

THE MANY MEANINGS OF MEDIATION: A SOCIOLOGICAL STUDY OF MEDIATION IN CANADA¹

Cheryl A. Picard, MSW, Ph.D.

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This study provides a snapshot of Canadian mediation trainer-practitioners in the late 1990's. More importantly, it examines the meaning they give to mediation. The primary goal of the study was to unmask the richness and complexities of mediation thought to be lost in bipolar views of "best practice". The study depicts mediation as a dynamic, complex and evolving work form where differences in understandings about the nature of mediation are linked to gender, educational background, dispute sector, and when an individual began working as a mediator. The study found considerable diversity of understanding about the work of a mediator as well as different opinions about how the practice of mediation should be organized. It also examined concerns mediators have about what is taking place within the field. One of these concerns is that mediation will take on a more legalistic form with the influx of the legal profession. The fear is that this will shift the focus of mediation from its original transformative goals to more evaluative and business-like ends.

The data for the study came from eighty-eight mediation trainer-practitioners working in Canada. Subjects who self-identified as both mediators and teachers of mediators were chosen because it was assumed they would have de-constructed many of the concepts found within mediation practice in order to teach them to others. Thus, they would be in a better position to articulate these concepts than the general practitioner. Close to half of the respondents were from Ontario and another third live on the West Coast, either in British Columbia or Alberta.

The study was exploratory, qualitative and based on grounded theory. Its purpose was to build theory, rather than test it, and give a fresh slant on what is known about mediation by discovering new meanings and generating new insights. It drew from interpretive sociology to legitimate its efforts to obtain knowledge about the nature of mediation by revealing how mediators understand the work they do, and to legitimate the notion that how mediators think about their work is an active and social construction of mediation. One of the strengths of the study design was the use of triangulation, which combined qualitative and quantitative methods and face-to-face interviews and written questionnaires. Mixed method research and multiple case sampling added confidence to the findings. Over twenty years of professional experience by the researcher provided theoretical sensitivity. A number of other steps ensured sound research procedures. Two additional mediators coded a sample of the data resulting in an inter-rater reliability rate of eighty to one-hundred percent between all three coders. Interpretations were continually checked against the actual data, periodic peer consultations were held, and the literature was used to generate questions and add validity to the interpretations. After collecting and transcribing the data three types of coding took place. Open coding was used to construct concepts from the data, axial coding helped form statements of relationships by asking questions and making comparisons and connections with the data, and selective coding was used to generate hypothesis and construct a story line. SPSS was used to uncover patterns and generate

¹ This is an executive summary of a much larger study carried out as part of my doctoral requirements.

theory specificity. A matrix table was constructed to find patterns across role, style and orientation variables. The table showed that various mediation traits interact to form at least four interrelated patterns of mediation meanings. These emergent patterns and combinations of patterns of meaning were labeled as pragmatic, pragmatic-socioemotional, socioemotional-pragmatic and socioemotional traits.

Finding more than two sets of meanings underlies one of the study's important insights – that dichotomous modeling of mediation approaches presented in the extant literature is not the way mediators think about their work. It suggests that mediators do not understand their work as having only one or another set of meanings, but that they draw on a range of meanings to conceptualize mediation. This was further supported by reports that many mediators change their style of mediation based on circumstances surrounding the dispute and characteristics of the disputing parties. In other words, they understand mediation to be both pluralistic and dynamic. While these patterns of understanding did involve poles, the poles did not have entirely separate traits but elements of the same traits. Veteran² mediators were more pluralistic in how they conceptualized their approach to mediation than newcomers. This finding contradicts earlier studies, which suggest that over time mediators become more set in their ways. Women tended to use more socioemotional patterns of meaning while men tend to use more pragmatic traits to conceptualize mediation. Individuals with backgrounds in business used pragmatic concepts to conceptualize mediation more so than mediators with law or social science backgrounds. And, newcomers to mediation tended to be slightly less pragmatic in how they understood mediation than veterans.

