mediators. One can only speculate on how their entry into mediation will have an impact on the development of the field. Many in this study fear they may come to dominate mediation and cause it to become a more elitist and competitive work form. Others link the entry of the law profession with the increasing call to regulate the practice of mediation. Abbott (1988) would posit that the legal profession is re-claiming its jurisdiction over conflict as a field of work. This may account for the growing number of professional law schools who now offer courses in mediation and other alternative dispute resolution processes. It may also be the reason that many law firms have created ADR departments, and that retired judges are claiming jurisdiction over certain legal disputes through the provision of private courts. There is an argument to be made that mediation may soon become a two-tiered work activity (if it is not already). One activity viewed as “professional” and “legitimate” and available to those who can pay, the other as “soft” and “marginal” and available to those less able to pay. This possibility calls for diligent scrutiny. On the other hand, it should be pointed out that all legally trained mediators in this study did not understand mediation the same way. Some respondents in this group conceptualize their role and style of mediation using highly socioemotional and socioemotional-pragmatic patterns traits making them more similar to community, workplace and family mediators. It may be that these were some of the individuals who were drawn to mediation by visions of

social transformation and empowerment and they have always conceptualized mediation as a more socioemotional than pragmatic activity. It may also be that their mediation training taught them to conceptualize mediation as more than a problem-solving process. Or, that they may have been trained in a relational model of mediation where communicative tools were taught to replace adversarial tools learned in law school.

5) The reasons individuals are attracted to work as mediators appears to be changing over time.

The more recent an individual became a mediator the more likely they were drawn to do this work for reasons associated with personal growth and job satisfaction. Conversely, veteran mediators were more likely to be drawn to work as mediators by visions of social transformation and empowerment. This finding leads us to wonder if mediation is evolving as an occupation that has appeal because it provides satisfaction to the worker more than because it has the potential to influence social change. Perhaps this is an inevitable outgrowth of institutionalization. Should it concern us that larger social visions for mediation practice may be replaced by more personal development and satisfaction needs? This is yet to be seen. Finding this pattern of change suggests that it is deserving of further attention. Not only is it important to know how this change in what attracted mediators to this field might impact their understanding of their work, it is equally, if not more, important to know what impact this shift may have on how they mediate.

6) Mediators have different views on regulating the field.

Given the range of understandings regarding the function of a mediator by the respondents in this study, it is not surprising to find differing opinions on how the field should be governed. Or, for that matter, whether or not it even needs a governance structure at this point in time. It is new mediators who most want regulation. Mediators with six or more years of experience do not agree that mediators need to be licensed. What does this say? Perhaps it supports the view that the need for consumer protection is more of a “perceived” need by those first entering the field and one that lessens with experience. It may also be linked to finding that those most recent to mediation are lawyers, and as a profession, lawyers are more accepting of controls as they have traditionally limited entry into their practice arenas. Then again, it may be that new mediators have more formal training in mediation than veterans and they want to lay claim to the work going to those with lesser training. These speculations clearly need further study. We are left with the view, nonetheless, that there is no emerging consensual voice regarding the development of mediation.

The above six insights provide considerable food for thought. They challenge existing notions of mediation, they have implications for policy, and they help to set a course for future research. Thoughts on policy implications and research directions derived from this study follow.

II. Implications for Policy and Advancement of the Field

This study has generated a number of implications that would be of interest to policy-makers, mediation practitioners, trainers, educators, consumers, the legal profession, and sociologists. Several of these implications are discussed below. It should be stressed that the ideas presented are by no means exhaustive. They are, however, intended to stimulate thinking on how the insights from this study might impact, in a very broad way, on Canadian society.

- i) **Policy-makers, researchers and the mediation community as a whole can no longer be content with conceptualizing mediation in dichotomous terms.**

Mediators are diverse. Understandings of mediation are pluralistic. And, mediation is in the process of change. Conceptualizing mediation as a plurality of practice rather than a single-model approach will help legitimate the broad range of mediation practice and practitioner. It will also encourage the development of new mediation approaches that may better respond to social, cultural, economic and other differences that unfold in a multi-cultural society like Canada.

- ii) **Policies that control the practice of mediation should be minimal.**

They should encourage rather than stifle innovative mediation approaches. And they should stimulate the flow of insights that emerge when

people are encouraged to wrestle in innovative ways with issues of diversity. How the field is regulated can determine whether the potential of mediation, beyond simply resolving a dispute, can be realized. In many ways, the concept of a regulatory scheme itself appears antithetical to the larger potential of mediation.

iii) **Linking mediation to the legal profession may defeat its transformative and restorative justice visions.**

While controls may seem a “natural” evolution, the burgeoning links to the legal profession may in fact relegate mediation to the role of handservant to the formal legal system and its agenda. Mediation may come to be seen as a specialization of law thus losing its “alternative” role. In turn, this will jeopardize the realization of more transformative goals of mediation, which have been espoused by many legally trained mediators and others. Government departments, in particular the Department of Justice, should weigh heavily the implications of restricting the practice of mediation to the law profession. Especially in view of their recent efforts to embrace the practices of restorative justice. A legal orientation may well reduce mediation to its least meaningful functions. What is required is a governance philosophy that mandates the full range of mediation approaches and practitioners.

- iv) **Turning to custom, as is sometimes done in malpractice suits, will reveal different standards of care depending on who is deemed to be “expert”.**

An issue arising from the lack of regulatory controls concerns the question of malpractice⁷⁶. Currently, “there is no jurisprudential evidence that Canadian mediators are committing malpractice, and thus far, none have been held liable for any actions committed during a mediation session” (Schulz, 2000). Complaints about mediators are, according to Schulz, emerging. The lack of formal agreement as to the proper way to mediate is likely to cause the courts turn to custom to determine whether the standard of care has been breached. Given that mediators in this study have such diverse understandings of mediation makes turning to custom problematic. Case in point, if a court were trying to determine custom they would likely obtain a different answer if the “expert” mediator they consulted was female or male. A woman mediator might define mediation as a relational communicative process, thus, a male mediator who is more pragmatic and settlement driven may be deemed to have not met the standard of care. Furthermore, if the courts felt that a lawyer-mediator was more expert than a community-based mediator, the described standard would be different. So too, if a man working in the business sector defined the customary mediator

⁷⁶ The ideas regarding mediator liability and the likelihood of the courts turning to custom as a legitimate way of determining the standard of care were first raised by Jennifer Schulz, University of Windsor, at a conference on dispute resolution where she and I delivered concurrent papers on the issue of professionalization and mediator liability.

behaviour for the courts it is likely that the model would be highly pragmatic. What then becomes of the male mediator working in the workplace sector, who in this study were found to use highly socioemotional concepts to conceptualize mediation? And finally, if, as this study suggests, the majority of mediators have university degrees, will this become a requirement to mediate? What about the recommendations by most mediation associations that standards should be performance-based and not academic?

v) **Policy-makers can no longer assume that they understand what someone means when they talk about mediation.**

And, they can no longer assume that mediators are of like minds in what they mean by mediation. This study has shown that common language does not imply common meaning. Thus, individuals should be encouraged to be explicit about the assumptions and goals of their mediation practice. In turn, policy-makers should also make explicit their assumptions and goals for mediation when they are writing or talking about it. This point is especially important for those who train others to mediate. Not only should they make explicit their ideological orientations and understandings of the terms commonly used in mediation, they need to ensure that their students know how to do the same. And, both student and teacher need to reflect on their practice and abstract into general theories.

- vi) **Policy-makers can facilitate the development of more clearly articulated understandings for mediation.**

They can do this by soliciting, supporting and funding activities that are specifically designed to include both researchers and practitioners.

Furthermore, they are encouraged to support research activities that are designed to provide new insights (as was the case in this study) as well promote empirical research to test existing theories.

- vii) **Policies that are developed should provide for the greatest of flexibility, diversity of practitioner and style of practice.**

Policy-makers and mediation leaders should avoid endorsing single-model mediation approaches. Court-mandated civil court mediation programs are an example of the endorsement of a single-model mediation approach. Policy-makers must be careful not to (intentionally or unintentionally) align themselves with a single ideology of practice. Doing so may stifle the growth of mediation along with its entry into places where innovative dispute resolution is badly needed.

