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ADRIC 2022
Annual National Conference
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LEADING DISPUTE RESOLUTION IN CANADA
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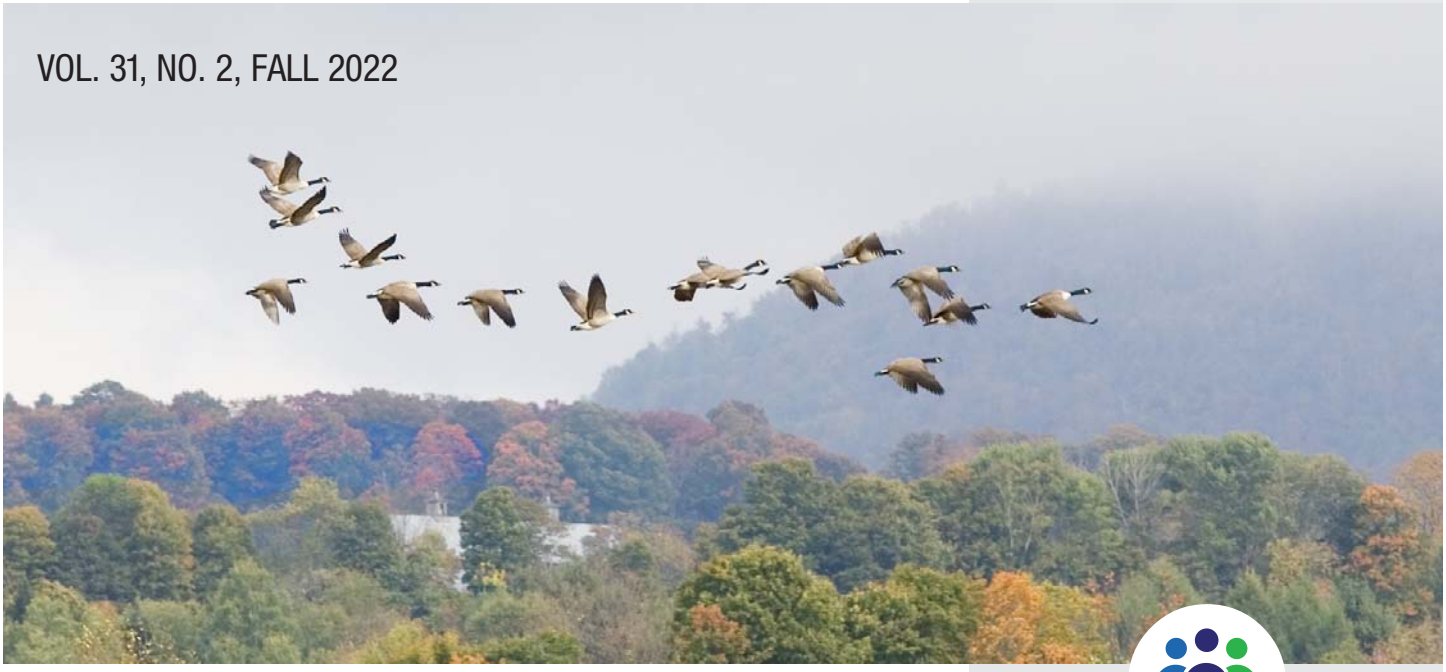

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234 Eglinton Avenue East, Suite 407
Toronto, ON (Canada) M4P 1K5

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Message from the Editor

Welcome to the fall 2022 issue of the *Canadian Arbitration and Mediation Journal.* In this issue, one of the things we look at is research—who is doing dispute resolution research in Canada, with what resources, and why isn't there more of it? Editorial board member ***Rick Russell*** talks with one of the most accomplished researchers in Canada, ***Julie Macfarlane***, who has looked into issues of access to justice and, most recently, non-disclosure clauses. Conflict coach ***Cinnie Noble*** outlines how she independently researched and designed a process for pre-mediation coaching that supports participants without compromising a mediator's neutrality. Practitioner ***Loïc Berthout*** describes how he developed a tool to measure and graph trust levels between business partners, and he invites other practitioners to use and evaluate his work. And I, ***Genevieve Chornenki***, offer an editorial that observes the absence of a culture of research in Canada's dispute resolution field. Other contributors offer thought-provoking contributions. ***Mina Vaish*** proposes a National Centre for Dialogue and Mediation, and she wonders what role it might have played in resolving the occupation of the nation's capital in 2022. ***Ali Soleymaniha*** provides a way for dispute resolution practitioners to think about the abstractions and generalizations that people use to order the world around them. ***Vrinda Sagar*** examines the role of identify in resource extraction disputes and suggests ways to take cultural concerns into account. ***Helen Finn*** details a methodology to manage large, complex environmental projects that impose a disproportionate impact on a few but stand to benefit many. And, ***Demi Peters*** reviews *An Anatomy of Everyday Arguments: Conflict and Change through Insight*, which she considers most appropriate for "seasoned practitioners." View our book reviews webpage *here*.

We hope readers will enjoy and benefit from the material presented here, and we urge everyone to share this issue with colleagues, clients, and friends. Past issues of the journal can also be found on CanLII at *https://www.canlii.org/en/commentary/journals/43/*.

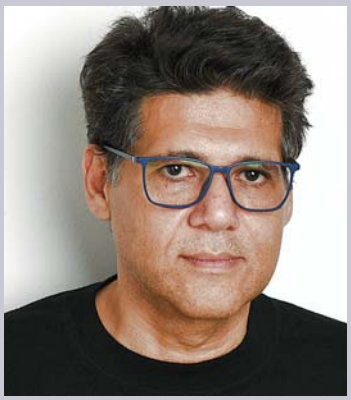
Thank you to all who made this issue possible: our contributors, the helpful staff at the ADRIC office, our volunteer editorial board, and to you, our readers. Please be in touch. Your feedback, submissions, and pitches are always welcome.

Genevieve A. Chornenki
Editor-in-Chief

GENEVIEVE A. CHORNENKI, LL.M.(ADR), C.MED, C.ARB

Genevieve is the author of *Don't Lose Sight* (2021) and co-author of *Bypass Court* (2015). She holds a Certificate in Creative Writing from the University of Toronto and a Publishing Certificate from Ryerson University. She was inaugural chair of the Ontario Bar Association's ADR section and serves on ADRIO's C.Med accreditation committee. *www.genevievechornenki.com*

President's Message



ELTON SIMOES, MBA, MDR, IDP-C, C.MED, Q.ARB

Elton Simoes is an accomplished Arbitrator, Mediator, Negotiator, Consultant, Board Director, and Business Executive. He practices arbitration, mediation, and Med-Arb in complex, confidential, time sensitive, commercial disputes. He has lived, worked, and studied in Canada, U.S., Latin America, and Europe. He possesses a strong academic background in Business, Law, Corporate Governance and Dispute Resolution.

It is already fall. 2023 stares us in the face, pregnant of promises, and full of challenges. New, exciting, productive times lie ahead. But it is equally important to take a moment to talk about what has been done in this post-COVID era.

ADRIC is not a stranger to crisis. During its lifetime, with the support of its members, ADRIC overcame many "once in a lifetime" challenges. Always in our favor is the fact that we benefit from a resilient organization built by many generations of dedicated officers and members. We stand on the shoulders of giants, who have their place not only in the organization's history, but most importantly, in our thankful hearts.

It was with resilience, skill, and determination that ADRIC emerged tall from COVID and, once again, restarted our in-person activities, adding to our already rich experience, the personal human contact that we all craved.

After two years of virtual work, ADRIC's upcoming conference and AGM in Gatineau could not come at a better time. We will regain the opportunity to meet our colleagues, learn and network, all in person and under the same roof.

It will be our pleasure to host our members in our AGM, not only to report and be accountable to our members, but also to recognize the contributions of our Board, volunteers, and staff, who cannot be thanked enough. Our success is a result of their collective endeavor to make this organization increasingly better, more relevant, and always at the service of its members, clients, and society.

As ADR practitioners, we serve society by providing a noble and needed array of services. We are not only an alternative to court or unproductive conflict. We are bridge builders that connect people and companies in their most personal, private, and difficult times. We save money to our clients, but also provide them with piece of mind, a sense of security, reduction of stress, and fair outcomes to difficult problems.

ADRIC and its affiliates support their membership to fulfill this difficult mission by building value to members and their clients. In this relentless effort, ADRIC both pursues excellence in the delivery of ADR services; and serves as a catalyzer to increase the adoption of these processes nationally.

In this last year, some examples of the many initiatives and results which we are proud of include:

- The National Introductory Mediation Course has been updated and improved. The delivery of the new content already started.
- ADRIC and Affiliates are working together in the setting up of construction adjudication rosters, with national minimum standards, at provincial and national levels. This includes a new designation for construction adjudication which will support and accelerate the adoption of these services and, at the same time, give our members a competitive advantage in this field.
- To better serve our clients and fulfil our commitment to our members to relentlessly improve the quality of the ADR services delivered, ADRIC has completed a long overdue review of its "Process for Addressing Complaints Against Members", which will be in place in the next few weeks.

Having shared these examples, this message would not be complete without mentioning our commitment to the future. As I said earlier, we stand on the shoulders of giants. However, the future depends on ADRIC's ability, willingness, and success in supporting and nurturing the new generations of ADR practitioners to come, in its beautiful complexity and diversity.

It is our moral and fiduciary obligation to make sure that ADRIC provides an open, diverse, welcoming, and accepting organization to newcomers, who, sometime in the future, will be responsible to lead this organization through yet another set of challenges and victories. We invite each of our members to join ADRIC in its efforts to support these professionals. It in our best interest to do so. They represent our future.

I look forward to seeing you at our AGM and/or Conference. In the meantime, should you need or wish to reach out to me, feel free to do so through LinkedIn (*linkedin.com/in/eltonsimoes*).

There is no greater pleasure than being of service. And there is no greater honour than serving ADRIC and its members.

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Listen In:

A conversation with Julie Macfarlane and editor Rick Russell.

Julie Macfarlane is among the most accomplished academics and dispute resolution practitioners in Canada. She has worked as a mediator, facilitator, and conflict resolution educator, and she has written and researched extensively about dispute resolution with a particular interest in access to justice. She is the recipient of a number of awards and honours, including the International Academy of Mediators Award of Excellence (2005), the David Mundell Medal for Legal Writing (2016), and the John M. Haynes Distinguished Mediator Award (2017). In 2020 Julie was named to the Order of Canada. She has taught in Ireland, the UK, Australia and in Canada, at the University of Windsor's Faculty of Law.

DR JULIE MACFARLANE
Julie is Distinguished University Professor (Emerita) at the University of Windsor and was appointed to the Order of Canada for her work on access to justice. Julie is Co-Founder with Zelda Perkins of Can't Buy My Silence, campaigning to end the misuse of non-disclosure agreements. https://profjuliemac.com/

RICK RUSSELL, C.MED, C.ARB
Rick Russell is involved in facilitation, mediation, workplace restoration, arbitration, and investigation. Rick is a founding partner of Agree Incorporated along with Gary Furlong. Rick is an editor of the Canadian Arbitration and Mediation Journal and has published articles in the CCH ADR Manual, the OBA monthly newsletter and others.

Thank you for making time to speak with us and for honouring us with your insights, Julie. I'd like to begin by asking you about an initiative that you founded called the National Self-Represented Litigants Project *https://representingyourselfcanada.com/*. You did ground-breaking research about self-represented litigants, work that is relevant to mediation and arbitration where people often participate without professional advisors. What was your motivation and what special insight did that work provide?

The group to which I belong—National Self-Represented Litigants Project or NSRLP—has done pioneering work in the impact on litigants of being self-represented before the courts, beginning with the National Self-Represented Litigants Research Study (2013) https://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf .

Most of us cannot understand the extent of the impact on litigants of representing themselves. These individuals showed signs of trauma and have paid a heavy cost on their relationships with both friends and family. They tend to fixate on their litigated issue and on their sense of injustice in dealing with legal institutions. Most of these folks had lawyers at the outset but could not afford them throughout the legal proceedings.

NSRLP has worked to build more empathy for the self-represented among both lawyers and those on the bench. When the project's work started litigants represented themselves in a minority of cases. Now, in family law, more than half of the cases involve self-represented parties. The project's work started to grow once the bench and the bar realized that "the genie was not going to go back in the bottle." There has been progress. Some judges have changed their attitudes. We are told

that some applicants for appointment to the bench are asked how they would manage with litigants who are self-represented.

You have now turned your considerable talents toward non-disclosure agreements (NDAs). You are working on Can't Buy My Silence *https://cantbuymysilence.com/*, a global campaign to ban non-disclosure agreements for anything other than their original use which was to protect trade secrets. Do you believe that mediators should play a role in reducing the proliferation of NDAs?

