

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.

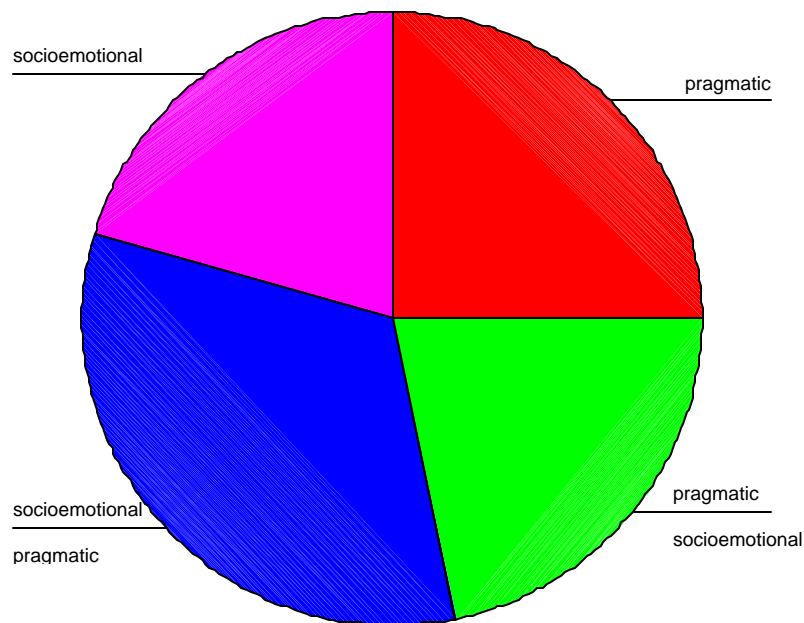
This study is not concerned with “proving” that these patterns of meanings exist. That few respondents described their work using only one pattern of meaning and that larger groups of individuals did not use a single set of meanings is considered to be of greater importance. This finding raises two important 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



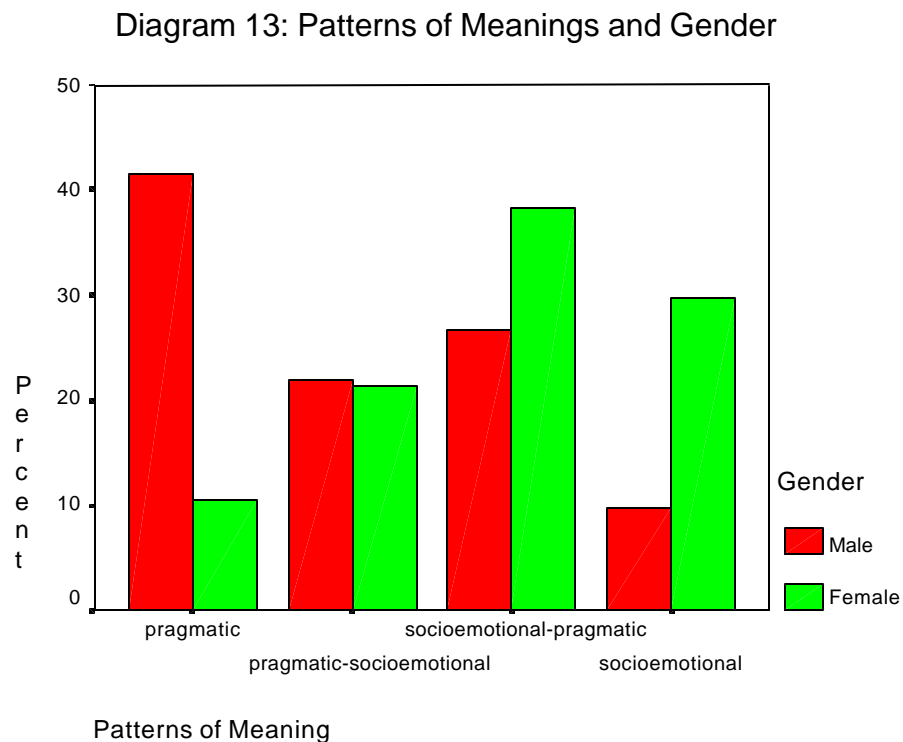
Source: C. Picard, *A Survey of Mediation in Canada*, 1998

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.