- viii) **As mediation continues to develop it will be increasingly important for mediators to communicate accurately what it is that they do.**

Clarity of meaning will help mediation consumers distinguish the differences in types of mediation practice and types of mediators, and aid them to find the mediator that best fits their needs. This does not necessarily

imply the need for a ubiquitous language system. A universal language at this point in time may restrict rather than expand the practice of mediation. It does suggest that the labels used to differentiate conceptual understandings of mediation be made more explicit. It also means that mediators need to use more detailed examples to explain what they mean when they discuss basic concepts. Thus, the word *mediation* would no longer be used to depict all forms of activity under the mediation umbrella. Instead, new labels that clearly differentiate the various ideological and actual mediation approaches would need to be constructed and used.

ix) **No one group should be charged with shaping policy decisions for the practice of mediation.**

Policy-makers might do well to listen to the mediators in this study who encourage widely based collaborative efforts where practitioners, academics, user groups, and government officials sit together to discuss how to best articulate guidelines that help to structure mediation. This is not to suggest that such efforts have not occurred, they have. It does suggest that collaborative policy development work be allowed to continue and expand.

x) **Policy researchers must be attentive to how individual studies are used, especially those from other countries.**

This research suggests that it is important to include a broad range of studies in policy considerations. It can no longer be assumed that any one

study, or any one voice for that matter, is entirely relevant – it just is not known at this point in time. Policy researchers may want to entertain the idea of doing a meta-analysis of mediation in many cultures. This would expand our knowledge about the similarity and variance in mediation practices.

This last point about research leads to the next section, which offers suggestions for future research.

III. Further Research

As with many studies, this study raises many more questions than it answers, and throughout this dissertation a number of them have been mentioned. Many of these questions and other areas for follow-up research are presented below. The questions raised are intended to aid in setting a research agenda for mediation in Canada. Before discussing these questions, a number of general comments about future research are offered.

Perhaps Kressel, Pruitt and Associates say it best, “research in mediation will be enriched in direct proportion to the degree to which those who study mediation have direct experience as mediators” (1989:431). The development of studies that involve both the practitioner and the researcher are important. So too, are studies that draw on a range of disciplines and methodological approaches. Some of these approaches might involve observational studies designed to support exploratory studies such as this

one. They might also include studies that draw from communication theory and use discourse analysis methods to study the interactions of disputants and mediators. The collection and comparison of additional case studies from a range of contexts is important. So too is the construction of longitudinal studies that can track the evolution of mediation practice over time. The development of more outcome-based measurement instruments to encourage comparative studies should also be encouraged. Some specific questions that researchers might explore as follow-up to this study follow.

Question 1: Does action conform to meaning?

Throughout this dissertation many claims have been made and substantiated about the way mediators view their mediation practice. While there is considerable social theory that links meaning to action (Weber, 1962; Gergen and Davis, 1985; Bourdieu, 1990; Giddens, 1993), care has been taken not to draw implications for practice. Using the insights from this study as the basis for a study that would examine whether mediators do what they say they do would be the next step in the quest to learn more about the nature of mediation.

Question 2: Are there other mediation traits that combine in patterns to yield different and even more complex patterns of mediation meanings?

This study found a matrix of patterns of meanings based on only a few combinations of traits. Given that the study sample was small and, for the

most part, culturally homogenous, it is expected a similar study on a larger and more diverse sample of mediators would define other traits to yield different and more complex patterns of mediation meanings.

Question 3: Is there a correlation between how mediators understand mediation and the types of disputes they mediate?

It would be interesting to know if the different meanings given to mediation are linked to types of disputes rather than to sector? One might ask, what is the variance in understandings of mediation by those who primarily mediate disputes that involve issues of harassment, child custody, finances, health care, or overtime, to name only a few? This question stems from finding that individuals who worked within the same sector do not understand mediation the same way. Given that most of the sample work in more than one dispute sector may account for some of this plurality of understanding. Then again, other factors may be contributing to this finding. Does a highly relational-type dispute (for example, a child custody dispute) have more of one particular set of interacting traits than a highly technical-type dispute (for example, the division of property). Building upon this question - what do different types of disputes reveal about the language used by a mediator? Is there a common understanding of mediation concepts within dispute-type?

Question 4: What might a similar study reveal if it were to use other internal and external contextual factors?

Recall that this investigation of the links between differences in understandings and contextual factors focused on only four contextual factors. Also that considerable evidence was found in this study to suggest that differences in conceptualization of mediation are linked to contextual factors. The extant literature also supports the connections between differences in conflict behavior and contextual factors. Both of these encourage us to do further exploration in this area. Taylor and Beinstein Miller (1994) suggest that differences in conflict behavior may be better explained by power, status and expertise factors than by gender. The relationship between conflict and culture, where culture refers to a range of differences based on age, gender, socioeconomic status, national origin, recency of immigration, education, sexual orientation, and disability, will be important to consider in future studies. Mediation as a dispute resolution process is already labeled to reflect only individualistic, low-context, modern society. Study is needed to assess the advantages and limitations of different understandings of, and approaches to, mediation in culturally sensitive circumstances.

Linked to the question of context, it would be useful in a future study to examine the training mediators receive. Were they trained in an academic setting or a professional program? Who trained them? What was the

trainer's educational background? What was included in the course content? What ideological viewpoint was stressed? What model of mediation practice? The questions could go on. Professional education and training provides more than facts and techniques. Students come to have particular ways of thinking about themselves and their profession, they learn values and attitudes towards the work that result in differing conceptions of the practitioner role (McFarlane, 1961). Thus, much could be learned about mediation and its stage of development by examining the training of its workers.

Question 5: How does this sample of mediation trainer-practitioners compare with the larger population of mediators?

While it was found that the sample of mediation trainers used in this study had similar characteristics to mediators in other Canadian studies, this connection needs further study. It would be interesting to follow-up this study with a much larger sample of Canadian mediators and one which has ample representation from the francophone community. Variances in provincial, regional and national factors, as well as language and cultural differences could be determined. Comparison could also be made across a range of sectors including public, private and government work places. A further area of exploration might be directed at examining how this sample (and the sample from a larger study) compares with provincial, regional and national information on gender, ethnicity and occupational variables such as wage

disparity, status, and workplaces, to name only a few. Are profiles of mediators the same in different parts of Canada? Building from this, how do these profiles compare to those in different countries?

One of the contributions of this research is that it provides a new analytical tool to carry out such studies. It also provides some baseline data to compare mediation trainers with other trainers and with the general mediation community. Such a study could use the coded categories constructed from the data gathered in this study to conduct a larger survey of mediators in Canada. It would allow for stronger claims about who is mediating in Canada and how the practice of mediation is conceptualized to be made. The survey questionnaire in this larger study would be less open-ended and less intent on gathering new insights. Instead its purpose would be to confirm, reject or expand upon the findings in this study.

Question 6: How widespread is the apparent shift from visions of social transformation to job satisfaction, and what impact is this having on the practice of mediation?

This is an interesting question. Finding how widespread the apparent shift from socially-orientated to more personally-oriented motives could be indicative of the changing field. This may be a predictor for how these changes might play out in the development of regulations and the legitimization of particular models of practice. Then again, they could simply

be reflective of the passage of time. Schwerin (1995) found that newly trained mediators had more feelings of personal empowerment than those who had been mediating for a time. He linked this with the possibility that:

...the psychological empowerment associated with the training is intense, but short lived, and that doing the actual mediation work does not provide the mediator what any additional psychological empowerment. It is likely that the high expectations and high levels of enthusiasm experienced in mediation training fades quickly for many of the mediators. This phenomenon is commonly observed in other types of human development training (p.126).

This study also found that after individuals work as mediators for a time, job satisfaction and personal growth are what sustain their interest. An important area still to be studied is how these changes in motivations may impact an individual's approach to mediation. Are some trait patterns more typical of those who are motivated by personal goals than those who are motivated by social transformation?

Question 7: What do disputants understand to be going on in mediation, and what do they think the mediator is attempting to do?

This is another very interesting question. This study looked at what mediators understand themselves to be doing in a mediation session. No studies examining what disputing parties think is happening in mediation were found, nor were there studies which asked what parties expect will go on in mediation. Studies where disputants are the subjects of investigation mostly focus on party satisfaction rates and rates of compliance. One study by Bush

(1996) found that parties' favorable attitudes to mediation stem from how the process works, not from the outcome of the process itself. Parties were satisfied with the process if they had the opportunity to participate in resolving their conflict, just having it settled was not as satisfying. This suggests a number of directions for further research. How do parties conceptualize mediation? How are these understandings affected by contextual factors? How do parties define success in mediation, and how do these vary?