NDAs have crept into terms of mediation through agreements to mediate, greatly expanding the usual confidentiality that applies where the process is ongoing and the admissibility rules that impact what information can and cannot be used outside the mediation process. I am concerned about how often mediators oversee settlement agreements that include extremely prohibitive NDAs well beyond the confidentiality regarding the quantum of a settlement. People often sign them under pressure, either to obtain a chance to settle or after settlement to close their bargain, but they do not understand what they are signing. Some of these agreements are so broad that they prevent past participants of mediation from talking to their friends and family, psychologists, and other professionals about their experience at mediation. Some even try to include police. Most of these are unenforceable, but they do serve to intimidate people into silence about a broad range of their human experience.

I believe that as an industry or profession, mediators need to take responsibility for the impact that these NDAs have on the mental health of those who feel traumatized by their experience and who feel they have nowhere to turn. Mediators ought to review their agreements to mediate to decide whether the degree of confidentiality in them is necessary or desirable—especially in terms of victims who are essentially gagged when participating in a process that mediators like to characterize as "theirs."

What is your opinion of the use of mandatory mediation in settings such as the Public Service Relations Board and the Canadian Human Right Tribunal? Are there areas where mandatory mediation is absolutely the best design choice?

Historically, I have been very much in favour of mandatory mediation in civil disputes because few people will opt into something they see as untested, and when mediation is optional or purely voluntary on a case-by-case basis it comes across as experimental. That said, when things are mandatory one must be concerned about client safety issues—is this particular participant the appropriate person and this particular situation the right situation for that process?

Mediation is much closer to an industry now than it was twenty years ago. I am concerned about the defaults that mediators and lawyers set around the process, ticking the box, for example, on a non-disclosure clause instead of understanding and relying upon confidentiality in the beginning and inadmissibility after. NDAs are just one example of the many bad habits that mediators and lawyers get into during and after mandatory mediation.

How would you characterize the different dynamics at work in mediating within unionized and non-unionized working environments?

My research arrived at some disturbing and counter-intuitive conclusions. My findings were that unionized women who have been bullied and harassed are less likely to raise an issue than women working in a non-unionized environment. I have no evidence to explain why this is so, but I understand that in some unions the leadership does not show respect for women and some are even known to be perpetrators themselves. Some union leadership participates in sexual harassment and bullying and has tolerated it for many years. Women have come forward but most complainants have a lousy time of it and ultimately leave the workplace anyways. The data relating to sexual harassment is not encouraging to female employees.

You have been involved in significant mediation program systems designs and evaluations. Can you describe the assignment(s) that you found most challenging and why that was so?

I was retained by the Catholic Teachers' Association to design a dispute resolution system for them, and there were many different approval levels and many steps I had to take in order to obtain agreement and ensure acceptance of my recommendations. I learned from that experience that to affect change in a system as complex as theirs I needed to create a united front in support of the initiative. That meant getting and maintaining buy in from the various constituencies that existed. The culture of an organization determines outcomes depending upon how unified its members want to be. In this assignment, I found that common denominators such as being members of the same association and the same faith tradition did not necessarily lead to greater unity.

Insofar as evaluation is concerned, I was retained by the Canadian Human Rights Commission to evaluate how well their dispute resolution system was meeting their systemic goals. What I learned was somewhat disappointing. My research demonstrated that the system's users were not motivated to select resolutions that benefitted others in the organization or outside. People preferred outcomes that met their individual needs over resolutions that included systemic benefits. Many people were primarily motivated by a strong desire to just "get it over with."

You are one of the few of us who has been both a practitioner and researcher in the area of mediation. What does the future of the field look like to you?

Thirty years ago, mediation had an enormous potential to empower participants and create change in society, and in these respects I am not totally disappointed. Some of the trappings of mediation like NDAs have blunted its effectiveness as a means of change, but we are still in there working on it.

Preparing Parties to Participate in Mediation—The Evolution of a Coaching Model

Regardless of how skilled mediators are at managing the concerns that participants have when entering mediation, many participants bring anxieties, questions and fears that can interfere with their ability to effectively engage in the process. Many people are actually ill-prepared to participate and are initially reluctant to engage in a face-to-face conversation with the other person. When I discussed the matter of mediation preparedness with other practitioners, I found that they shared my concerns, so I researched and developed a method for conducting a pre-mediation process that supports and prepares people to effectively take part in a mediation conversation. This article details the evolution of my thinking and that process.

In the beginning...

My mediation training and practice started over 35 years ago. Like most mediators of my vintage, I started with an interest-based process. *Getting to Yes Negotiating Agreement Without Giving In* was the seminal text, and the theory and practice made perfect sense. We learned the language—BATNA, WATNA, loss aversion—and other terms and phenomenon that apply when disputing parties negotiate their differences.

Thousands of people settled their disputes and continue to do so based on the well-worn theories posited by Roger Fisher and William Ury. Of course, other great texts began to line our libraries as other theories gained credence among those of us who are mediating matters that aren't about "negotiating agreement without giving in" as the title goes. *The Promise of Mediation*, *Insight Mediation*, *Transformative Mediation*, *Narrative Mediation*, *Solution-Focused Conflict Management* are examples of practices that reflected further development of the thinking in our field and the realization that many parties come to facilitated discussions to mend, improve, and strengthen the relationship between them and the other person.

None of what is said here is new to those of you who practise mediation. But over time, many of us incorporated other principles into our practices to do more than facilitate settlement of issues in dispute. We recognized that the other needs parties express—just as strong, if not stronger than those relating to the content of the dispute—had to do with the breakdown of the relationships not only in family, neighbourhood, workplace, estates and other conflicts that are interpersonal in nature, but also in many commercial and civil disputes. As other methodologies evolved in the ADR field these types of considerations informed what was included in training and our practices, and this evolution and my own experiences lead me to consider some other aspects of mediation to do with preparing people to actively and effectively engage in the process.

Purpose of Pre-Mediation Work

Not all mediators conduct pre-mediation meetings, and there are some that subscribe to the view that meeting privately prior to (and even during) mediation may bias the mediator about one of the parties or issues in dispute[1]. Some other commentators have expressed concerns about the possibility of violating confidentiality and abuse of power[2]. In the many training programs I took when I started in the field, limited time was devoted to what pre-mediation entails and ways to prepare parties to participate in the process. Undoubtedly, our practices vary in this regard. Certainly, we learned that pre-mediation meetings give the mediator the opportunity to assess parties' suitability and even whether to bring the parties together

CINNIE NOBLE, LL.B., LL.M. (DR), C.MED

Cinnie Noble is a Chartered Mediator and Professional Certified Coach, and pioneer of conflict management coaching. She and her international team train mediators and others worldwide in her unique CINERGY® Model. Cinnie is the author of Conflict Mastery: Questions to Guide You and Conflict Management Coaching: The CINERGY™ Model Bio: https://cinergycoaching.com/about-cinergy/cinnie-noble/ www.cinergycoaching.com

at the beginning. Pre-mediation meetings also give the parties a chance to give free expression to their emotions and ask questions about the process. We also learned, of course, the type of procedural and logistical information to be shared with clients prior to the first joint session.

In a small research study I conducted 6 years ago on this topic, I asked mediators what their pre-mediation practices were, how this part of the process had changed since they started their practices (if it had), and what they saw as the rationale for the change, if any.

Experience and increased awareness about what the practitioners determined would be more helpful for the parties (and themselves) resulted in changes for all I interviewed. For instance, I heard about such changes as extending the time spent with each party from 20–30 minutes to up to 75 minutes with each party (initially providing process information and then, adding more elements). I read and heard about mediators who increasingly provide parties with tips regarding listening, communication and negotiation skills—in written form and/or verbally and give general advice on ways to participate most effectively. I heard from many practitioners that they were incorporating more written preparatory questions for parties in which they focus on many of the elements of mediation to be discussed during the process.

These interviews and the growing literature on pre-mediation meetings demonstrated a shift in how many mediators prepare parties to participate more actively in the process and the outcomes they observed as a consequence of doing so. To name a few, the practitioners who extended their time and included more information giving and gathering spoke about the importance of developing a rapport with the parties, and gaining an understanding about what concerns might preclude effective participation. They noticed that by doing so, people who expressed the types of worries they had about engaging with the other person appeared less anxious and more confident when the mediation occurred. Others articu-

lated that pre-mediation meetings serve to get parties focused on identifying what is most important to them and what they need to do, ask, say during joint sessions to feel the process has been successful for them. Others talked about how the individual sessions before mediation helped parties to get into a problem-solving mind-set and better able to engage in the process and concentrate on the possible outcomes for moving ahead rather than dwelling on what happened.

Regardless of how skilled we are at managing the range of concerns the parties might have when they enter into the process, many come with anxieties, questions and fears that have the potential for interfering with their ability to effectively engage in mediation. The most common rationale practitioners identified for the changes they had made over time have to do with this and a basic recognition that most people are actually ill-prepared to participate and in fact, many feel resistant to sitting across from the other person and speaking their truth. This is consistent with my findings and my experience and resulted in taking a different approach in my own practice.

A Coaching-Approach to Mediation Preparedness

In the late 90's I became a certified coach and developed a model for coaching people on a one-on-one basis to strengthen their conflict competence and gain confidence to more effectively engage in their interpersonal disputes. The International Coaching Federation (*www.coachingfederation.org*) defines coaching as "partnering with clients in a thought-provoking and creative process that inspires them to maximize their personal and professional potential." Applying this definition to conflict management coaching then, one of the premises is to maximize clients' potential to engage in conflict. In my one-on-one coaching practice it was evident that part of my role entails making conflict a better experience for my clients and I began to consider how this role might also apply in my mediation practice - with whatever else the parties need and want from the process. It is inherently about creating a safe place and space.

In my coach training and subsequent studies, an important topic, which was increasingly being raised in the conflict management field, focused on the brain and what happens when we are "triggered." At these times, the amygdala (two small regions in the brain that help regulate emotion) is "hijacked" due to the emotions that occur in reaction to the negative stimulus and the ability to think is compromised. Helping people shift this reaction to be able to use their "executive function" in the pre-frontal cortex to reflect, increase awareness, be creative, problem-solve and make decisions is key in both coaching and dispute resolution practices when working with people engaged in conflict.

My studies and research resulted in developing ways to facilitate a shift from peoples' emotional reactions to their interpersonal disputes to a place where they are able to reflect before responding. That shift, of course, is not one that is easily made especially when it comes to interpersonal disputes and long term conflicts in which values and identities have been threatened. Based on my research, among other things related to neuroscience principles, I developed a methodology for facilitating that shift for my individual coaching clients and I wondered how coaching would apply to my mediation practice.

Before developing what a pre-mediation process would look like, I met individually with people who had engaged in mediations relating to interpersonal disputes and asked whether or not they settled. The four questions I asked parties were: Looking back, what more, if anything, might have been helpful by way of preparation for the mediation? And what was the nature of your concerns before you participated? What about during? How about afterwards?

I will focus on the responses that are most pertinent to the topic at hand. Many people expressed fears[3] about participating in the process and how they and the other person were going to interact. Most people also said, in retrospect, that they would have liked to have been better prepared to deliver tough messages, to receive less reactively the other's upset and blame and to respond more effectively. Many were still agonizing about what they said and didn't say. There were many wish-lists in this regard such as "I knew that is what she was going to say and I wish I had prepared for how to respond …." I wish I had had the nerve to say…." I wished I had apologized. I wanted to but couldn't find the words…" "I wished I was prepared to say what I have wanted to for a very long time" and so on. Again, it was a small sample but, the responses to my questions were consistent.

I reminded myself, and it is important to keep in mind, in relational conflicts (and other disputes really), parties typically have a good idea of what the other person is going to say in the mediation based on having heard it in an altercation between them. Or, it might be by way of a written complaint or, by a boss or someone else within the organization, like a human resources employee, who has conveyed the information. Because they knew generally what to expect, most people anticipated what was going to be said and figured that the other person would, too. As a consequence, being prepared to respond more effectively, and communicate their experience and needs with more clarity and calm than they had during their altercation were common "wishes." Many stated they also wanted to understand better where the other person was coming from, saying they were unable to hear, understand, take in etc. what was said.

A Pre-Mediation Model

Using my research, I developed a method for conducting a pre-mediation process based on each person's specific fears and concerns about how the interaction will go, the reactions

they want to regulate, the messages they want to convey and the responses they hope to make. If they want to instead or, in addition prepare for other concerns or consider the risks and opportunities relating to settlement options or anything else that worries them then, that's the focus of the sessions.

The model is a flexible, multi-faceted process based on what the parties bring. It includes:

1. sending the parties a short summary of what mediation is and is not and a questionnaire that asks the parties to share what they are hoping to achieve regarding the relationship and issues in dispute, what they are most concerned about, and for what they want to be most prepared. Sometimes there are more questions depending on what information I already have; and
2. holding 3 (and sometimes more) sessions with each party for an hour at a time. This usually occurs over 2–3 weeks.