Other insights emerged. Namely, that mediators do not share a common understanding of the language they use. This was seen repeatedly in descriptions of their mediation role, style and orientation. To illustrate, ninety percent of respondents described their role as that of a “facilitator”. However, deeper analysis showed that they emphasized different aspects of this role. In some instances the word was used to depict activities that involved the exploration of needs and concerns, the acknowledging of emotions, and the heightening of understanding, empowerment, and self-determination. In other instances it had to do with the guiding of process, the exploration of options for settlement, and making possible joint-problem solving. 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 was understood as having to do with the potential to change institutional structures. In others it had to do with relational aspects of the mediation, and the transforming of an individual. In still others, it was understood as a spiritual event. Context also matters. Women, those working in the community sector, and newcomers tended to say they facilitated communication. Men, lawyers, veterans, and those working in the business sector tended to say they facilitated process. The goal for each of these role tasks was also found to vary. In some cases emphasis was placed on resolving the dispute while in others resolution was never alluded to. Instead, the goal of mediation had more to do with reaching understanding. This lack of a universal language should not be seen as simply a sign of professional immaturity. Mediation might be better imagined as drawing from a range of professionals each with their own set of

² Veteran mediators have more than six years of experience while newcomers have six or less years of mediation experience.

assumptions and goals. This plurality of understanding is likely to broaden if mediation continues to expand into new arenas. Efforts to ensure better understanding of the terms used by mediators may be a more prudent activity for mediation leaders and policy-makers than those focused on the creation of limiting definitions through standardization.

Another insight generated from this study shows that what attracts an individual to work as a mediator is changing. Veterans reported that they were attracted by the opportunity for social change and individual empowerment whereas newcomers said they were motivated to become mediators because it provided job satisfaction and personal growth. While we cannot generalize to the larger mediation community, the question emerges as to how this change might shape the future of mediation and whether or not mediation will retain its social movement ideals. Given the range of understandings regarding the role of a mediator, it was also not surprising to find differing opinions on how the field should be governed, or, for that matter, whether or not it needs a governance structure at this point in time. It is new mediators who most want regulation. Veteran mediators do not think mediators need to be licensed.

The profile of mediators in this study is also noteworthy. They tend to be in their forties and fifties; the mean age being forty-eight years with a range of thirty to seventy years. Those with a business background tend to be slightly older than the rest of the sample and lawyers tend to be the youngest. They are well educated. Very few do not have a university degree and two-thirds have completed or done some graduate studies or have a law degree. Most were born in Canada, as were their parents. They work in various conflict arenas and usually mediate in more than one of the following sectors - business, family, community or workplace. Individuals with law backgrounds are the most recent group to do this work; half of them have worked six or less years. The majority is self-employed and working full time, however, they devote only about one-quarter of their professional work to mediation activities. Almost equal numbers of men and women work as trainer-practitioners. No notable demographic differences were found to exist in the study sample when compared to other studies of Canadian mediators.

There are a number of implications to be gleaned from this research. For one, we need to be open to various styles of mediation and range of practitioner instead of the current trend to try to define, thus restrict, mediation practice. This would allow mediators to be responsive to the array of social, cultural and other needs that present themselves in conflict situations. It would also allow more time to study mediation and ensure important aspects are not inadvertently lost in any upcoming regulatory schemes. For another, we can no longer assume that mediators are of like minds in what they mean by mediation. Common language does not imply common meaning. 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 trainers 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.

If mediators want to improve their practice, regardless of whether or not they want it to be a profession, they will need to be more explicit about the language they use to discuss their work. And, they need to use more detailed examples to explain what they mean when they discuss basic concepts. Mediators also need 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.

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 to not, 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. We would 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 continue and expand. As well, the legal community and the mediation community must work closely to ensure that linking mediation to the legal profession does not in the end defeat many of its transformative and restorative justice goals. Furthermore, it will be important to include a range of studies in policy deliberations. We can no longer assume 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 involving various cultures. This would expand our knowledge about the similarities and differences in mediation practice.

A number of questions arise from this study. Does action conform to meaning? Are there other mediation traits that combine in patterns to yield different and even more complex patterns of mediation meanings? What might a similar study reveal if it were to examine other contextual factors? How does this sample of mediation trainer-practitioners compare with the larger population of mediators? How widespread is the apparent shift from visions of social transformation to job satisfaction? And, 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? These questions help set a research agenda for the future.

This study advances our knowledge about mediation and the inter-relatedness between context and meaning. As an exploratory study it presents some exciting insights about what is meant by mediation that will hopefully motivate further inquiry. And, it offers an analytical model from which to study other interacting patterns of meanings.