

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.