The first session is initially a getting to know one another meeting that includes a review of the answers to the questions and responding to process type questions. Obtaining the client's goals for our time together is also done in the first session including ascertaining what success would be for them. Each then analyzes the dispute based on The (Not So) Merry Go Round of Conflict[4] which requires them to step back and gain different perspectives on the conflict between them and the other person. This analysis begins the process of developing mutuality – by considering not only their own perspective but also, how they view the other person's "come from." There are times the latter analysis is moved to the second session. The content of the next two sessions is according to each person's objectives for what they want to be most prepared.

Essentially, parties work on setting their intentions about how they want to be and interact. They might practice certain sentences and requests they are finding hard to articulate based on considering what and how they want to communicate and how they want to be heard and received. They contemplate and practice various ways of responding to what they expect the other will say. They might list the possible options for settling things and the pros and cons of each for them and the other person. Essentially, they consider what will make the process a successful one for them - whether or not they settle.

I am clear with the parties from the start that I am there to support each with respect to that for which they want to be most prepared in order to make the process and experience as productive as possible. I do not teach, train, provide advice or opinions, or make suggestions. Rather, the coach-approach is strictly about tapping into parties' own resources so that they are best able to gain the confidence and clarity needed to participate.

What I have found by follow-up evaluations and conversations is that parties who engage in this sort of format express relief that they were well-prepared to engage in the process, that they felt more confident and calmer than they expected to, that they would use such a process again, and that they have learned some things about themselves that they are applying in other situations.

Summary

Over the years, I have been part of conversations in which mediators are looking at the processes they might want to add to their growing tool box for conflict management specialists. Some are considering what else may improve the conflict experience for disputing parties and what other ways might be helpful for people to reach settlements or at least reconcile their differences. There will be many more conversations and one of them will be about pre-mediation coaching. I welcome our ongoing discussions.

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1 For example Christopher W. Moore "The Caucus: Private Meetings That Promote Settlement" *Mediation Quarterly* 16 (Summer 1987) 87-101; Gregoria Billikopf-Encina, "Contributions of Caucusing and Pre-Caucusing to Mediation" *Group Facilitation: A Research and Application Journal 4* (Sprint 2022) and Joyce Odidison, *Getting Ready for Mediation: A Pre-mediation Concept* (Winnipeg: Interpersonal Wellness Services 2004, 2013)

2 For example Christopher W. Moore *The Mediation Process: Practical Strategies for Resolving Conflict* (San Francisco: Josse- Bass, 2003); Joan Blades, "Mediation: An Old Art Revitalized" *Mediation Quarterly* 16 (March 1984) 15-19

3 Cinnie Noble, "The Fear Factor and Conflict" https://www.mediate.com/articles/NobleC12.cfm

4 From the book *Conflict Management Coaching: The **CINERGY** Model* p. 51 2012, by Cinnie Noble

Measuring Trust Between Business Partners: A Practical Tool

LOÏC BERTHOUT, LLM, MBA

Loïc Berthout, LLM, MBA is a practitioner of conflict management, specialized in Alternative Dispute Resolution (University of Sherbrooke), Organizational Management (Sheffield University, UK), and Leadership (Saint-Cyr Military Academy, France). Loïc has a significant international experience in the creation of partnerships, in strategic planning, coaching, and in mediation/conciliation. Bio: *http://www.linkedin.com/in/loicberthoutchansac*.

Introduction

Partnership negotiations typically contain three riddles: How do you know if the new partners will be able to get along and work effectively together? What are the principles and values that will guide their partnership? And, what will happen in the event of a conflict? The answers often turn on the matter of trust, a rather broad and deep concept that can be difficult to grasp.

Trust is essential between partners who wish to share their fate successfully. Originally, the word meant an act of faith (*fides* in Latin) whose nature is irrational and invisible. But mediators need more than faith and philosophy to do their jobs. As a mediator with experience working with disputing partners, I wanted an approach that could make trust more tangible and measurable, an approach that could generate trust as well as prevent disputes. So, I set out to try to answer the following research question: is it possible for a neutral mediator to create a framework of interaction based on mutual trust and to use that framework in preventive mediation between business partners?

To answer the question I set myself three sub-objectives: (i) to determine the attributes or characteristics of trust in a partnership context; (ii) to establish criteria for measuring trust between partners, and (iii) to show how the mediator (or the third-party mediator) can use those measurements to enhance trust between partners and prevent disputes.

How to measure trust?

As I will explain in the section on my methodology, I developed a practical, easy-to-use questionnaire that measures the level of mutual trust between partners and identifies areas of difference or dissent. The questionnaire is intended to be completed by each partner independently. Their responses then give the mediator a framework from which to generate and enhance trust.

As its ancient origin suggests, trust is established by seeking a reliable point of support in others (*pistis* in Greek), and my questionnaire is intended to establish the extent of that support, numerically and graphically.

Before beginning the questionnaire, partners are given a lexicon that defines ten attributes of trust—loyalty, respect, transparency, good faith, cooperation, reliability, commitment, confidentiality, competence, equity. Then they are invited to rate those attributes, first to reflect on attributes that are important to *them*, then to reflect on the behaviors, expressions, and actions of *the other person*. Each question is graded from 1 to 5 so that partners can assign a degree of importance to each attribute in terms of expectations and perceptions.

Figure 1: Questionnaire

Please rate the IMPORTANCE you place on the following attributes regarding your relationship of trust with the other party, on a scale of 1 to 5:

SCALE: 1: not at all important, 2: not important, 3: neither important nor unimportant, 4: important, 5: extremely important

Loyalty	①	②	③	④	⑤
Respect	①	②	③	④	⑤
Transparency	①	②	③	④	⑤
Reliability	①	②	③	④	⑤
Cooperation	①	②	③	④	⑤
Commitment	①	②	③	④	⑤
Competence	①	②	③	④	⑤
Good faith	①	②	③	④	⑤
Confidentiality	①	②	③	④	⑤
Equity	①	②	③	④	⑤
Others (specify):	①	②	③	④	⑤

Please rate the IMPORTANCE, in your opinion, that the other party places on the following attributes in your relationship of trust with you, on a scale of 1 to 5:

SCALE: 1: not at all important, 2: not important, 3: neither important nor unimportant, 4: important, 5: extremely important

Loyalty	①	②	③	④	⑤
Respect	①	②	③	④	⑤
Transparency	①	②	③	④	⑤
Reliability	①	②	③	④	⑤
Cooperation	①	②	③	④	⑤
Commitment	①	②	③	④	⑤
Competence	①	②	③	④	⑤
Good faith	①	②	③	④	⑤
Confidentiality	①	②	③	④	⑤
Equity	①	②	③	④	⑤
Others	①	②	③	④	⑤
(specify):					

Mediator's Framework

Once the partners have each completed the questionnaire, the mediator can generate and enhance trust between them by means of three steps.

First, the results offer a starting point for a discussion on trust with the partners. Calculating the average of the perceptions gives the mediator a first indicator of the level of trust (high, medium, or low). The mediator can also stimulate the open-mindedness of the partners by inviting them to define trust and what it means for them.

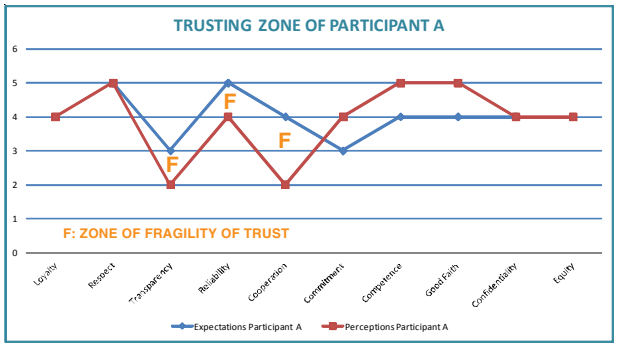
Second, with the consent of the partners, the mediator can share and compare the individual responses in order to promote mutual learning and enrichment. Sharing results allows the partners to see key areas where trust is fragile, as well as what matters most to each of them and where their differences lie. As shown in Figure 2, when their responses are plotted the graphs reveal where trust is fragile; the invisible becomes visible! Each plotted point corresponds to one attribute of trust, and every point is an opportunity for the partners to discuss their expectations and adjust their perceptions.

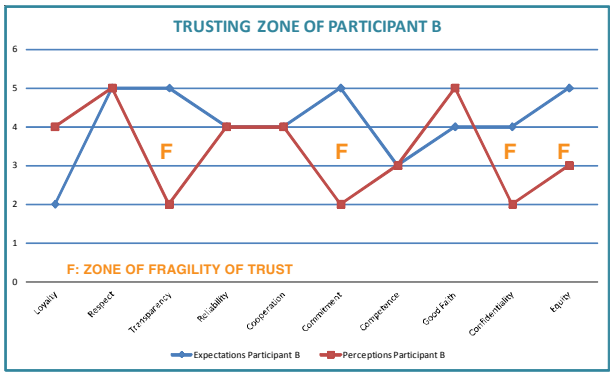
Third, once discrepancies have been identified and addressed, the mediator can switch focus and provide a new momentum by exploring the expectations for a relationship of mutual trust. Through a facilitated discussion the partners can exchange their points of view in an explicit conversation based on objective criteria (attributes), and they can probe their perceptions while having the opportunity to assert what counts for them.

Figure 2 shows how the responses of the partners might be graphed. The blue line illustrates what a partner expects in the relationship. The orange one illustrates what a partner perceives to be the case. The striped area (in red) illustrates where trust is fragile, a "zone of relative fragility (F)." In the case of partner A the zone of fragility relates to transparency, reliability, and cooperation. In the case of partner B the zone of fragility relates to transparency, commitment, confidentiality-equity.

While sharing these results the mediator can indicate that A considers cooperation to be very important (4/5) whereas B attaches little importance (2/5) to this same attribute. The mediator then reveals dissatisfaction or lack of trust, expressed by party A regarding cooperation that it is considered more important for party A and perceived far less important, from his standpoint, for party B.

Figure 2: Partners' Expectations & Perceptions





With these results, the mediator identifies the areas of lack of trust and direct intervention towards the attributes that show significant negative deviations, likely to be analyzed with the partners to understand the origin and potential causes.

After observing and understanding the discrepancies, the mediator can consider how to generate trust by focusing on the areas of fragility and using trust-building techniques. In the above example, for instance, the mediator can ask party A to define what cooperation looks like in a

business context and in day-to-day life, and to elaborate on the perceived lack of cooperation with party B. In turn, the mediator can ask B to share their vision of cooperation.

As the conversation progresses, the mediator can open up the field of possibilities while offering a reflective feedback, encouraging the partners to better appreciate their mutual perceptions for an effective cooperation, fostering reassuring words and reciprocal actions, and helping the partners to agree on the implementation of preventive mechanisms crafted to the specific needs and common interests (e.g. preventive partnership or charter).

In short, the graphical representation of trust allows the partners to precisely visualize the contour of their mutual trust and to specifically identify areas of fragility. They may then assess their expectations and work to strengthen the level of trust. By their common will, the partners undertake to address their vulnerabilities and their mutual expectations with the help of the mediator.

Practical Steps for Mediators

In my experience as a mediator who has worked with business partners, I have observed that many partners are open and eager to better understand the dynamics of trust and to take advantage of opportunities to improve their relationship. They are favourably disposed to my suggestion that they "test their trust" by means of my questionnaire.

If the partners agree, the questionnaire can be completed during a one-on-one preparation session. I then collect the completed questionnaires filled with valuable information that I can disclose during the plenary session, preferably at the outset for a smooth start, especially if the level of trust is low, or, alternatively, at the end of the process when the partners have made progress in their rapprochement and are looking for support to satisfy their need for harmony or to demonstrate their efforts towards each other (better cooperation versus more transparency in our exhibit).

If necessary, the mediator can also pick a key moment to disclose the results of the questionnaire during an initial plenary session to defuse a tense situation or, later, to prevent a hasty decision by one or both partners to put an end to the resolution process. The disclosure of the results creates a sort of decompression chamber and an opportunity to continue the informal process, avoiding the risk of falling into an impasse.

I recommend naming the "confirmed" areas of trust i.e., absence of deviation (respect in our example) or positive deviations (attributes where expectations are surpassed); and using them for a constructive dialogue in a benevolent, empathetic, and inclusive approach. As trust also takes place between the mediator and the partners, such an approach extends trust with an almost immediate ripple effect. Indeed, some cognitive strategies work better with the presence of a mediator because partners may welcome and value information more when it comes from a neutral source.