Question 8: What can the study of the professionalization of mediation in other countries tell us about mediation in this country?

There is a considerable activity taking place regarding the professionalization of mediation in Canada, the United States and elsewhere. A comparative analysis that involves activities and research in various countries could advance our knowledge about the complexity of mediation practice at the start of the millennium and about the emergence of mediation as a profession. We might also compare the many activities going on within mediation with those of other newly formed professions, such as social work and nursing, to determine if mediation is emerging as a new profession. Another possibility is to examine mediation activities using system theory. Abbott (1988) offers a model for examining why professionalization is being sought; and who is seeking it. Doing so might help answer the following questions. Is professionalization a natural progression, or, is it being pushed? Who will be included and who will be excluded through the professionalization

of mediation? What makes mediation attractive to the legal community, and why now? How does professionalization relate to new forms of work? One might hypothesize that the legal profession is seeking both to maintain and expand its jurisdiction on conflict as a work claim.

Question 9: What might be learned by doing a longitudinal study of mediators?

It is increasingly important to pursue studies designed to trace a group of mediators through their professional careers. Longitudinal studies would confirm whether mediators' understandings change over time, and why. They would also provide us with answers to a host of other questions. Do different events in different contexts happen differently over time? Are they different for men and for women? How are they different for individuals from a variety of cultural orientations? Are mediators picking up tools during their careers to differentiate the types of disputes? How does this happen? Do mediators become more pluralistic over time? If so, why?

Question 10: Are mediators from some sectors, in particular the community sector, feeling in a vulnerable position as mediation becomes more "professionalized". If so, are they adopting a more business-like way of talking about mediation?

This question arises from finding that some community mediators describe their work using many of the same traits as business mediators. Are

mediators becoming more eclectic in the use of other discourses because of experience and training? Or, is this an attempt to legitimate themselves and their work? This question might also be asked of those who volunteer their time as mediators then contrasted with those who charge for their services.

Question 11: Can the style of a mediator be predicted by knowing their characteristics and the characteristics of their clients?

In Chapter 6, which examined differences in how mediators understood their style of mediation and how these were linked contextual variables, the notion was raised that an individuals' style of mediation might be predicted if their profile and that of their clients was known. This idea stemmed from finding that patterns of style were linked to educational background and gender. To illustrate, female mediators, in general, use more relational language to describe their style. So do mediators with social science backgrounds. On the other hand, male mediators, in general, use more problem-solving language, as do those with backgrounds in law or business. It would be interesting to test this question in a controlled study. The findings might lend insight to how best regulate the field. They would also be useful to consumers of mediation, as well as those who run mediation programs or have the task of assigning mediators to cases.

Question 12. Does the plurality of understandings and language with multiple meanings reveal a moment in the development of mediation that can be generalized to other professions?

This research would suggest that a profession “in development” goes through a period of confusion that results in simultaneous and multiple visions of its field of work. If the results of this research can be generalized to other professions, it can be said that this period has two features: 1) having a common language with multiple meanings, and 2) a process of self-articulation. This latter point involves individuals bringing to the conscious level their idea of themselves as a profession. It is being suggested that this self-articulating process is a significant phase in the emergence of a profession and a profession in-transition (as may be the case with law).

Thus, sociologists might expect developing professions to have different visions that are described using the same language. Yet, when the language is tested for meaning, the meanings are found to be multifarious. Of course, the fact that mediators have many educational and training routes, not just one, could account for some of the diversity found in this study. Professional workers develop their professional character, values, attitudes and knowledge through their training. In fact, their training is viewed as a process of “socialization” (McFarlane, 1961). It is not surprising then, to find that mediators have varying conceptions of their work. But perhaps there is more going on than this. Looking behind common language to find a plurality

of meanings as part of a self-articulating process may itself be a legitimate way to understand the growth process of occupational groups.

Stable professions fit easily into models. It would seem that emerging professions do not. This study moved beyond trying to fit mediation into a dualistic trait-based continuum by examining the meaning of mediation. It posits that the plurality of meaning it found represents a process of self-discovery where members of the occupation are engaged in actively discovering themselves and each other. And, it suggests that this represents a key time in the emergence of a profession. Further research could test this hypothesis for its application to other developing professions.

In summary, these and other questions emanating from this study call for a research agenda to be set in Canada. Mediation leaders, practitioners, consumers, researchers, and policy-makers along with representatives from the public, private and government sectors are encouraged to collaboratively construct this agenda. This would help to ensure that the needs of the various interest groups were met. It would also allow a research agenda to be constructed in an integrative and inclusive fashion. Before concluding this chapter comments on some of the limitations of this study will be made.

IV. Limitations of the Study

One of the first limitations of this study might be the use of self-report data. This form of data collection was chosen for this highly exploratory study because it provided the opportunity to gather rich data on mediators' conceptions of their work based on their "lived experience". The self-report data was then used to construct the coded conceptual categories for understanding mediation approaches, which in many instances were generated from the actual words used by respondents. These conceptual categories can now be used in larger studies. This method of data collection led to the insight that mediators use the same words to mean different things. Given some of the limitations of self-report measures including establishing validity of the measure and the problem of social desirability (Podsakoff and Organ, 1986), caution is urged in generalizing to the larger mediation community.

A second limitation of this study concerns the length and complexity of the questionnaire. Many respondents reported taking in excess of five hours to complete. The extent of the time required for completing the survey might well have deterred some from responding. Still and all the response level was quite high at fifty-two percent.

A third limitation of this study is the size of the sample. Eighty-eight (88) mediation trainer-practitioners were included in the study. Many of the

analytical cells used to interpret the data were small, which limit making any generalizations from these findings. Given that this was an exploratory, not an evaluative study, generalizations from these findings can be the work of future research.

A fourth limitation relates to the use of mediation trainers as the study group. At this point in time there is not sufficient evidence to confidently know whether trainers form a population of their own, or whether they share general characteristics with the wider population of Canadian mediators.

A fifth limitation has to do with using professional association membership lists and self-report databases for research purposes. The information contained in the databases used in this study was found to have considerably fewer numbers of trainer-practitioners than indicated. To speculate on this, it may be that the rapid turnover in those doing the work of a mediator makes it difficult to keep lists current. To speculate further, it may also be that individuals report activities that are exaggerated because they would like to be doing the work, not because they actually are. A word of caution to other researchers wishing to replicate this study using the same databases is that these lists are less than reliable.

A sixth limitation concerns the limited relevance of certain questions. Eliminating some of the questions on the instrument would have shorted the

time needed to complete it and in turn more mediation trainer-practitioners might have completed the survey increasing the sample. Furthermore, asking questions related to the types of disputes that were being mediated, not just in what sector respondents mediated would have allowed for analysis to be done on the type of disputes mediated within each sector and across sectors. Analysis on various types of disputes and different understandings of mediation could have been undertaken.

A final limitation of this study was the lack of detailed information on respondents' mediation training. The information collected was not all that useful other than it indicated when respondents had taken their first mediation training. Collecting more information on the content of respondents' training would have allowed analysis of an individual's pattern of conceptual understandings of mediation with their mediation training. Given that this research did find connections between patterns of meaning and educational background, it likely that there are connections between how mediators conceptualize their approach to mediation and the mediation model in which they were trained.

Conclusion

This study provides a snapshot of how mediation is conceptualized in the late 1990's by those who both work as mediators and teach others to mediate. It depicts mediation as a dynamic, complex and evolving work form

where differences in understandings about its nature were found to be linked to gender, educational background of the mediator, the dispute sector in which an individual mediates, and the amount of time they have been practicing as a mediator. Given the amount of diversity in how mediators understand their work, it is not surprising to find considerable difference of opinion on how the field should be organized. In Chapter 3, some of these conflicting views as well as mediators' concerns over what they see to be taking place in the field are discussed. The strongest of these concerns is that mediation will take on a more legalistic form with the entry of the legal profession and that it will lose its grassroots focus and alternative goals.

The primary task of this study was to unmask the richness and complexities of mediation that were lost in bipolar views of "best practice". The study was exploratory, qualitative and based on grounded theory. It drew from interpretive sociology to legitimate its efforts to obtain knowledge about the nature of mediation by revealing what mediators mean by the work they do. In Chapters 5 and 6, an in depth analysis of how respondents conceptualize their role, their style and their orientation to mediation can be found. The results of this analysis were depicted on a matrix table as a way to study clusters of mediation traits. As discussed in Chapter 7, these mediation traits interact to form at least four interrelated patterns of mediation meanings. Finding more than two sets of meanings led to one of this study's important insights – that dichotomous modeling of mediation approaches

presented in the extant literature is not the way mediators think about their work. As an outgrowth of this study an analytical model from which to engage and study interacting patterns of meanings has been developed. This heuristic “tool” is not a rigid concept but is imagined as an emerging and dynamic construct that can help examine not only mediation traits and interacting patterns of meaning found in this study but others which remain to be discovered in other studies.

