

## 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 mediators<sup>73</sup>. 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

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<sup>73</sup> 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 mediating<sup>74</sup>. 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

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<sup>74</sup> 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 mediation<sup>75</sup>? 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

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<sup>75</sup> 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 malpractice<sup>76</sup>. 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

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<sup>76</sup> 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 an 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.