In addition, it may also be wise to consider other post-mediation conditions, such as

1. formulating vision and mission statements, and the adoption of common values
2. defining operational objectives (e.g., decision-making methods)
3. clarifying of the contributions (roles and responsibilities) of the partners, and
4. regularly measuring the level of trust between partners.

It could also be worth testing the ten attributes in various cultural contexts to validate their universality or, on the contrary, to shed some light on the various local culture codes and idiosyncratic business practices.

Many options are open to mediators once the topic of trust has been introduced and examined with the partners, and the questionnaire that I designed allows a constructive conversation to begin and continue.

Research and Design Methodology

When I decided to explore the issue of trust in business

relationships, I hypothesized that there was a specific psycho-sociological dynamic[1] between business partners, and I anticipated that an in-depth analysis of trust would be necessary. Understanding trust would allow me to identify what would contribute to stable and durable relationships, and I anticipated that once I had identified the main attributes of trust I could identify areas where trust between business partners needed to be strengthened.

Three theories informed my work: (i) the theory of cooperation[2] ("*solidarisme procédural*[3]"), (ii) the theory of strategic alliances[4] ("*Théorie évolutioniste réaliste*[5]"), and (iii) the "Attribution Theory[6]" ("Dynamics of Trust[7]"). I have summarized the principles and characteristics of these theories here [Table 1].

I also conducted extensive documentary research to unveil the mysteries of trust. I filtered the literature on trust through the sieve of my theoretical framework to select the attributes of trust based on their frequency and importance in the existing academic literature. This involved examining fifteen qualitative models, eight quantitative models, and an intermediate model, details of which interested readers may read here [Table 2].

I then synthesized the main approaches to trust that I found in the literature. This synthesis was complemented by a second axis of analysis by examining the process of generating of trust. All of the models aimed at conceptualizing and measuring trust allowed me to better understand trust, to identify its potential attributes, and to identify the limits of existing approaches. Indeed, the choice for the ten attributes of trust is the result of a detailed inventory based on more than two hundred references[8]. In the light of this inventory, a comparative analysis of the main characteristics of trust was carried out to

1. extract and select the attributes, and
2. check whether a measurable relationship was possible between the suite of selected attributes and the anticipated areas of trust variance.

Finally, after having identified the attributes of trust and validated the principle of measurement as well as the possibility of identifying areas of fragile trust, an attempt to model the combinations of four indexes (perceptions, expectations, satisfaction, insufficiency) was performed through a special use of the Likert scale.

Readers interested in learning more about my methodology are welcome to contact me directly.

Conclusion

Trust can be seen as the manifestation of an expectation towards the other. Too often, where lack of trust exists, when the dynamic of trust turns into a toxic spiral, or if a negotiation process has stalled, partners may be wary and doomed to failure. A dispute is not a forgone conclusion. Trust issues can be addressed and solved. Some of the doubts and suspicions can then be captured into a rational assessment of the dynamics between partners to contain mistrust (or even distrust) and overcome the barriers that hinder a possible resolution. A neutral mediator can play a role using this new framework of interaction to help business partners. Together, they can explore the gaps in perception through introspection, then the areas of fragility of mutual trust, through extrospection. The mediator can also facilitate a dialogue allowing partners to better identify their mutual expectations and rely on a measurement tool, with visible benchmarks, to treat the fragile areas and generate trust according to specific attributes.

Initial use of my questionnaire and mediation framework has yielded perceptible positive results in partnership mediations. I recommend its use in empirical work, and hope that other researchers will be motivated to test the effectiveness of my approach and the extent to which positive outcomes can be replicated. Anyone interested in doing so, is welcome to be in touch with me directly.

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1 Note: Psychosociology is the study of how psychological and sociological factors combine ***Psychosociology definition and meaning | Collins English Dictionary (collinsdictionary.com)*** (consulted on September 14th, 2020).

2 AXELROD, R., *The Evolution of Cooperation,* New York, Basic Books, 1984, 241

3 Hountohotegbè, S. A.-L., « Le principe de coopération dans les modes amiables de prévention et de règlement des différends : ébauche d'un cadre théorique pour des processus de qualité », in *Pour un droit du règlement amiable des différends : des défis à relever pour une justice de qualité* / under the direction of Lise Casaux-Labrunée (Professor at the University of Toulouse Capitole) and Jean-François Roberge (Professor, Faculty of Law, University of Sherbrooke), Issy-les-Moulineaux, LGDJ, Lextenso éditions, 2018, 215-235

4 Noël, A., *Alliances stratégiques : une bibliographie thématique*, Montréal, Cahiers du CÉTAI, HEC, 1993, 93-6, 57

5 Monin, P., « Vers une théorie évolutionniste réaliste des alliances stratégiques », (2002) Revue française de gestion, 3-4-139, 49-71 *https://www.cairn.info/revue-francaise-de-gestion-2002-3-page-49.htm#* (consulted on February 12th, 2020)

6 Heider, F., *The Psychology of Interpersonal Relations*, New York, John Wiley and Sons, 1958, 322

7 FURLONG, G.T., *Dynamics of trust - Conflict resolution toolbox: Models and Maps for Analyzing, Diagnosing, and Resolving Conflict*, Mississauga, Wiley, 2010, 256

8 Note: All references are available on Savoirs UdeS (University of Sherbrooke) *http://hdl.handle.net/11143/19042*

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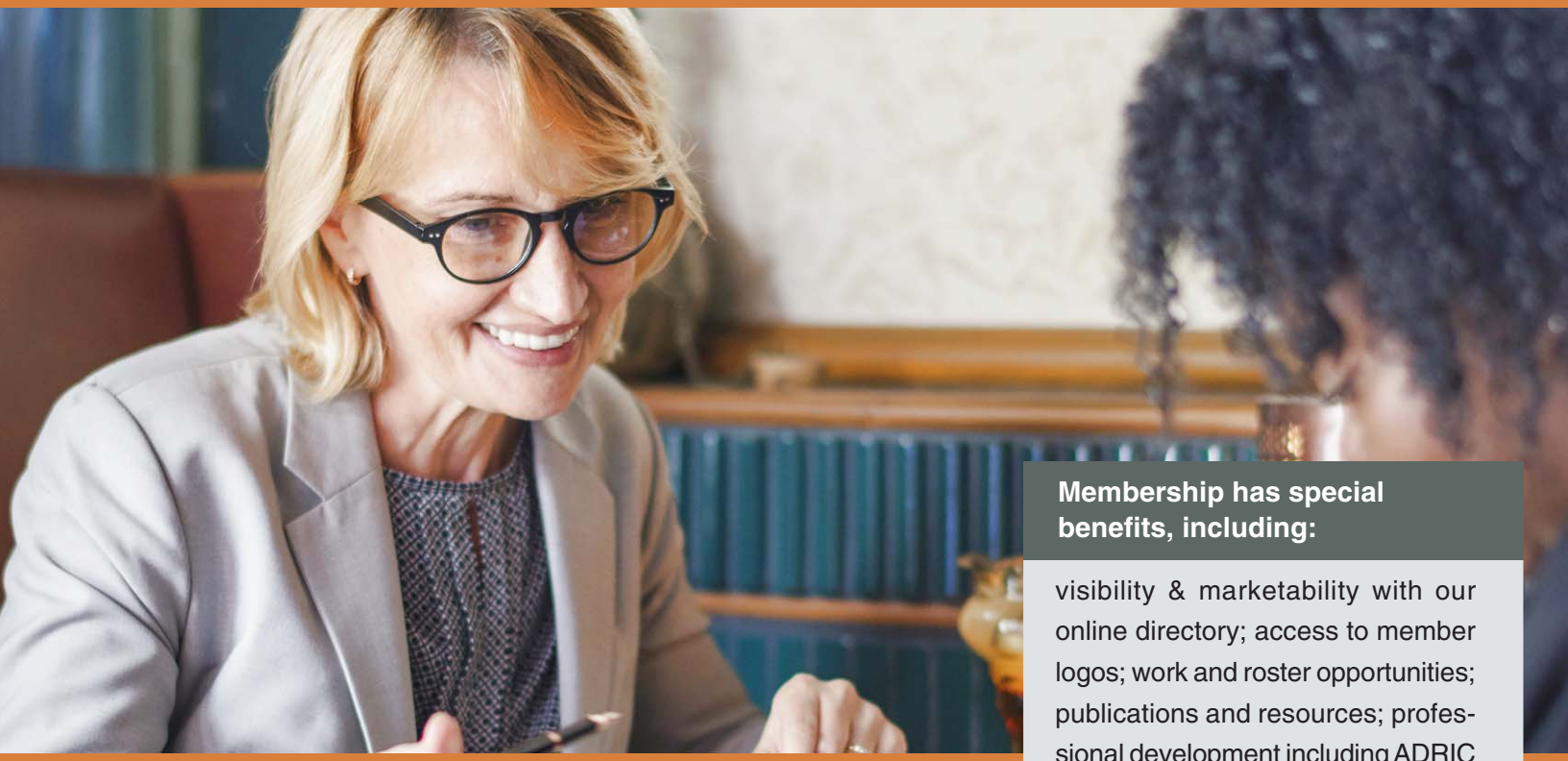

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Editorial—Towards a Culture of Research in Dispute Resolution

GENEVIEVE A. CHORNENKI, LL.M.(ADR), C.MED, C.ARB

Genevieve is the author of *Don't Lose Sight* (2021) and co-author of *Bypass Court* (2015). She holds a Certificate in Creative Writing from the University of Toronto and a Publishing Certificate from Ryerson University. She was inaugural chair of the Ontario Bar Association's ADR section and serves on ADRIO's C.Med accreditation committee. www.genevievechornenki.com

"What does the research show about what a mediator wears?" asked a student in a mediation course that I was helping to present. "Does it make a difference if he or she wears blue jeans, a suit, judge's robes, or whatever?"

Without missing a beat, the lead instructor replied, "Well, what I wear is..."

The instructor's answer was not only subjective, it was non-responsive. The student had not asked what that instructor or any other particular mediator wore. The student had asked about research, and the correct answer should have been, "There is no such research" or "I'm not aware of any research on that point."

Readers may consider the student's question to have been irrelevant or inappropriate—should we really be evaluating mediators on the basis of their clothing? But that attitude presumes that research results would be used in a particular—even immoral—way. Approached more neutrally, research conducted in different contexts could tell mediators to what extent their attire matters and how best to promote trust and confidence in the mediation process.

Contrast the above training exchange with a conversation I had with two young doctors who are doing their residencies in teaching hospitals. One of them had been awarded a grant to study whether the risks of a routine hospital procedure exceeded its presumed benefits. She was curious and concerned that medicine's good intentions may, in fact, be harming patients. The other doctor was interested in a new cancer treatment, excited that it might significantly prolong patients' lives. He wondered if the favourable results of two recently published studies would be replicated in research that he was involved in.

What struck me about these two young medical practitioners was the extent to which they had integrated empirical research—reading, critiquing, applying, and conducting it—into their professional lives at such an early stage. They are immersed in a culture of research. When they invited me to share examples of dispute resolution research, all I could do was shrug. "Seriously?" they said.

In contrast to an established profession like medicine, the Canadian dispute resolution field lacks a culture of research, certainly insofar as practitioners are concerned. "Research" tends to mean reviewing literature, much of which is based on theory or the personal philosophy of the author, or reading legal decisions to see how courts have decided cases with a dispute resolution component.

I have been practising as a neutral for over thirty years and cannot recall ever hearing about a study group in a Canadian province or territory where members routinely read and analyze empirical research. Nor have I ever received notice of a workshop or program focussed on research. Most books and articles are of a descriptive nature with an emphasis on principles, processes, and practices—although this American website (that I learned about from an academic) does offer a curated selection of empirical research https://open.mitchellhamline.edu/dri_empirical/1/.

As mediators, arbitrators, facilitators, trainers, or systems designers, we dispute resolution practitioners are like the mediation instructor: more often than not, we offer subjective explanations for what we do. We rely on personal preferences, general theories or models, and gut feelings to justify our interventions. Our justifications are not inappropriate. Indeed, they may be useful and valuable, but they are partial, even incomplete. As one of my colleagues once explained, "You may be highly intuitive. You may also be wrong."

Why is empirical research outside the consciousness of most dispute resolution practitioners, even of those who teach? What accounts for the apparent lack of interest and motivation? I put these questions to a colleague who

has been working in the field for nearly forty years. He thought that there were just too many variables to take into account, not to mention the challenge of finding willing research subjects and structuring control groups. I agree that research would be challenging, but I suspect there are more factors at play. Is the field simply too young, too immature? Too focused on outcomes? Composed of too many disciplines? Lacking research funds? Decentralized? Are research results too inaccessible, isolated, exclusive? Or is business development a more urgent priority?