Suffice it to say at this point that there are many meanings for mediation, and differences in what mediation means for mediators have some connection to contextual factors. This study makes major contributions to the knowledge about mediation. At the same time, it has only begun to scratch the surface on the interrelatedness between context and meaning. As an exploratory study, this work presents some exciting insights about what is meant by mediation. Insights that hopefully will motivate further inquiry. And, it offers some tools to aid with this task.

The Many Ways Of Mediation: A Survey Of Mediation In Canada

March 1998

Dear Practising Mediator:

I am writing to ask for your help in compiling, for the first time, a comprehensive description of how mediation is conceptualized by Canadian mediators. This research is being conducted as part of my doctoral studies.

As you know, many debates dominate the field of mediation - who should practice, what standards should be set, and which model to use, all of which have resulted in conflicting views of "best practice". For some time, I have felt that these debates masked much of the richness and complexities of the work that mediators do. I have also wondered if the practice of mediation in Canada differed in some ways from what is practiced elsewhere. Both these reasons drew me to design a study that would examine how mediation is conceptualized in Canada and how these conceptualizations might vary, for example, by nature of the dispute, or, by occupational background and gender of the mediator.

One way to address these questions is to ask you how you understand your work as a mediator. In an attempt to uncover new insights about mediation in Canada, this survey covers a lot of ground; I hope you will take the time to complete it in order that important baseline research can be established in our field. ***You are the only one who can provide this critical view.*** Many of the questions in this survey are open-ended, and answering them is likely to take some time. ***I would suggest that you approach completing the questionnaire in stages rather than trying to answer all the questions at once. Please return the completed questionnaire on or before April 17, 1998 in the enclosed postage-paid envelope.***

This questionnaire is confidential but it is not anonymous. The label on the last page of the questionnaire is only there to control the postage and paper costs of the survey so that I can avoid having to send you reminders once you have responded. I would ask that you make any necessary changes to the label but do not remove it. ***Please be assured that your answers will be held in the strictest confidence. The information you provide on this questionnaire will be used only in a summary form which does not identify individuals.*** This study has been approved by the Carleton University Ethics Committee and has the support of the Network: Interaction for Conflict Resolution. The study has also received funding support from the Department of Justice Canada.

Thank you in advance for taking the time to participate; I hope you find the questionnaire stimulating and interesting to answer.

Yours sincerely,

Cheryl Picard
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1125 Colonel By Drive, DT 2211
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Some Notes and Instructions on Completing the Questionnaire

Please take the time to read these instructions before you begin.

1. Specific directions are given for completing many of the questions in the questionnaire. Where no directions are given, please circle the number or letter of the most appropriate response, such as in the example below:

Example:

What language do you most often use when you mediate?

1. English 2. French 3. English and French 4. Other → specify: _____
2. The questionnaire is organized into five sections with points of clarification at the beginning of each section. Please read these carefully before answering the questions. As it was difficult to gauge how much space you might need to answer each question, feel free to use extra paper (remember to number the question you are answering) and insert them in your completed booklet. I have also left some space for your answers on pages 4 and 12.
3. Given that many of you mediate in more than one dispute area, I am asking that you answer the questions based on the dispute area in which you mediate most (for example, divorce, civil court, community). **Please use the same dispute area throughout the questionnaire.**
4. Because there has been so little Canadian research on mediation, I have had to construct many of the questions in an open-ended format. These may take an hour or more to complete but your participation will be worthwhile for at least two reasons. First, it will help to uncover the deeper meaning of mediation in Canada and advance mediation practice and policy development. Second, it presents you with the opportunity to engage in some self-reflection (a luxury seldom afforded), one that I hope will enhance your mediation practice and training courses. It is important that you keep in mind that I am looking for your views, not consensus.
5. And finally, if I am to conclude anything with confidence from this study, it will be very important that you complete and return the questionnaire **at your earliest convenience and please no later than April 17, 1998**. Your help in this regard is greatly appreciated.

INFORMED CONSENT

By completing this questionnaire you are giving informed consent to participate in the research study "*The Many Ways of Mediation*". Your consent is given on the understanding that the information collected will be used for research purposes only, and that procedures to ensure confidentiality will be followed. Should you have any questions regarding your participation in this study, you may contact me at 613-738-4750, or, my advisor, Dr. Janet Siltanen, at 613-520-2600 ext. 2611.

SECTION A: YOUR MEDIATION WORK This section asks about your work as a mediator and as a mediation trainer. Most of the questions in this section require only short answers and should not take long to complete. **Let's begin with your work as a mediator...**

A1. Over the past two years, in what dispute area did you **most often** mediate? _____

A2. Over the past two years, how often did you mediate in each of the following areas? (Please circle the number corresponding to the scale value for each item listed.)

	Never	Rarely	Sometimes	Frequently	Routinely
Community	0	1	2	3	4
Family/divorce	0	1	2	3	4
Public policy	0	1	2	3	4
Environmental	0	1	2	3	4
Criminal court	0	1	2	3	4
Civil court	0	1	2	3	4
Commercial/Corporate	0	1	2	3	4
Workplace	0	1	2	3	4
Union/management	0	1	2	3	4
School/University	0	1	2	3	4
Church	0	1	2	3	4
Other -- please specify below:					
_____	0	1	2	3	4
_____	0	1	2	3	4
_____	0	1	2	3	4
_____	0	1	2	3	4

A3. For how many years have you been a practicing mediator? _____(years).

A4. Which **language** do you most often use when you mediate?

1. English 2. French 3. English and French 4. Other → specify: _____

A5. During the past 2 years, how many times a **month on average** did you mediate? _____

A6. When did you last mediate? _____(month) / _____ (year).

A7. Out of 100%, what percentage of your paid time is spent mediating cases? _____%

A8. Out of 100%, what percentage of your mediation work is spent convening or doing intake? _____%

A9. During the past two years, what percentage of your mediation work was done in each of the following ways? *Please ensure that the values you enter sum to 100%.*

On a fee for services basis _____ %
As part of a salaried job _____ %
As a non-paid volunteer _____ %
Other - specify below: _____ %
_____ %

=====
TOTAL **100%**

A10. If you charge a fee, what is your **most typical hourly rate**? \$ _____ /hr.

A11. Do you use a **sliding scale** when determining your fee? 1. Yes 2. No

A12. What factors **motivated** you to become a mediator? *(Please try to be specific in your answer)*

A13. What **sustains your interest** in mediation? _____

A14. Please list the **mediation training** you have taken as a **participant** *(not trainer or coach)*.

Organization &/or Trainer:	Course Title:	# of hrs. or days:	Year:
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

A15. From whom did you take your first mediation training course, and when?

Organization &/or Trainer:

Year:

A16. What was his, her, or, their professional background?

Now, some questions about your work as a mediation trainer . . .

A17. How many years have you been training people to mediate? _____(years)

A18. Typically, how long are your mediation courses? _____

A19. How many people, on average, attend one of your training courses? _____

A20. Roughly what percentage of your paid time is spent training mediators? _____%

A21. During the past two years, approximately how many mediation courses did you deliver? _____

A22. When did you last deliver a mediation course? _____(month) / _____(year)

A23. During the past two years, what percentage of your mediation training was done in each of the following ways? *Please ensure that the values you enter sum to 100%.*

On a fee for services basis _____%

As part of a salaried job _____%

As a non-paid volunteer _____%

Other - specify below:

_____ %

=====

TOTAL **100 %**

A24. If you charge for mediation training, what is your ***most typical daily*** rate? _____

A25. Do you use a sliding scale to determine your fee? 1. Yes 2. No

A26. Which language do you most often use when you train?

1. English 2. French 3. English and French 4. Other → specify: _____

A27. During the past two years, how frequently did each of the following types of people attend mediation courses in which you were the trainer?