Over the last several years, this journal, which is edited by volunteers, has tried to bring research into readers' consciousness incrementally. It has published research-related submissions by motivated practitioners or programs in Canada, beginning with Ruth Corbin's 2019 article "Mediation Psychology: Seven Science-based Insights." In Fall 2021, Cinnie Noble described how, working independently, she conducted research before designing and testing a prototype of her conflict coaching model. Another 2021 article explained how The Neighbourhood Group, St. Stephen's Community House in Toronto, Canada, did research to assess whether community mediation improved the conflict resolution capabilities of its clients. And this current issue features an interview with Julie Macfarlane, one of the pioneers of empirical dispute resolution research in Canada. Julie founded The National Self-Represented Litigants Project and conducted seminal research into the needs of individuals who participate in legal processes without adequate support.

If these journal articles were to signal the start of a culture of research in Canada's dispute resolution community, where might that lead?

Consider the debate about whether to keep disputants together in plenary session or apart in a "caucus" model throughout a mediation. Practitioners can easily recite the arguments for and against both options. What if, instead of arguments, such suppositions were tested in a controlled way and participants—not mediators or lawyers acting as their proxies—were asked about their preferences for and experiences with different options?

Or, to be more specific and more pragmatic, what if the pre-mediation coaching model described in this issue were to be widely tested in, say, estate mediation? Suppose the trust companies and banks that act as institutional executors collaborated with a neutral organization to see if there is a relationship between pre-mediation coaching and settlement rates or pre-mediation coaching and the time required to bring an estate dispute to closure?

And what about Loïc Berthout's trust questionnaire, another innovation described in this issue? Loïc adapted and applied published social science research to develop an instrument that measures how much trust business partners repose in each other. What if that instrument were to be more widely tested? What insights might practitioners gain about effectively and economically preventing and resolving partnership disputes?

A culture of research will not evolve and mature in Canada overnight. Dispute resolution practitioners first need increased awareness. They must be able to locate existing research and appreciate its application and implications. They also need to be literate in research, to understand the difference between quantitative and qualitative research and what each can contribute to human knowledge. To this end in a forthcoming issue, the journal hopes to offer readers a research primer. Ideally, other contributors will build on that primer.

Empirical research in dispute resolution has the potential to provide practitioners with direct information about the people they serve. It can validate (or not) the presumptions that practitioners make on behalf of their clients and the models that practitioners champion. But credible, accessible research may offer more. It might—just might—give dispute resolution gravitas and credibility, and it might do so more effectively than any amount of credentialing, regulation, or promotion.

Why Canada Needs a National Centre for Dialogue and Mediation

In the winter of 2020, in what was known as the Wet'suwet'en pipeline protests, parts of the Canadian rail system—a vital link for industry, trade, and tourism—lay silent due to massive nation-wide protests.

MINA VAISH, LL.M., B. COMM
Mina is a Canadian-based mediator and peacebuilder. She is active with international mediation efforts, including capacity and skills building of women mediators and advocacy for mediation at the United Nations. She is the Past Chair of Women in Mediation and member of the UNMWG-SDG 2030 group of Mediators Beyond Borders International.

More recently, the truckers' protest known as the "Freedom Convoy" that thrust Canada into the international spotlight created massive disruptions. It was yet another troubling siutation of polarized positions and a lack of a rationale desire to seek common ground. Politicans quarrelled about what should be done, and many Canadians felt helpless in the face of an unpredictable situation. It was during this crisis that the void of an independent mediation and conflict resolution voice—equipped with skills in national dialogue, conflict resolution and mediation efforts—was painfully apparent.

Investment in peace by the private and public sectors of Canada should include investment in peacebuilding, dialogue, and mediation efforts. Peacebuilding[1] according to the United Nations "involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and [laying] the foundations for sustainable peace and development." The important words in this definition are *national capacity*, *conflict management*, and *foundations of sustainable peace*.

While there is no doubt that national and international conflict situations involving Canadian interests are inevitable, investment by both the private and public sectors in conflict prevention and mediation, and peacebuilding is an investment in sustainable peace.

Let us look at the foundational elements of such an investment.

Element #1: Building National Capacity in Mediation and Peace Processes

Despite Canada's role as a founding nation to UN peacekeeping efforts and despite immense talent and expertise in this country, the international community does not always look to Canada for subject matter expertise in dialogue, peace mediation, and conflict resolution processes. Furthermore, while the government of Canada does invest millions[2] for international peacebuilding efforts in countries such as Mali, Philippines, and Colombia, little investment is offered by the federal government to develop Canadian expertise in mediation and other collaborative processes that contribute to positive peace. This is highly perplexing.

One area that could benefit from centralization and investment is building our capacity in a resource called Track II mediation. Track II mediation refers to nonofficial or non-diplomatic processes that support official peace processes and/or introduce neutral leadership in contexts where governmental conflicts of interest are real or perceived. It is one of many tools available to peace actors to assist in the prevention and resolution of conflict anywhere in the world.

Track II mediators are non-governmental mediators who are often experts in particular subject matters, mediation process design, and mediation skills and competencies. Nationally, they may be better equipped to organize civil society stakeholder engagement, explore the interests of parties, and facilitate dialogue and collaborative processes. They can also support peace and resolution efforts where the optics of federal or provincial leadership are not desireable. Indeed, Track II mediators may be preferable when government is a party to a dispute or conflict because they can bring impartiality and neutrality to the resolution efforts.

Internationally, Track II talent may act as an essential check and balance to government-led diplomatic efforts in international peace processes by, for example, advocating for inclusive process design (such as the inclusion of women in peace processes) and early warning and conflict prevention measures.

Another reason to develop a

centre for peace mediation is perhaps more academic. A central "think-tank" of conflict resolution professionals could contribute to contemporary research in peacebuilding, engage in emphirical data collection relating to conflict management, and advocate for policy changes to incorproate provisions for conflict prevention, resolution and management at all levels of government including those relating to Canada's most pressing issues.

Canada can model itself after countries with think-tank peace entities, such as Norway, USA, and Switzerland all of whom have strong ties to national peace centres often supported and funded by their federal governments and nations with specific interests in their work. The US Institute of Peace (*Mediation, Negotiation & Dialogue | United States Institute of Peace (usip.org)*), and the Carter Center (*https://www.cartercenter.org/news/publications/annual_reports.html*) are specific examples of what is currently lacking in Canada. The Mediation Support Network (*https://peacemaker.un.org/mediation-networks/MSN*) is a global consortium of primarily non-governmental peacebuilding organizations that works on important research, operations, and measurables for peace processes, yet at the time of this writing, no Canadian-based organization is a member which means that our mediation talent must be selected from abroad and contributions to international peacebuilding are filtered through non-Canadian-led organizations.

While federal support for Track II talent is a "nice to have," it is not imperative; building Canada's national capacity of peace mediators should not require or be reliant on federal funding. Independence, neutrality, and impartiality are crucial mediation principles that must be preserved in the formalisation of any panel. Canadian mediators and conflict resolution specialists, global affairs experts, former diplomats, former military officials and even the private sector can all play a role in building Canada's Track II capacity which, in turn, will significantly contribute to Canada's interests in positive and sustainable peace. Many questions remain on how such a centre could be funded and sustained, and the concept warrants further analysis.

There is often a debate as to whether mediations skills are transferrable from the board room to peace processes. The skills and competencies of mediators—honed over thousands of hours of mediations and complex conflict situations—are inherently transferrable to the skills and competencies of a peace mediator. Developing and investing in peace mediation talent capacity in Canada is not a far reachable goal nor a massive embryonic concept; Canada has some of the world's best mediators already. What is needed is consolidation, centralization, and investment.

Element #2: Conflict Management

As the name implies, conflict management is a system to prevent, manage, and resolve conflict. Such systems include conflict prevention initiatives (contributing to sustainable peace indicators for example); peacekeeping efforts, including military action; investments in women, peace, and security; and other peacebuilding efforts.

Conflict management processes are heavily influenced by their designers' inherent values. Canadian mediators can play a critical role in international conflict management design by advocating for values such as respect for human rights, Indigenous peace processes, rule of law and democratic principles. In addition, because the foundational principles of mediation and peace processes often mirror these values, mediators may ask the difficult questions: Is the peace process inclusive, fair, and just? Are fundamental rights protected in any process (such as the right to peaceful protest)? Are marginalized voices heard and do they have a seat at the table? Is there an impartial assessment of the conflict positions and interests as well as a comprehensive mapping of stakeholders, observers,

and other actors? Is the government's role an inherent conflict of interest?

Element #3: Foundations of Sustainable Peace and Development

Perhaps the most important of the foundational elements to peacebuilding is investing in foundations of sustainable peace.

According to the Institute for Economics and Peace, sustainable peace is linked to investment in both negative and positive peace indicators[3]. In times of crisis, the IEC has found an elasticity of peace, meaning that nations with a high investment in positive peace bounce back from conflict more rapidly than those with a lower investment. Furthermore, the lower a nation's positive peace index, the higher the chance that conflict will erupt there and stay unresolved for longer periods of time. While Canada rates high on the positive peace index (12th globally in 2021[4]), our lack of investment in national and international mediation and peace processes may mean there is a lack of ability to use coordinated, non-military actions to resolve conflict, which, over time, could erode our elasticity of peace.

How can a centre for peace and mediation support peacebuilding? Firstly, mediators serve as an important check and balance to the federal, provincial/territorial efforts employed to prevent and resolve conflict both nationally and internationally. Secondly, the emergence of a centralized and national advocacy voice for mediation and peace processes could advocate, inform, educate, and lobby government policy in favour of positive peace investment. Thirdly such a centre would strengthen economic investment in Canada by providing a mechanism for conflict management. Companies may be reluctant to invest in Canada if there is a lack of sustainable peace within our borders.

The 2030 United Nations Sustainable Development Goals (SDGs) are global goals that Canada is voluntarily agreeing to achieve. These goals include indicators on important global achievements such as climate change, eradication of poverty and disease, strong institutions, and peace. The SDGs require an immense amount of resources to achieve. In times of conflict and unrest (such as experienced during the COVID-19 pandemic for example), vital resources are often diverted away from initiatives intended for a better world. Conflict prevention, management, and resolution systems are missing ingredients in Canada's voluntary action review (VNR[5]) and can assist with resolving disputes relating to the allocation of resources to maintain the achievement of the UN's SDGs.

Conclusion

Canadians understand the immense humanistic, environmental, and economic cost of conflict which is immensely harmful and, furthermore, often preventable. Canadians may discover that investment in peace processes and mediation capacity building in this country can support sustainable peace for both intra-state and inter-state contexts.

By building national capacity of peacebuilders, promoting conflict management and investing in positive peace, our collective hopes for sustainable peace may be strengthened.

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Abstractions and Generalizations—What Every Mediator Should Know

ALI SOLEYMANIHA
Ali Soleymaniha is an experienced transformation and behaviour change coach. As the creator of the Dynamic Mediation™ model, he helps his clients with conflict management coaching, negotiation training, change management, and dispute resolution both at corporate and personal levels. Web link: PorroVia.com Reference link: https://DynamicMediation.ca

1 Introduction

People use abstraction and generalization to order the world around them. They develop and rank categories, and use those categories—good person/bad person—to evaluate and interact with others. I think of these personalized categories as "hierarchies of abstraction" and have learned from experience that the better I understand them, the more effective I become as a mediator. Simply put, it is important to realize that the perceptions and abstractions used by any two people may differ, even when they are talking about the same thing.

In this article I share my understanding of abstractions and generalizations and suggest practical ways to make use of these concepts.

2 The Hierarchy of Abstractions

Human beings gradually learn to create groups such as Cats, Dogs, Chairs, People, Enemies, and so on, to refer to objects and things that they encounter in life. With time, the mind grows more adept in abstracting, and, in doing so, constantly fine-tunes categories. This allows humans to better make sense of the world and gradually build a model of the perceived world.

Very early on, humans learn to expand their abstract thinking and even to apply abstraction to abstractions, decomposing different abstracts, discovering shared characteristics and attributes, and creating new abstracts in a higher level to encompass lower-level abstracts. Thus emerges a **hierarchy of abstractions** used to perceive the world.

As an example, we separate Cats from Dogs in different categories, but we put them both under the same higher category, Mammals. Furthermore, we define Animals as the next higher level that encompasses Mammals, Amphibians, Birds, etc.

We build hierarchies of abstracts on and around only the things that we care about; the rest of the world is "irrelevant"[1] until it isn't (e.g., interferes with our goals). As soon as something becomes "relevant" we introduce "values" into our way of thinking and abstracting. The things that we value are, in fact, the things that are relevant to us, so we pay attention to understand and include them in our hierarchies of abstracts.