	Never	Rarely	Sometimes	Frequently	Routinely
Lawyers	0	1	2	3	4
Social workers	0	1	2	3	4
Government workers	0	1	2	3	4
Union Officials	0	1	2	3	4
Managers/Supervisors	0	1	2	3	4
Human Resource personnel	0	1	2	3	4
Health care workers	0	1	2	3	4
Clergy	0	1	2	3	4
Volunteers	0	1	2	3	4
Teachers/Professors	0	1	2	3	4
Students - university/college	0	1	2	3	4
Students - primary/high school	0	1	2	3	4
Community groups	0	1	2	3	4
Other - please specify below:					
_____	0	1	2	3	4
_____	0	1	2	3	4
_____	0	1	2	3	4

Extra space for any of your answers. Please reference the question number you are answering.



SECTION B: MEDIATION - THE PRACTICE This section asks you to describe **your work as a mediator**. Remember, I am most interested in **what you do**, not what you think others might do. This will likely take some time, so grab a cup of tea or coffee and settle in. When answering each question, please reflect on situations in the area in which you mediate most.

For you, the area in which you most often mediate is (list only one): _____

B1. In the opening stage of mediation how do you describe the **process and purpose** of mediation to the parties?

B2. In the opening stage of mediation how do you describe **your role** to the parties?

B3. As a mediator, what **other roles** do you take on throughout the mediation?

B4. In the area where you most often mediate, how often do the following occur?

Routinely	Never	Rarely	Sometimes	Frequently	
A fee is not charged.	0	1	2	3	4
More than one mediation session occurs.	0	1	2	3	4
There are time limits to complete the mediation.	0	1	2	3	4
Parties are mandated by the court to attend.	0	1	2	3	4
You co-mediate.	0	1	2	3	4
A written agreement is reached.	0	1	2	3	4
There is a power imbalance.	0	1	2	3	4
Lawyers are present.	0	1	2	3	4
Parties have an on-going relationship.	0	1	2	3	4
You mediate financial issues.	0	1	2	3	4
One party is in a subordinate position.	0	1	2	3	4
Children participate in the mediation.	0	1	2	3	4
There are more than 3 stakeholder groups.	0	1	2	3	4
There are allegations of physical abuse.	0	1	2	3	4
One or both parties are from visible minorities.	0	1	2	3	4
Parties are from different ethnocultural groups.	0	1	2	3	4
An interpreter is required.	0	1	2	3	4

B5. In the area where you mediate most, what circumstances about the parties, the dispute, or the environment most **enhance a mediation**. (Please be specific and explain why.)

B6. In the area where you mediate most, what circumstances about the parties, the dispute, or the environment most **detract from a mediation** (Please be specific and explain why.)

B7. How likely would it be for you to **talk about dispute resolution options other than mediation** to parties who are seeking help to resolve their dispute?

1. Never 2. Rarely 3. Sometimes 4. Frequently 5. Routinely

B8. Do you use a **caucus model** of mediation? 1. Yes 2. No → **Skip to Question B11**

B9. In what, for you, would be a typical mediation session lasting 3 to 4 hours, **how often** do you caucus with the parties separately?

0. Never 1. Rarely 2. Occasionally 3. Frequently 4. Most of the work is done in caucus

B10. What has been the most **common reason** for you calling a caucus?

B11. In your view, what constitutes **success** in a mediation? *List the 3 most important factors.*

1. _____
2. _____
3. _____

B12. What would you say are **your most important strengths** as a mediator?

B13. In the area where you mediate most, would you typically use more than one **style or manner**?

1. Yes 2. No

→ **If yes**, what factors cause you to change your style or manner? _____

B14. Please describe your **typical style or manner** of mediation. _____

B15. How significant were each of the following factors in the *development of your mediation style*?

	Not at all Important	Somewhat Important	Highly Important	Not Applicable	No Opinion
Professional background	0	1	2	6	8
Initial mediation training	0	1	2	6	8
Continuing education/training	0	1	2	6	8
Experience as a mediator	0	1	2	6	8
Experience as a party in mediation	0	1	2	6	8
Reading books and journals	0	1	2	6	8
Culture/Ethnicity	0	1	2	6	8
Gender	0	1	2	6	8
Religion	0	1	2	6	8
Life experience	0	1	2	6	8
Other - please specify below					
_____	0	1	2	6	8
_____	0	1	2	6	8
_____	0	1	2	6	8

B16. With which *orientation or ideology* of mediation do you most identify? **Choose only one.**

- | | | | | |
|-------------------|-----------------|------------------|---------------|-----------------|
| 1. Settlement | 3. Evaluative | 5. Directive | 7. Relational | 9. Humanistic |
| 2. Transformative | 4. Facilitative | 6. Non-Directive | 8. Structured | 10. Therapeutic |

B17. What does the term you chose in B15 mean to you? ____

B18. Do you use other terms to describe *your orientation or ideology* of mediation?

1. Yes → If yes, what terms do you use? _____

2. No

B19. How likely would it be for you to **talk about the various orientations or ideologies** of mediation in what, for you, would be a typical mediation training course?

1. Never 2. Rarely 3. Sometimes 4. Frequently 5. Routinely

B20. Which of following statements best describes what you **believe to be most important** about mediation? **Please choose only one.**

1. Parties must have maximum control over the outcome of their dispute; autonomy is important
2. Parties should receive information about legal entitlements and relevant financial, technical and psychological data before making decisions about the outcome of their dispute
3. Parties must not only have all relevant information to make informed decisions, their agreements must also reflect social norms and normative principles
4. None of the above → Please describe what you believe about mediation:

B21. How significant are each of the following factors **to you** as a mediator?

	Not at all Important	Somewhat Important	Highly Important	No Opinion
Fairness	0	1	2	8
Achieving resolution	0	1	2	8
Self-determination	0	1	2	8
Expediency	0	1	2	8
Order of story telling	0	1	2	8
Face saving	0	1	2	8
Mutual understanding	0	1	2	8
Reconciliation	0	1	2	8
Preserving relationships	0	1	2	8
Restoring harmony	0	1	2	8
Neutrality	0	1	2	8
Not as formal or legalistic	0	1	2	8

Other - please specify:

_____	0	1	2	8
_____	0	1	2	8
_____	0	1	2	8
_____	0	1	2	8

B22. How significant are each of the following factors to *the parties* in a mediation?

	Not at all Important	Somewhat Important	Highly Important	No Opinion
Fairness	0	1	2	8
Achieving resolution	0	1	2	8
Self-determination	0	1	2	8
Expediency	0	1	2	8
Face saving	0	1	2	8
Mutual understanding	0	1	2	8
Preserving relationships	0	1	2	8
Restoring harmony	0	1	2	8
Neutrality	0	1	2	8
Order of story telling	0	1	2	8
Saving money	0	1	2	8
Not as formal or legalistic	0	1	2	8
Other - please specify:				
_____	0	1	2	8
_____	0	1	2	8
_____	0	1	2	8

In the next series of questions I describe five different scenarios. For each of these situations please tell me what you would do if you were the mediator. If I have not identified the mediation context, use the area where you mediate most.

Please be as specific as possible, for example, tell me what strategy or skill you would use, whether you would do this in joint session or in caucus, and what you hope to achieve by taking this particular action.

B23. In a **divorce mediation** where the couple have been married 27 years, because of a pending inheritance the wife chooses not to seek any portion of the husband's pension (the law says she is entitled to half). What would you do and what would you hope to achieve?

B24. In a **community mediation**, one of the parties, a recent immigrant from Bosnia, was injured in a corner store. The owner has offered to pay 10% of what would likely be awarded in court. Due to the immigrant's fear of "the establishment" the man is prepared to settle. What would you do and what would you hope to achieve?

B25. Negotiations are leading to an agreement that you believe to be quite unfair because of a **power imbalance** between the parties. What would you do and what would you hope to achieve?

B26. You are mediating an **harassment complaint**. In caucus the complainant tells you she is deeply in debt and will agree to drop her allegation if assured of keeping her job. You are convinced she would win her case at a Human Rights Commission hearing. What would you do and what would you hope to achieve?

B27. *The parties appear to have reached an **impasse** and are ready to terminate without an agreement. Tensions are high. What would you do and what would you hope to achieve?*

Extra space for any of your answers. Please reference the question number you are answering.

SECTION C: MEDIATION - THE PROFESSION *There has been much debate about standardizing the practice of mediation. This section asks for your views on accreditation, as well as changes that are taking place within the field.*

C1. In the area where you mediate most, how ***strongly do you agree or disagree*** with the following?