The critical fact to note here is that these hierarchies of abstractions will be different from person to person because people are different and their value systems are diverse. Based on their distinct and unique set of experiences, backgrounds, and environments, each individual develops their specific hierarchy of abstractions, forming their own singular perception (i.e., model) of

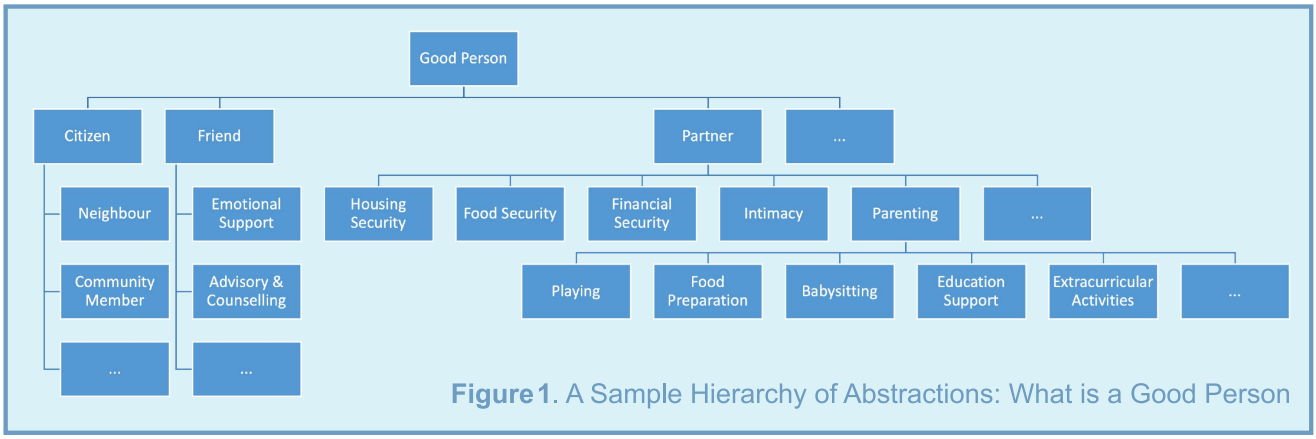

Figure 1. A Sample Hierarchy of Abstractions: What is a Good Person

the world.

By building these hierarchies, people make sense of the world they live in: this is their model of the world, upon which they can define their behaviour in interacting with others. Without this structure, the world will be a complex jungle of concepts and objects, a chaotic existence in which the individual will be lost.

For example, one may create the below hierarchy of abstraction (Figure 1), perceiving how a "good person" can be defined. Based on this hierarchy, a good person needs to be a good citizen, a good friend, and a good partner. Furthermore, a good partner needs to provide housing security, financial security, etc.

In designing and implementing an effective mediation process, it is crucial to fully understand this process of abstraction and generalization for two important reasons: each person in mediation will come to the table

- bringing different meanings and definitions, and
- focussing on different levels of their hierarchy.

2.1 Different Meanings and Definitions

Parties in a conflict, say a couple in dispute, may speak the same language, but the mediator will be introducing a grave error in the mediation process if they assume the parties' perceptions and abstractions are the same, even when they are talking about the same thing.

Often people's definitions of a concept are different from one another because each has a different background of experiences, culture, and values behind their process of creating their individual hierarchy of abstractions. One might think of what constitutes a "good friend" in a way that the other could find unfamiliar or alien.

One party's definition of a "good partner" could be surprisingly different from the other's. Both parties may be accusing each other of being a "bad partner" simply because what they believe to be a "good partner" is different. Those differences (which may be benign in and of themselves) can explain why they just talk in circles with no light apparent at the end of the tunnel. The mediator who does not recognize and address this phenomenon will also be joining the mediation participants in the downward spiral of disagreements and accusations.

2.2 Focus on Different Levels of Hierarchy

Conflict tends to branch out, expand, inflate, and amplify; its tentacles grow and reach out deep into people's memories to bring out all that is stored to see if they can be used as a tool in defeating the other side. In my experience, people usually jump upwards in their hierarchy and sum up their "opponent" at the highest possible level.

For example, using the hierarchy illustrated above for our hypothetical couple in dispute, person A explains how person B always fails to spend time with their children, never helps in preparing food in the house, and treats the household as their personal hotel. Counting these failures, they come to this strong belief that person B is not only a "bad parent," but, by extension, a "bad partner" and, indeed, a "bad person."

The conflict can very rapidly grow from a dispute about helping in food preparation to an accusation that the other party is a bad person. The other person defends themselves by throwing similar accusations, and there it grows, an avalanche that overwhelms everyone, including the mediator!

It is crucial for the mediator to observe the dialogue closely, notice the level at which the conflict originates, and help dispute parties to stay focused on that specific level and not jump upwards.

3 Mediator's Role

Knowing about inevitable differences in hierarchies of abstractions, a seasoned mediator embraces the fact that it is natural for people in conflict situations to experience distressing feelings and sweltering negative emotions. If unchecked, these sentiments will find their way out, permeating the parties' conversations, fanning the flames, and aggravating the conflict between them.

Therefore, instead of questions inviting parties to explain their pain points and problems—with the result that they stay on one level of their hierarchy—the mediator uses the language of hope and change to encourage other ways of approaching the issue. See Table 1.

It's worth pointing out at this juncture that this encouragement is categorically NOT about stopping parties from talking about their problems and preventing them from discussing their negative emotions; rather, it involves helping them move away from problem talk and to think more about what they want to see happening. This means in

Table 1. Problem Seeking vs. Hope Generating Language

PROBLEM SEEKING	HOPE GENERATING
What brought you to this mediation?	What are your best hopes from this session?
What prompted you to seek mediation now?	What do you hope to accomplish in your life?
What do you feel is wrong in your life?	What changes would you like to see in your life as a result of these sessions?
What is it like working in this company?	What is it that you saw in this company that led you to choose to work there?
What is it like growing up in your family?	What did each of you do to grow the relationship?
How do you see/define the problem?	What positive changes would you like to see happening?
How would you best describe your relationship with ...?	What made you try to find a solution instead of giving up on the relationship?
How did that action make you feel?	What positive outcome do you hope to see as a result of this conversation?
What is the problem from your point of view?	What are you hoping for from deciding to participate in this conversation?
Could you explain why you are not happy with ...?	What difference would you like this conversation to make for you?

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response to any "not to be" answers (e.g., I don't like to be pushed around, I don't want to be stressed out, I don't like his tone of voice), the mediator needs to follow up with more questions to probe deeper and inspire them to think, discover, and clarify what they want there "to be" instead:

- Assume you are not being pushed around anymore; what changes do you see in your life?
- What if you are not stressed out anymore? What changes will your friends see in you?
- Imagine your colleague is talking to you in a tone that you prefer; what changes will you see in yourself?

As the mediator is asking the above questions and probing for individuals' preferred future — what they *do* want to see, as opposed to what they *don't* want to see—they facilitate a shift in communication from negative talk to more positive and constructive discussions. Instead of blaming and censuring and trying to find the "responsible one," parties will be more focused on the desired state they want to see, and along the way, they are being encouraged by the mediator to elaborate more, explain further, and clarify what they mean by each abstract.

For example, if person A declares person B to be a "bad parent," instead of driving them towards negativity by asking "why exactly do you believe that's the case?" the mediator asks for more clarification: "Could you elaborate more on what you define as a good parent? What characteristics should a person demonstrate to be recognized as one?" This question will be asked of both parties, and by doing so, the mediator shifts the focus from different interpretations of the abstract category of "good parent" into co-defining and co-creating a shared meaning between two parties and fleshing out differences without bolding them.

Also, in the meantime, the mediator needs to pay close attention to identify the level of the hierarchy on which people are focusing. If person A is not happy about the lack of help in preparing food at home, the mediator should be absolutely sensitive in detecting the jump from that level to next one up, parenting, and the ones after, all the way towards a "bad person." The mediator should use effectively timed questions to break the stride upwards and focus the attention on lower levels. For example, "apart from helping to prepare food, what else would you say can be listed as characteristics of a good partner?"

Doing so, the mediator will make sure that the attention is not only on one characteristic and proving that person B is lacking in that area. One might be lousy in helping with food preparation but might have many other virtues that will be overlooked and undervalued if the mediator allows such a jump.

Often, by maintaining a focus on lower levels of the parties' hierarchies, a seasoned mediator can facilitate the learning process so that parties will learn what is expected from them in a partnership relationship.

This shift in tone, from negative to positive, happens within the mediation session in front of the other party, and they will be listening, observing, and taking in what is being said. They will find the other party is not blaming them or pointing a finger towards them as someone who is responsible for their problems, so they will be more focused on their side of the story and what they want in life.

Many times, what different individuals want in life has astonishingly great overlaps with that of others: If person A wants to be respected, it might be reasonable to expect that person B may also want the same. In fact, it might not be at all out of the bounds of reality to expect, if probed deep enough, people involved in a conflict to have many similar needs. However, regardless of how probable it is that they have needs in common, the mediator cannot rely on disputants independently crafting a common preferred future. That is what the mediator is there to facilitate.

The mediator's role is to build and increase awareness about what each person sees as their preferred future and to help them recognize the abstracts and meanings that make sense to them, but without blaming others. When the mediator can help the parties expand the boundaries of their awareness, learning happens. Learning produces movement, and movement fosters change. All of which gives people optimism and hope and makes them more amenable to move away from rigid positions.

[1] The ideas of "what is relevant" and "how do we compute relevancy" require a separate venue for a more in-depth discovery and discussion. For now, we can be satisfied to an acceptable degree that at any given time, there are a few things that we focus on, and many other things that we simply ignore, because at that specific timeframe, they were irrelevant.

Resource Extraction Disputes and Identity: Opportunities for Process Design

VRINDA SAGAR, MA (CR), LL.B.
Vrinda obtained a Master of Arts in Conflict Resolution at the Georgetown University and a Bachelor of Laws from Delhi, India and worked as a lawyer at leading law firms in Delhi. She holds certificates in Community and Cultural Mediations and is actively involved in the community as a volunteer mediator.

Introduction

Research has shown that identity often plays a central and complicating role in conflict[1], and conflicts surrounding the extraction of natural resources in Canada ("extractive disputes") are no exception. They are often deeply intertwined with identity concerns, particularly those related to the rights of indigenous peoples. Multi-party mediation may provide opportunities to transform or resolve such disputes, but only if the cultural challenges are acknowledged and dispute resolution processes respect and accommodate identity concerns. In this article, I suggest a dramatic reimagining of extractive ADR processes in ways that are cognizant of diverse identities and interests.

The Complexity of Extractive Disputes

The way we frame conflicts is essential both to our understanding of them and to our ability to transform them. Though it is often human nature to frame conflict in terms of "us" and "them," it would be a vast oversimplification to frame extractive disputes involving indigenous nations as a disagreement between "anti-pipeline" and "pro-pipeline" parties. In the Canadian context, these conflicts are sometimes framed in terms of a perceived incompatibility between economic development and environmental sustainability. They are sometimes also framed in terms of a perceived incompatibility between the priorities of the settler Canadian government and those of indigenous nations and environmentalists.[2] Though the latter framing goes further than the former to examine some key interests at stake in extractive disputes, it fails to address the diversity of actors, identities, and interests that impact these conflicts: whether to cause, exacerbate or resolve them.

All extractive disputes have one element in common, which is the use (or exploitation, depending on one's perception) of land or other natural resources. For many indigenous nations and cultures in Canada, "land means more than property—it encompasses culture, relationships, ecosystems, social systems, spirituality, and law. For many, land means the earth, the water, the air, and all that live within these ecosystems."[3] For extractive industry players and some parts of the Canadian government, lands and resources represent economic opportunity and security, essential elements of Canada's identity on the world stage. And, for some Canadians, the country's vast supply of land and natural resources is a key to their national identity.

The disparate ways in which parties' identities are linked to the use of land and natural resources add complexity to extractive disputes, making it difficult to see beyond initial positions to underlying interests which might be able to exist in concert.

Need for Identity-Conscious Conflict Resolution

At present, processes for extractive dispute resolution within Canada are not federally mandated, though recommendations have been made by the Standing Committee on Indigenous and Northern Affairs that the government encourage the use of independent ADR practices in indigenous land disputes, in particular, because these processes are "less adversarial and have the potential to accelerate negotiations."[4] While dispute resolution processes in some provinces and territories are established, the main avenues for resolving extractive disputes between indigenous nations and Canada are litigation and arbitration.[5]

Given the complex nature of Canadian extractive disputes and their intersections with identity and interests, and the lack of consensus regarding the most effective means of dispute resolution, there is a need for a dramatic reimagining of extractive ADR processes, processes that can

address these disputes in a way that is cognizant of diverse identities and interests. In particular and as discussed below, a comprehensive list of stakeholders must be developed, and cultural practices and preferences must be accommodated.

1. Identifying Stakeholders

The question of who should be brought to the mediating table is an essential factor to consider in designing multi-party mediation processes. In Canadian extractive disputes involving indigenous nations, the answer to this question is made more complex by competing systems of governance. There have been significant disputes over which bodies should represent indigenous nations at negotiations and mediations, with tension between customary community leaders and democratically elected band councils.

During the 1990 Mohawk Resistance, for example, "the federal government would only engage in negotiations with the band council elected under the Indian Act and its chosen representatives [...] Only Quebec Native Affairs Minister John Ciaccia, who had studied Mohawk traditions and culture, believed the traditional Longhouse leaders and warriors had to be included in negotiations if they were to succeed and brought them into the talks even against the desires of his colleagues (York and Pindera 1991, 67-8). When asked if the federal government's refusal to negotiate with the Longhouses and Warriors impeded a settlement, Mohawk leader Ellen Gabriel replied that "It hindered everything" (Winegard 2008, 103).[6]

In order to identify stakeholders in a dispute it is important to first understand who a stakeholder is. Broadly speaking, stakeholders are defined as the people and organizations who are involved in or affected by an action or policy and can be directly or indirectly included in the decision-making process (Freeman 1984; Annan 2007; Sterling et al. 2017).

A particular organization may further define situation-specific groups of stakeholders for its projects. For example, the U.S. National Park Service defines a stakeholder as a group or individual that should be present in order to reach the desired outcome or overall team purpose (U.S. National Park Service, www.nps.gov/ncrc), while the United Nations Environment Programme identifies and engages with nine specific major stakeholder groups for sustainable development projects under their oversight: farmers, women, scientific and technological community, children and youth, indigenous peoples and their communities, workers and trade unions, business and industry, non-governmental organizations, and local authorities (UNEP 2015).[7]

The following are some of the ways in which stakeholders may be identified:

- Geographical footprint
- Interests
- Influence
- Intuition
- Key informants
- Past experience
- Self-selection
- Use of media

There must also be an analysis, by which key actors in a system are identified, categorised and understood. Such an analysis is required for a range of reasons, including: ensuring balance in stakeholder groups, prioritising certain groups of stakeholders over others where resources are limited, identification and investigation of possible conflicts between stakeholders, tailoring contact to specific types of stakeholder, and phasing contact with stakeholders through a project according to their relevant utility to and benefit from the research.[8] Interviews and group conversations must also be undertaken to gather the perspectives and interests of stakeholders in relation to the issues, e.g. how stakeholders currently view the issue, what they expect of the situation in the future (e.g., development, sustainability, distribution, economic benefit), and the reasoning behind these perceptions.

To ensure that all stakeholders are involved and feel heard an

engagement plan would need to put in place. This plan would be based on a few key elements:

- Identification of priority issues - the likely risks and opportunities arising from the project.
- Appropriate forums and methods – best way to organize engagement and consultations.
- Documentation, disclosure, feedback – best way for flow of information between all parties. This would include grievance mechanisms.
- Design and implementation decisions - decision-making and management system for the issues and conflict.[9]

2. Cultural Competency

Several scholars and practitioners have looked to mediation as the most appropriate existing form of ADR for conflicts involving indigenous nations, and many have concluded that though it is indeed preferable to other forms, mediation "does not allow for the resolution of a problem in a way that is supported by familiar Indigenous cultural practices."[10] The mediation model that most readers are likely familiar with, though more identity-conscious and cooperative than litigation and arbitration, is a Western invention and has been criticized for its inability to successfully deal with identity and power issues in disputes with indigenous peoples.[11] Some commentators favour a more consultative model of ADR (see Danesh and Danesh, 2002), while others see the potential to make mediation a more culturally adaptive and competent process.[12][13]

Some scholars and practitioners have noted, however, that it is not enough to attempt to "indigenize" mediation. Rather, the process must go through a complete "decolonization,"[14] by which they mean that a new process must be designed, one that combines mediation techniques with First Nation peacemaking practices. As one writer put it, "If only those parts of indigenous knowledge, values and processes that do not conflict with Western values and law are adopted, the internalized oppression experienced by some Aboriginal peoples is reinforced and further cultural assimilation is promoted."[15]

Ongoing Process Development

While the use of mediation and other forms of ADR to resolve extractive disputes involving indigenous nations poses unique identity-based challenges such as those outlined above, research and experimentation are ongoing. Processes are being designed for meaningful use in indigenous spaces in Canada and beyond.[16][17]

In a 2004 piece, Natalie Oman shares three theories for a culturally sensitive approach to ADR within the

Canadian context.[18] Douglas Eyford has presented several principles for more culturally adaptive ADR processes in indigenous land claims, while Catherine Bell has identified ten principles of culturally-sensitive mediation, specifically adapted for the Métis Settlements Appeal Tribunal:

"(i) using mediation for healing relationships and the community; (ii) respecting elders by seeking their wisdom in the healing mediation process; (iii) treating people with respect and dignity; (iv) honouring the importance of spirituality; (v) using the circle for healing; (vi) speaking from the heart and the head; (vii) using consensual dispute resolution; (viii) removing constraints of time from the healing process; (ix) using a simple process that can be translated into Cree; (x) using [mediators] who are acceptable to all participants."[19][20][21]

One group of scholars and practitioners have gone so far as to develop a new, hybrid form of mediation for the Canadian context, incorporating elements of classic mediation practice and elements of indigenous peacemaking.[22] "In First Nation culture," say Beaucage, Kuin and Ianoco, "resolutions are achieved through a peacemaking process that uses ceremony, medicines, circles and collective decision-making. […] A goal of the hybrid process is to create an atmosphere and setting that is culturally appropriate for all of the parties to the dispute. Another goal is to ensure that the dynamics of conflict involved in the dispute are given the space and time needed to be voiced. Conventional mediation cannot achieve these goals because there is a cultural gap that must be bridged, and there are too many layers of conflict that must be addressed before you can begin to problem solve."[23]

Conclusion

The complexity of Canadian extractive disputes involving indigenous nations makes addressing them challenging. Disparate positions are grounded in often disparate interests, those in turn rooted in firmly held and protected identities.

Though mediation is a promising route towards resolving these extractive disputes, it is essential that any mediation process be designed with diverse identity concerns, cultural competency and decolonization at the forefront. There is likely no one-size-fits-all approach to extractive conflict resolution or mediation, even within the Canadian context of disputes involving indigenous nations—specific cultural, regional, geographical and economic contexts will call for specific mediation processes—but the importance of identity concerns and their intersection with conflicting interests should be deliberately centered in any conflict resolution process design.

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Major Development Projects – Improved Conflict Management in Québec and Elsewhere[1]

How can we improve management of complex major projects that have environmental impacts? What do we do if the project has advantages and positive impacts for the majority, but has a substantial adverse impact for a minority? The absence of a balanced resolution process can often degenerate, and a conflict in the public arena may result, or at best, the stakeholders may end up in a stalemate. How can these situations be prevented? A transparent and rigorous process can be conceived in Dispute System Design, and led by a neutral group mediator, to generate collaborative solutions and a damage mitigation plan that is socially acceptable for the community.

Social Acceptability of major development projects

The concept of social acceptability ("SA") has occupied a growing place in project planning for decades. In Québec, the Act respecting land use planning and development generally requires a public consultation for changes of use in zoning. In the metropolitan regions, where cranes and construction cones are omnipresent, this can easily lead to a register or a referendum to try to block a project in a coveted space. Important projects in almost every industry have been aborted or significantly affected in the past few years due to perceived lack of SA. Yet there is no recognized definition of SA, and our society requires projects for a transition to renewable energy, or even for our health.

A different approach

The jurisprudence clearly shows that the emphasis is placed on the results of the process, whether it is the acceptability or refusal of a given project by the population; there is little analysis of the process to achieve social acceptability. We maintain that the ultimate decision on a project's social acceptability depends on the process that led to it; an incomplete public consultation process leads to an equivalent decision.

We recommend a conflict management approach to natural resource projects and conflicts related to the environment.[2] The goal is a real decision-making process that is equitable, representative, responsible, and the achievement of social acceptability. The Dispute System Design methodology is used to discern missing elements in the process.

Development project with strong environmental impact — and public opposition

Our research focuses on a use category called LULUs: "*Locally Unwanted Land Uses*". The main distinction of LULU projects is that they are perceived as beneficial (or necessary) by the majority in a region, but as harmful by the population of the precise location of the project's proposed implementation. Faced with a LULU project, a minority of individuals believe they will suffer some kind of "loss", whether a reduction of the value of their property, a loss of green spaces, a threat to air, water and soil quality, an increase in traffic and difficulty parking. A small proportion of the immediate sector's population will have a potential direct gain, whether in the form of taxes, income or potential jobs. There are benefits for the majority, but a perception of disproportionate impacts on a small minority where the project will be implemented. This may involve a residential development project with increased density[3] geared to public transit for sustainable development (*Transit-Oriented-Development* or "**TOD**"), a residual materials site project,[4] or, a mining development for copper, lithium or rare earth elements, etc. All these materials are necessary for manufacturing of electric cars, computers, solar panels and wind turbines,[5] critical for Canada and the clean energy economy

HELEN FINN, L.L.B., D.E.S.S

Helen Finn, L.L.B., D.E.S.S., is a lawyer with Sodavex, a law firm specialised in environmental law, an IMAQ-accredited mediator, and more recently, a Commissioner with the Montreal public consultation office (OCPM). Her post-graduate studies in law included conflict resolution, notably surrounding development projects, in Quebec and internationally.

Bio: https://www.sodavex.com/en/team/helen-finn
https://ocpm.qc.ca/fr/equipe-commissaires
https://www.linkedin.com/in/helenfinn/#experience

toward which our society is heading,[6] for the benefit of all.[7]

Methodology

To achieve a satisfactory result in major complex environmental and other projects, a rigorous and systemic analysis is required, such as *Dispute System Design*[8] ("**DSD**"). This systemic analysis requires multiple steps, including: [9]

- Analysis of the legislative and historical context and local practices to elucidate the factors of influence;
- Upstream and continuous information sharing;
- Identification and recruitment of the key stakeholders;[10]
- Public consultations conducted by a neutral and experienced person (group mediator):
- Impact studies and scientific analyses to analyze the context of the conflict — *AND a plain language version for general understanding*
- Joint identification of the facts;[11]
- Mapping the stakeholders' interests;
- Brainstorming sessions to generate alternative solutions;
- Identification of a Zone Of Possible Agreement (ZOPA);[12]

This involves analyzing each major problem as a whole and integrating all the factors into the analysis of the problem and the potential solutions, including the short-term and long-term costs. An excellent example of the incorporation of these numerous factors, with an upstream analysis, information sharing, consultations conducted by a mediator, and planning of solutions, is the *Facility Siting Credo* ("**CREDO**").[13] The Credo includes 15 success factors; we will briefly discuss some of them.

The current analytical and approval framework

In Québec, the municipalities determine the authorized siting of the various types of residential, commercial and industrial buildings in their territory by zoning according to the Act respecting land use planning and development ("LAUPD"). The siting of a LULU project frequently will require a zoning change, and the majority of these changes are subject to referendum approval, which can be triggered by 12 people, effectively blocking the project for a period of 4 months or longer. If, on the contrary, the use is compliant with the zoning and thus does not require any change, in the absence of a site planning and architecture integration plan ("**SPAIP**") by-law, the developer may obtain a permit. This will not prevent general grumbling by dissatisfied neighbours and repeated complaints, or lawsuits for nuisances related to noise, traffic or quality of life. Sometimes the municipality itself will present a notice of motion to amend the zoning by-law before the developer submits its complete application.

None of these approaches is advantageous: perpetual conflict, paralysis in carrying out projects necessary for society, lawsuits, additional costs, etc. The current system suffers from several weaknesses, particularly at the municipal level, including low transparency upstream of the city council meeting. The LAUPD provides that the public consultation is overseen by an elected officer or a designated person. By definition, an elected officer is not a neutral person, but a person who represents part of the population. Furthermore, it is extremely rare to hire a neutral and experienced group mediator to facilitate the public consultation, even when the population is resistant to a project.

All of these flaws are conducive to conflict. The problem is systemic: it is conditioned by the legislation that

governs it and that limits the capacity to explore the real needs to achieve social acceptability. For a systemic problem, we propose a systemic solution developed by the Dispute System Design methodology.

The source of the conflict

The basis of any conflict management requires knowing by whom and why a project is contested. A project that changes the local residents' lifestyles always risks provoking a reaction. Is this a "Not in my backyard" (**NIMBY**) response? If so, how can it be overcome?

Institute a broad-based participatory process

The goal is to integrate all the parties in ONE common and transparent consultation process: the City, the developer, neighbourhood and group representatives, with a neutral and experienced group mediator to facilitate the consultation, in order to ensure representativeness and equal legitimacy for each party.