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
Mediators should be licensed.	0	1	2	3	8
Competency should be based on performance, not education.	0	1	2	3	8
Standards are needed to ensure delivery of quality services.	0	1	2	3	8
Mediators should have legal backgrounds.	0	1	2	3	8
Only mediation associations should decide who is qualified to mediate.	0	1	2	3	8
No single organization should dictate standards.	0	1	2	3	8
A market-based approach is sufficient to protect consumers.	0	1	2	3	8
Mediators should be trained in university or community colleges.	0	1	2	3	8
The number of licensed mediators should be controlled.	0	1	2	3	8
Mediation trainers should be accredited.	0	1	2	3	8
The content of mediation training courses should be regulated.	0	1	2	3	8
The field is becoming over populated with minimally trained mediators.	0	1	2	3	8

C2. How would you like to see the issue of standards and accreditation addressed in Canada?

C3. In the area in which you mediate most, what are the **three most important “content”** areas that every mediator should be required to know?

1. _____
2. _____
3. _____

C4. In the area in which you mediate most, what are the **three most important “skills”** every mediator should be able to demonstrate competently ?

1. _____
2. _____
3. _____

C5. In the area in which you mediate most, what are the **three most important “personal attributes”** a mediator should possess?

1. _____
2. _____
3. _____

C6. In the area in which you mediate most, what would constitute **unethical behavior**?

C7. Have you ever had occasion to refuse to mediate for reasons of **principle/values/beliefs**?

1. Yes → Please describe the circumstances _____

2. No, I have never had occasion to refuse on grounds of principle/values/beliefs.

C8. In the area in which you mediate most, what are some of the most important **benefits to disputants** of mediation?

C9. In the area in which you mediate most, what are some of the most important ***institutional or organizational benefits*** of mediation?

C10. In the area in which you mediate most, what are some of the most important ***benefits for society*** of mediation?

C11. What are some of the ***positive changes*** you see taking place within the field of mediation?

C12. What are some of your ***concerns*** about what is happening within the field of mediation?

C13. Are any of these changes affecting your work as a ***mediator***?

1. Yes → How have they affected your work? _____

2. No, they have not affected my work.

C14. Are any of these changes affecting your work as a ***mediation trainer***?

1. Yes → How have they affected your work? _____

2. No, they have not affected my work.

C15. If you had a crystal ball and could look upon mediation in Canada 10 to 15 years from now, what would you most *hope to see*?

SECTION D: PLEASE TELL ME ABOUT YOURSELF *I have just a few more questions to ask about who you are, your background and where you work. Hang in there, you are almost finished!*

D1. Sex: 1. Male 2. Female

D2. Year of birth: _____

D3. What is your highest university or college education?

- | | |
|--------------------------------|---|
| 1. Business diploma | 7. Bachelor's level professional degree (e.g., LLB) |
| 2. Some community college | 8. Some graduate school |
| 3. Community college diploma | 9. Master's degree |
| 4. Some university | 10. Some doctoral study |
| 5. Undergraduate-level diploma | 11. Doctorate (including medicine and theology) |
| 6. Bachelor's degree | 15. Other -- please specify: _____ |

D4. From which university/college did you earn your highest degree? _____

D5. In what discipline (i.e., law, business, social work) did you earn your highest degree?

D6. Outside of mediation, with which profession do you most identify? _____

D7. In what province do you live? _____

D8. In what country were you born? _____

D9. In what country/ies were your parents born? _____

D10. What is your ethno-cultural heritage? _____

D11. Do you identify with a minority group?

1. Yes, → Which one or ones? _____

2. No

D12. Which of the following categories best describes **you as party** to a conflict? Choose only one.

1. I tend to become competitive

5. I tend to take things personally and feel hurt

2. I tend to give in too easily

6. I tend to seek a solution on which everyone can agree

3. I try to ignore the situation

7. Other → please specify:

4. I tend to seek a fair solution _____

D13. What is your **current work status**?

1. Full-time, self-employed

5. Part-time (fewer than 35 hours/week)

2. Full-time, single employer (35+ hours/ week)

6. Part-time, self-employed

3. Full-time, more than one employer

7. Volunteer, not in labour market

4. Full-time, self-employed and other employer

8. Other -- please specify: _____

D14. In your current work, do you have a designated **job title**?

1. Yes, → What is your job title? _____

2. No

D15. Do you do **work other than mediation** or mediation training?

1. Yes, → Briefly describe the nature of your other work or business. _____

2. No

Important Note

This questionnaire is to be completed only by people who both mediate and train others to mediate. If you do not meet this requirement please indicate on the line below and return it with the uncompleted questionnaire in the self-addressed, stamped envelope. Thank you.

_____ I am not currently a practising mediator and mediation trainer.

The Many Ways Of Mediation: A Survey Of Mediation In Canada

March 1998

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I am writing to ask for your help in compiling, for the first time, a comprehensive description of how mediation is conceptualized by Canadian mediators. This research is being conducted as part of my doctoral studies.

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One way to address these questions is to ask you how you understand your work as a mediator. In an attempt to uncover new insights about mediation in Canada, this survey covers a lot of ground; I hope you will take the time to complete it in order that important baseline research can be established in our field. ***You are the only one who can provide this critical view.*** Many of the questions in this survey are open-ended, and answering them is likely to take some time. ***I would suggest that you approach completing the questionnaire in stages rather than trying to answer all the questions at once. Please return the completed questionnaire on or before April 17, 1998 in the enclosed postage-paid envelope.***

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Thank you in advance for taking the time to participate; I hope you find the questionnaire stimulating and interesting to answer.

Yours sincerely,

Cheryl Picard
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1. Specific directions are given for completing many of the questions in the questionnaire. Where no directions are given, please circle the number or letter of the most appropriate response, such as in the example below:

Example:

What language do you most often use when you mediate?

1. English 2. French 3. English and French 4. Other → specify: _____

2. The questionnaire is organized into five sections with points of clarification at the beginning of each section. Please read these carefully before answering the questions. As it was difficult to gauge how much space you might need to answer each question, feel free to use extra paper (remember to number the question you are answering) and insert them in your completed booklet. I have also left some space for your answers on pages 4 and 12.
3. Given that many of you mediate in more than one dispute area, I am asking that you answer the questions based on the dispute area in which you mediate most (for example, divorce, civil court, community). ***Please use the same dispute area throughout the questionnaire.***
4. Because there has been so little Canadian research on mediation, I have had to construct many of the questions in an open-ended format. These may take an hour or more to complete but your participation will be worthwhile for at least two reasons. First, it will help to uncover the deeper meaning of mediation in Canada and advance mediation practice and policy development. Second, it presents you with the opportunity to engage in some self-reflection (a luxury seldom afforded), one that I hope will enhance your mediation practice and training courses. It is important that you keep in mind that I am looking for your views, not consensus.
5. And finally, if I am to conclude anything with confidence from this study, it will be very important that you complete and return the questionnaire ***at your earliest convenience and please no later than April 17, 1998.*** Your help in this regard is greatly appreciated.

INFORMED CONSENT

By completing this questionnaire you are giving informed consent to participate in the research study "*The Many Ways of Mediation*". Your consent is given on the understanding that the information collected will be used for research purposes only, and that procedures to ensure confidentiality will be followed. Should you have any questions regarding your participation in this study, you may contact me at 613-738-4750, or, my advisor, Dr. Janet Siltanen, at 613-520-2600 ext. 2611.

SECTION A: YOUR MEDIATION WORK This section asks about your work as a mediator and as a mediation trainer. Most of the questions in this section require only short answers and should not take long to complete. **Let's begin with your work as a mediator...**

- A1.** Over the past two years, in what dispute area did you **most often** mediate? _____
- A2.** Over the past two years, how often did you mediate in each of the following areas? (Please circle the number corresponding to the scale value for each item listed.)

	Never	Rarely	Sometimes	Frequently	Routinely
Community	0	1	2	3	4
Family/divorce	0	1	2	3	4
Public policy	0	1	2	3	4
Environmental	0	1	2	3	4
Criminal court	0	1	2	3	4
Civil court	0	1	2	3	4
Commercial/Corporate	0	1	2	3	4
Workplace	0	1	2	3	4
Union/management	0	1	2	3	4
School/University	0	1	2	3	4
Church	0	1	2	3	4
Other -- please specify below:					
_____	0	1	2	3	4
_____	0	1	2	3	4
_____	0	1	2	3	4
_____	0	1	2	3	4

- A3.** For how many years have you been a practicing mediator? _____ (years).
- A4.** Which **language** do you most often use when you mediate?
 1. English 2. French 3. English and French 4. Other → specify: _____
- A5.** During the past 2 years, how many times a **month on average** did you mediate? _____
- A6.** When did you last mediate? _____ (month) / _____ (year).
- A7.** Out of 100%, what percentage of your paid time is spent mediating cases? _____%
- A8.** Out of 100%, what percentage of your mediation work is spent convening or doing intake? _____%

A9. During the past two years, what percentage of your mediation work was done in each of the following ways? *Please ensure that the values you enter sum to 100%.*

On a fee for services basis _____ %
As part of a salaried job _____ %
As a non-paid volunteer _____ %
Other - specify below: _____ %

=====

TOTAL	100%
--------------	-------------

A10. If you charge a fee, what is your **most typical hourly rate**? \$ _____ /hr.

A11. Do you use a **sliding scale** when determining your fee? 1. Yes 2. No

A12. What factors **motivated** you to become a mediator? (*Please try to be specific in your answer*)

A13. What **sustains your interest** in mediation?

A14. Please list the **mediation training** you have taken as a **participant** (*not trainer or coach*).

Organization &/or Trainer:	Course Title:	# of hrs. or days:	Year:
---------------------------------------	----------------------	---------------------------	--------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

A15. From whom did you take your first mediation training course, and when?

Organization &/or Trainer:

Year:

A16. What was his, her, or, their professional background?

Now, some questions about your work as a mediation trainer . . .

A17. How many years have you been training people to mediate? _____ (years)

A18. Typically, how long are your mediation courses? _____

A19. How many people, on average, attend one of your training courses? _____

A20. Roughly what percentage of your paid time is spent training mediators? _____%

A21. During the past two years, approximately how many mediation courses did you deliver? _____

A22. When did you last deliver a mediation course? _____ (month) / _____(year)

A23. During the past two years, what percentage of your mediation training was done in each of the following ways? *Please ensure that the values you enter sum to 100%.*

On a fee for services basis _____%

As part of a salaried job _____%

As a non-paid volunteer _____%

Other - specify below:
_____ %

=====

TOTAL	100 %
--------------	--------------

A24. If you charge for mediation training, what is your ***most typical daily*** rate? _____

A25. Do you use a sliding scale to determine your fee? 1. Yes 2. No

A26. Which language do you most often use when you train?

1. English 2. French 3. English and French 4. Other → specify: _____

A27. During the past two years, how frequently did each of the following types of people attend mediation courses in which you were the trainer?

	Never	Rarely	Sometimes	Frequently	Routinely
Lawyers	0	1	2	3	4
Social workers	0	1	2	3	4
Government workers	0	1	2	3	4
Union Officials	0	1	2	3	4
Managers/Supervisors	0	1	2	3	4
Human Resource personnel	0	1	2	3	4
Health care workers	0	1	2	3	4
Clergy	0	1	2	3	4
Volunteers	0	1	2	3	4
Teachers/Professors	0	1	2	3	4
Students - university/college	0	1	2	3	4
Students - primary/high school	0	1	2	3	4
Community groups	0	1	2	3	4
Other - please specify below:					
_____	0	1	2	3	4
_____	0	1	2	3	4
_____	0	1	2	3	4

Extra space for any of your answers. Please reference the question number you are answering.

SECTION B: MEDIATION - THE PRACTICE This section asks you to describe **your work as a mediator**. Remember, I am most interested in **what you do**, not what you think others might do. This will likely take some time, so grab a cup of tea or coffee and settle in. When answering each question, please reflect on situations in the area in which you mediate most.

For you, the area in which you most often mediate is (list only one): _____

B1. In the opening stage of mediation how do you describe the **process and purpose** of mediation to the parties?

B2. In the opening stage of mediation how do you describe **your role** to the parties?

B3. As a mediator, what **other roles** do you take on throughout the mediation?

B4. In the area where you most often mediate, how often do the following occur?

	Never	Rarely	Sometimes	Frequently	Routinely
A fee is not charged.	0	1	2	3	4
More than one mediation session occurs.	0	1	2	3	4
There are time limits to complete the mediation.	0	1	2	3	4
Parties are mandated by the court to attend.	0	1	2	3	4
You co-mediate.	0	1	2	3	4
A written agreement is reached.	0	1	2	3	4
There is a power imbalance.	0	1	2	3	4
Lawyers are present.	0	1	2	3	4
Parties have an on-going relationship.	0	1	2	3	4
You mediate financial issues.	0	1	2	3	4
One party is in a subordinate position.	0	1	2	3	4
Children participate in the mediation.	0	1	2	3	4
There are more than 3 stakeholder groups.	0	1	2	3	4
There are allegations of physical abuse.	0	1	2	3	4
One or both parties are from visible minorities.	0	1	2	3	4
Parties are from different ethnocultural groups.	0	1	2	3	4
An interpreter is required.	0	1	2	3	4

B5. In the area where you mediate most, what circumstances about the parties, the dispute, or the environment most **enhance a mediation**. (Please be specific and explain why.)

B6. In the area where you mediate most, what circumstances about the parties, the dispute, or the environment most **detract from a mediation** (Please be specific and explain why.)

B7. How likely would it be for you to **talk about dispute resolution options other than mediation** to parties who are seeking help to resolve their dispute?

1. Never 2. Rarely 3. Sometimes 4. Frequently 5. Routinely

B8. Do you use a **caucus model** of mediation? 1. Yes 2. No → **Skip to Question B11**

B9. In what, for you, would be a typical mediation session lasting 3 to 4 hours, **how often** do you caucus with the parties separately?

0. Never 1. Rarely 2. Occasionally 3. Frequently 4. Most of the work is done in caucus

B10. What has been the most **common reason** for you calling a caucus?

B11. In your view, what constitutes **success** in a mediation? *List the 3 most important factors.*

1. _____
2. _____
3. _____

B12. What would you say are **your most important strengths** as a mediator?

B13. In the area where you mediate most, would you typically use more than one **style or manner**?

1. Yes 2. No

→ **If yes**, what factors cause you to change your style or manner? _____

B14. Please describe your **typical style or manner** of mediation. _____

B15. How significant were each of the following factors in the *development of your mediation style*?

	Not at all Important	Somewhat Important	Highly Important	Not Applicable	No Opinion
Professional background	0	1	2	6	8
Initial mediation training	0	1	2	6	8
Continuing education/training	0	1	2	6	8
Experience as a mediator	0	1	2	6	8
Experience as a party in mediation	0	1	2	6	8
Reading books and journals	0	1	2	6	8
Culture/Ethnicity	0	1	2	6	8
Gender	0	1	2	6	8
Religion	0	1	2	6	8
Life experience	0	1	2	6	8
Other - please specify below					
_____	0	1	2	6	8
_____	0	1	2	6	8
_____	0	1	2	6	8

B16. With which *orientation or ideology* of mediation do you most identify? **Choose only one.**

- | | | | | |
|-------------------|-----------------|------------------|---------------|-----------------|
| 1. Settlement | 3. Evaluative | 5. Directive | 7. Relational | 9. Humanistic |
| 2. Transformative | 4. Facilitative | 6. Non-Directive | 8. Structured | 10. Therapeutic |

B17. What does the term you chose in B15 mean to you?

B18. Do you use other terms to describe *your orientation or ideology* of mediation?

1. Yes → If yes, what terms do you use? _____

2. No

B19. How likely would it be for you to *talk about the various orientations or ideologies* of mediation in what, for you, would be a typical mediation training course?

1. Never 2. Rarely 3. Sometimes 4. Frequently 5. Routinely

B20. Which of following statements best describes what you **believe to be most important** about mediation? **Please choose only one.**

1. Parties must have maximum control over the outcome of their dispute; autonomy is important
2. Parties should receive information about legal entitlements and relevant financial, technical and psychological data before making decisions about the outcome of their dispute
3. Parties must not only have all relevant information to make informed decisions, their agreements must also reflect social norms and normative principles
4. None of the above → Please describe what you believe about mediation:

B21. How significant are each of the following factors **to you** as a mediator?