Reach an agreement that the status quo is unacceptable

The basic principle is that the majority must perceive the project as necessary. It is essential to develop the stakeholders' common understanding of the importance of having a LULU, and *the impacts of not having it, now and in the future*.

Integration of economic and social externalities into the decision-making

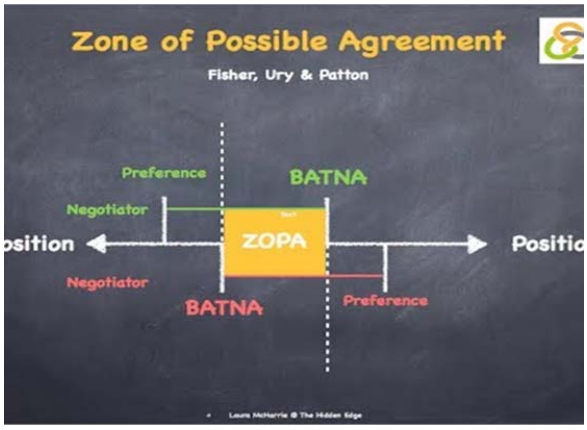
Each decision has a cost, a little like ecodesign and the circular economy: you pay now or you pay later. Essentially, the externalities are all the foreseeable costs of a project and its impacts, as well *as the costs of not doing a project*. The classic example of a negative externality is pollution, or the effect of road congestion.

Many less-than-ideal projects in popular perception are necessary to reduce our impact on the environment. For example, engineered landfill sites for residual waste are required to dispose of goods we have created, consumed and disposed of collectively. The necessity for suitable sites to manage these residual materials adequately affects all of the world's developed countries and is undeniable, even if we immediately began to plan ecodesign of all our products.

Seek a consensus

From the beginning, to ensure the legitimacy of the process and public confidence, everyone should have access to the information concerning a new LULU siting, before the developer has invested significant funds. By involving the representatives of all parties in the same process, everyone benefits from all the knowledge and resources, in the same place. The population's concerns can be considered and lead to a more complete solution, according to the Collaboration model: information, ideas and solutions flow in all directions.[14] :

The goal is to understand the resistance to the project and share information transparently upstream, in an active questioning exercise to bring out the concerns and the foundation of public opposition, while actively seeking solutions. The analytical table[15] of the Zone of Possible Agreement facilitates the distinction between needs and preferences, the concerns and risks for the future, and the importance of determining each of them for the various groups.



"Not in my backyard" opposition

Sometimes citizens protest the loss of "their" green space, on lands belonging to another person, or construction noise on "their" streets. In some LULUs, this involves a real risk of loss, because the LULU projects are established a short distance from residences, due to the lack of a buffer zone between incompatible uses. Nonetheless, by its nature, a LULU is a project that *benefits many people, but disproportionately impacts a group or a neighbourhood due to its proximity*.

The NIMBY syndrome may be defined as a problem related to "inequality in distribution, and the nature of the costs and benefits associated with these facilities [and] virtually assures the existence of local opposition".[16] The solution would be transfers to the parties affected, or mitigation of the damage to improve everyone's lot. According to Susskind[17], at the beginning of any project, it has

about 10% opponents, 10% supporters, 30% indifferent and 50% neutrals, labelled the "Guardians". The Guardians observe, wait for more information and monitor the actions of the developers and the decision-makers. The fairness of the treatment reserved for each group will determine which side they will back; if they believe the opponents are treated unjustly, the Guardian will rally to the opposition.

Mitigation measures

A plan for the future must be articulated to determine the actions the developer or the decision-makers will take in case of accidents, service interruption or a change of environmental standards and norms.

Various measures can be taken to reassure the population suffering disproportionate impacts: creation of an equivalent habitat, green space, wetland or water body on another site, a guarantee of water service in case of contamination, or a buffer zone. Because the LULU will benefit a number of people extending far beyond the neighbourhood, the cost of the impacts on the small minority of the most severely affected people can be redistributed by a tax on a larger pool of people, or by a tax reduction granted to the small minority.

Another alternative would be the removal of a local source of irritation, in exchange for implementation of the LULU, such as cleaning up a contaminated site elsewhere in the neighbourhood.[18] However, the offsetting project will have to be meaningful,[19] and reflect a need of the group: improvement of their health network, a new school or the development of community services, in order to create long-term impacts to improve the community.

The CopenHill waste incinerator in Denmark is an excellent example.[20] This thermal Waste-to-Energy (WtE) reclamation centre recovers steam from waste incineration to supply heating to over 150,000 households, and is designed to attract the residents: built inside an artificial ski hill, with a climbing wall and an après-ski champagne bar. This example represents all of the key elements for siting. CopenHill represents a real need of the population to dispose of their waste, meets the needs expressed by the population during the public consultations, safety measures and strict environmental standards, while it is located less than 200 m from residences, on the shore of the Baltic Sea, and communications remain open between the reclamation centre and the representatives of citizens' groups.

Conditions for success: Notice of intention to balance forces

One additional factor is required to escape from the present paralysis, improve collaboration and achieve SA of the projects: create a safe and legitimate discussion framework. This basic element of any mediation is absent from zoning-related projects in Québec due to the legislative context: a city can block a project for 4 months with a notice of motion, or a developer can request a permit for plans compliant with the by-laws of a small rural town with limited resources and succinct municipal by-laws.

We therefore recommend a legislative amendment to create a measure of balance: a "notice of intention of regulated discussion", with a "freeze period" of at least 90 days, renewable, adapted to the municipal context and the LAUPD, instead of the city council's unilateral notice of motion. The notice of intention could apply to the various parties during the request for implementation of a LULU. This notice would apply upon its transmission, both to the developer and the municipality, and to all the levels of government that could be called on to make a decision in relation to the project during the "regulated discussion" with the municipality.

Conclusion

The integration of a notice of intention with a freeze effect for all parties would have the merit of creating the safe discussion space essential to any mediation. The holding of public consultations with the participation of a neutral mediator would balance and legitimize the proposals of the various parties, with the firm objectives of reaching a consensus on the development of the project, drawing up a damage mitigation plan, and achieving social acceptability. Moreover, the notice would protect the rights of all parties. The developer would be protected against a sudden action by a council and would avoid the substantial costs that a delay or a zoning change could generate. The municipality would benefit from protection related to the implementation impacts of an unforeseen project. The population would have the opportunity to benefit from the necessary information, in a collaborative context, in the spirit of article 1 of the Code of Civil Procedure.

1 This is a condensed version of our article *Le Potentiel et les limites de l'acceptabilité sociale des grands projets de développements*, published online in *Développements en droit de l'environnement (2021)* at Centre d'accès à l'information juridique (CAIJ, and with a summary version on the website: https://www.sodavex.com/publications/le-potentiel-et-les-limites-de-lacceptabilite-sociale-des-grands-projets-de-developpements/ .

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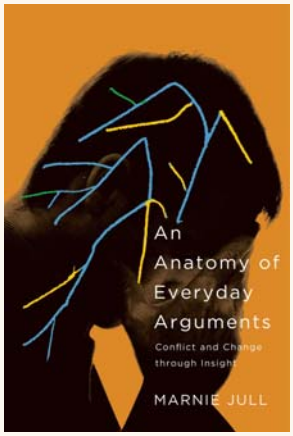

An Anatomy of Everyday Arguments: Conflict and Change through Insight

Marnie Jull,
McGill-Queen's University Press, 2022

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Reviewed by: Demi Peters, Q.Med

DEMI PETERS, Q.MED
Demi Peters is a Qualified Mediator and dispute resolution educator from Saskatoon, Saskatchewan and a member of the ADR Institute of Saskatchewan.

This book is an academic look at what is called "the Insight approach" to conflict. In a brief but dense introspective piece, Jull examines four different conflicts through that lens. New to the approach, I found the writing deeply insightful and informative, but wished that prior to reading the book I had read more rudimentary materials on the subject; I often felt that Jull's presentation and application of the Insight approach were beyond my understanding.

Jull begins *An Anatomy of Everyday Arguments* with an introduction that invites the reader who "prefers story before theory" to begin at chapter four and then return to the earlier chapters where the theoretical and methodological aspects of the Insight approach are outlined. As a reader who enjoys a good story, I appreciated this invitation. However, I did not accept it and was glad to have made my way through the theoretical and methodological explanations, as I was completely unfamiliar with the Insight approach.

In Chapter 1, Jull uses the term "*Autoethnography*," which was a new word for me. Autoethnography, she explains, is how she will convey the stories of conflict and apply the Insight approach. In the following chapter, she outlines the key concepts of the Insight approach, stating at page 20, *"The Insight approach pays attention to individual decision making as a focus of analytical attention, recognizing that conflict behaviour is an enactment of a decision made by individuals that takes place within the social roles that we enact (M. Price 2019; Peddle 2020)."* Chapter 2 was extremely valuable to me because my exposure to the Insight approach prior to reading this book was zilch.

Whether a reader chooses to take Jull's invitation to initially skip to the stories or opts to read cover to cover, I would encourage any reader to read, and possibly even re-read Chapter 2 together with the appendix that includes a diagram of the "Insight Loop." These helped me understand Jull's academic analysis of the conflicts she described, as well as give me some understanding of the Insight approach to conflict.

Chapter 3 contains Jull's methodological preface to the cases she examines in the book. Then, in the following four chapters she shares experiences she has had with various conflicts from multiple perspectives—that of a participant in a conflict, of an observer, and of a dispute resolution facilitator. In each story Jull analyzes the experience of conflict and focuses on how the Insight approach expands the possibilities of understanding between parties and provides more opportunities for resolution than if participants stayed in their own space of incuriosity and valuing.

Chapter 4 describes an interpersonal conflict between Jull and her partner. In this touching and light-hearted example, Jull examines resolving conflict when no change in values or even agreement happens. Instead, what transpires is a deeper understanding of the other side.

Chapter 5 describes Jull's internal conflict relating to her daughter's involvement in a competitive hockey league. In this example,

Jull examines expanding horizons of possible questions and considerations, and concludes that conflict is not necessarily bad, among other things related to the situation.

Chapter 6 describes Jull's interaction with a friend regarding a conflict her friend is experiencing in his role as a consultant. In this chapter what struck me was Jull's reflection about "self-referencing" compared to understanding someone "on their own terms" (page 89), and her determination that neither is inherently bad or good; each has its place and understanding someone "*on their own terms*" is likely more appropriate for individuals acting in the role of a mediator.

The final example Jull uses is one where Jull acts as a group facilitator. At the end of this case study Jull shares, "I'm starting to think that maybe putting more compassion into systems like these can often produce better outcomes…" to which a participant in the facilitation responds, "When a person believes they are on the receiving end of compassion from another person, suddenly the world becomes a safer place…" (page 115). I thought that this exchange was a lovely way of wrapping up the narrative portion of Jull's writing.

Jull concludes her book with a chapter on "*Implications for Inquiry*" and "*Implications for Conflict Analysis*," along with a conclusion, providing a summary and further reflection on the examples in the book and how the Insight approach assisted the people, including herself, in the experience of the conflict. In italics on pages 154 and 155 she includes an adorable personal story of a conflict between herself and her daughter, describing an altercation regarding bedtime, while she herself is trying to finish writing the book. This piece was endearing to me because I found myself in a similar situation as I sat at my kitchen table writing this review.

As I mentioned, I was unfamiliar with the Insight approach prior to reading this book, though I was trained in various other styles and models of mediation. This type of deep, academic examination of an approach to conflict is most appropriate for a seasoned mediator or seasoned student of dispute resolution. As Jull describes on pages 140 and 141, when teaching conflict and communication, the explanation of how to "open up" a question is very basic, but it "lacks complexity, precision, context, and interiority" (page 140). This book, as Jull writes in her conclusion, is more about a deeper "method of discovery" (page 141), than "a list of techniques" (page 141). Thus, for the new mediator, I would suggest saving this read until after mastery of the basics is reached, and I would encourage the advanced mediator to engage with this book for the interesting implementation of the Insight approach and the academic lens with which conflict is examined.

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Suite 407, 234 Eglinton Avenue East
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ADR INSTITUTE OF ONTARIO
Suite 405, 234 Eglinton Avenue East
Toronto, ON M4P 1K5
Phone: 416-487-4447
Toll Free: 1-844-487-4447 (Outside GTA)
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Email: *info@adr-ontario.ca*
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INSTITUT DE MÉDIATION ET D'ARBITRAGE DU QUÉBEC
1445, rue Stanley, bureau 1501
Montréal (Québec) H3A 3T1
Phone: 514-282-3327
Fax: 514-282-2214
Email: *info@imaq.org*
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c/o ADR Institute of Canada
407-234 Eglinton Avenue East
Toronto, ON M4P 1K54
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