	Not at all Important	Somewhat Important	Highly Important	No Opinion
Fairness	0	1	2	8
Achieving resolution	0	1	2	8
Self-determination	0	1	2	8
Expediency	0	1	2	8
Order of story telling	0	1	2	8
Face saving	0	1	2	8
Mutual understanding	0	1	2	8
Reconciliation	0	1	2	8
Preserving relationships	0	1	2	8
Restoring harmony	0	1	2	8
Neutrality	0	1	2	8
Not as formal or legalistic	0	1	2	8
Other - please specify:				
_____	0	1	2	8
_____	0	1	2	8
_____	0	1	2	8
_____	0	1	2	8

B22. How significant are each of the following factors to *the parties* in a mediation?

	Not at all Important	Somewhat Important	Highly Important	No Opinion
Fairness	0	1	2	8
Achieving resolution	0	1	2	8
Self-determination	0	1	2	8
Expediency	0	1	2	8
Face saving	0	1	2	8
Mutual understanding	0	1	2	8
Preserving relationships	0	1	2	8
Restoring harmony	0	1	2	8
Neutrality	0	1	2	8
Order of story telling	0	1	2	8
Saving money	0	1	2	8
Not as formal or legalistic	0	1	2	8
Other - please specify:				
_____	0	1	2	8
_____	0	1	2	8
_____	0	1	2	8

In the next series of questions I describe five different scenarios. For each of these situations please tell me what you would do if you were the mediator. If I have not identified the mediation context, use the area where you mediate most.

Please be as specific as possible, for example, tell me what strategy or skill you would use, whether you would do this in joint session or in caucus, and what you hope to achieve by taking this particular action.

B23. *In a **divorce mediation** where the couple have been married 27 years, because of a pending inheritance the wife chooses not to seek any portion of the husband's pension (the law says she is entitled to half). What would you do and what would you hope to achieve?*

B24. In a **community mediation**, one of the parties, a recent immigrant from Bosnia, was injured in a corner store. The owner has offered to pay 10% of what would likely be awarded in court. Due to the immigrant's fear of "the establishment" the man is prepared to settle. What would you do and what would you hope to achieve?

B25. Negotiations are leading to an agreement that you believe to be quite unfair because of a **power imbalance** between the parties. What would you do and what would you hope to achieve?

B26. You are mediating an **harassment complaint**. In caucus the complainant tells you she is deeply in debt and will agree to drop her allegation if assured of keeping her job. You are convinced she would win her case at a Human Rights Commission hearing. What would you do and what would you hope to achieve?

B27. *The parties appear to have reached an **impasse** and are ready to terminate without an agreement. Tensions are high. What would you do and what would you hope to achieve?*

Extra space for any of your answers. Please reference the question number you are answering.

SECTION C: MEDIATION - THE PROFESSION *There has been much debate about standardizing the practice of mediation. This section asks for your views on accreditation, as well as changes that are taking place within the field.*

C1. In the area where you mediate most, how ***strongly do you agree or disagree*** with the following?

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
Mediators should be licensed.	0	1	2	3	8
Competency should be based on performance, not education.	0	1	2	3	8
Standards are needed to ensure delivery of quality services.	0	1	2	3	8
Mediators should have legal backgrounds.	0	1	2	3	8
Only mediation associations should decide who is qualified to mediate.	0	1	2	3	8
No single organization should dictate standards.	0	1	2	3	8
A market-based approach is sufficient to protect consumers.	0	1	2	3	8
Mediators should be trained in university or community colleges.	0	1	2	3	8
The number of licensed mediators should be controlled.	0	1	2	3	8
Mediation trainers should be accredited.	0	1	2	3	8
The content of mediation training courses should be regulated.	0	1	2	3	8
The field is becoming over populated with minimally trained mediators.	0	1	2	3	8

C2. How would you like to see the issue of standards and accreditation addressed in Canada?

C3. In the area in which you mediate most, what are the **three most important “content”** areas that every mediator should be required to know?

1. _____

2. _____

3. _____

C4. In the area in which you mediate most, what are the **three most important “skills”** every mediator should be able to demonstrate competently ?

1. _____

2. _____

3. _____

C5. In the area in which you mediate most, what are the **three most important “personal attributes”** a mediator should possess?

1. _____

2. _____

3. _____

C6. In the area in which you mediate most, what would constitute **unethical behavior**?

C7. Have you ever had occasion to refuse to mediate for reasons of **principle/values/beliefs**?

1. Yes → Please describe the circumstances _____

2. No, I have never had occasion to refuse on grounds of principle/values/beliefs.

C8. In the area in which you mediate most, what are some of the most important **benefits to disputants** of mediation?

C9. In the area in which you mediate most, what are some of the most important **institutional or organizational benefits** of mediation?

C10. In the area in which you mediate most, what are some of the most important **benefits for society** of mediation?

C11. What are some of the **positive changes** you see taking place within the field of mediation?

C12. What are some of your **concerns** about what is happening within the field of mediation?

C13. Are any of these changes affecting your work as a **mediator**?

1. Yes → How have they affected your work? _____

2. No, they have not affected my work.

C14. Are any of these changes affecting your work as a **mediation trainer**?

1. Yes → How have they affected your work? _____

2. No, they have not affected my work.

C15. If you had a crystal ball and could look upon mediation in Canada 10 to 15 years from now, what would you most *hope to see*?

SECTION D: PLEASE TELL ME ABOUT YOURSELF *I have just a few more questions to ask about who you are, your background and where you work. Hang in there, you are almost finished!*

D1. Sex: 1. Male 2. Female

D2. Year of birth: _____

D3. What is your highest university or college education?

- | | |
|--------------------------------|---|
| 1. Business diploma | 7. Bachelor's level professional degree (e.g., LLB) |
| 2. Some community college | 8. Some graduate school |
| 3. Community college diploma | 9. Master's degree |
| 4. Some university | 10. Some doctoral study |
| 5. Undergraduate-level diploma | 11. Doctorate (including medicine and theology) |
| 6. Bachelor's degree | 15. Other -- please specify: _____ |

D4. From which university/college did you earn your highest degree? _____

D5. In what discipline (i.e., law, business, social work) did you earn your highest degree?

D6. Outside of mediation, with which profession do you most identify? _____

D7. In what province do you live? _____

D8. In what country were you born? _____

D9. In what country/ies were your parents born? _____

D10. What is your ethno-cultural heritage? _____

D11. Do you identify with a minority group?

1. Yes, → Which one or ones? _____
2. No

D12. Which of the following categories best describes **you as party** to a conflict? Choose only one.

- | | |
|-----------------------------------|--|
| 1. I tend to become competitive | 5. I tend to take things personally and feel hurt |
| 2. I tend to give in too easily | 6. I tend to seek a solution on which everyone can agree |
| 3. I try to ignore the situation | 7. Other → please specify: |
| 4. I tend to seek a fair solution | _____ |

D13. What is your **current work status**?

- | | |
|---|---|
| 1. Full-time, self-employed | 5. Part-time (fewer than 35 hours/week) |
| 2. Full-time, single employer (35+ hours/ week) | 6. Part-time, self-employed |
| 3. Full-time, more than one employer | 7. Volunteer, not in labour market |
| 4. Full-time, self-employed and other employer | 8. Other -- please specify: _____ |

D14. In your current work, do you have a designated **job title**?

1. Yes, → What is your job title? _____
2. No

D15. Do you do **work other than mediation** or mediation training?

1. Yes, → Briefly describe the nature of your other work or business. _____

2. No

Appendix A.

Table 3. Concerns by Gender

CONCERNS	MEN	WOMEN
Lack of Work	15.6%	20%
Incompetence	42.5%	24.4%
Domination	35%	37.8%
Regulation	10%	22.2%
Training	17.5%	8.9%
Underuse	20%	4.4%
Style	10%	11.1%
Inappropriate Use	10%	28.9%
None	0%	2.3%
TOTAL	47.1% (n=40)	52.9% (n=45)

Percentages based on number of responses. 85 valid cases.

Table 4. Concerns by Dispute Sector

CONCERNS	Community	Family	Business	Workplace
Lack of Work	22.7%	14.3%	20.8%	12.5%
Incompetence	22.7%	47.6%	20.8%	43.8%
Domination	22.7%	38.1%	45.8%	43.8%
Regulation	18.2%	4.8%	16.7%	18.8%
Training	4.5%	14.3%	25%	6.3%
Underuse	18.2%	14.3%	8.3%	6.3%
Style	9.1%	9.5%	16.7%	6.3%
Inappropriate Use	36.4%	9.5%	8.3%	25%
None	4.5	0%	0%	0%
TOTAL	26.5% (n=22)	25.3% (n=21)	28.9% (n=24)	19.3% (n=16)

Percentages based on number of responses. 83 valid cases.

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