



THE BENEFITS OF CO-MEDIATION:

WHY AND WHEN SHOULD YOU
CONSIDER USING CO-MEDIATION



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INTRODUCTION

Co-mediation is a unique model in which two professionals work together to facilitate resolution of a dispute. Co-mediation is often used as a training model for new mediators, i.e. pairing a rookie mediator with a senior mediator. I first became acquainted with the co-mediation model, when, as a newly minted mediator, I worked with a “mentor” mediator. In my co-mediation sessions, my mentor mediator was not identified as the senior mediator to the parties. Instead, we were presented to the parties as equals. Because of this, co-mediation was a very effective way for me to interact with the parties while learning how to navigate the mediation process, all the while guided by a seasoned mediator. The co-mediation model allowed me to quickly gain key skills and confidence as a mediator. When I graduated to doing solo mediation, although I felt very comfortable and enjoyed the work, I felt there was something missing and realized that I preferred co-mediation to the more traditional “solo” mediation model. I came to understand that there are many benefits to co-mediation and embraced the style. However, it also became clear that many others do not understand co-mediation and that, as a model, it is vastly underutilized. This article addresses the benefits of co-mediation. I hope that after reading it you will come to understand its benefits, as I have.

KEEPING PARTIES ENGAGED

One very evident benefit I observed from co-mediating was that the parties remained more engaged and informed throughout the process. Co-mediators are able to split up and spend more time with all of the parties, keeping them updated and informed as matters progress. In contrast, when mediating

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alone and shuffling between caucus rooms, I have experienced instances where one party would get more air time than the other. One concern is that the party who is not getting equivalent time becomes disengaged, or starts to believe the process is not evenly balanced. With two mediators, this is not an obstacle; parties are constantly kept in the loop and this helps to move matters forward at a faster pace. For myself, I have found that having a co-mediator partner keeps me more motivated and feeling less isolated than when I am running a mediation on my own. The co-mediation model is a very effective model for maintaining momentum and keeping people focused on achieving a resolution.

AN EXTRA SET OF EYES AND EARS

Working with a co-mediator also allows for the exchange of valuable feedback and for more insight between the mediators themselves. It provides an extra set of eyes and ears on the issues, allowing for more in-depth consideration of different vantage points. Co-mediators are able to consult with each other periodically, in the absence of the parties, to ensure that the most effective strategies are being used to assist the parties in reaching a resolution. As a sole mediator you are left to your own skill set and your own vantage point, whereas in co-mediation you increase the odds of looking at something in more than one way and avoid getting bogged down with unintentional biases or pre-conceived notions. I found having this additional viewpoint and the ability to bounce thoughts and ideas off a partner to be extremely useful in co-mediation settings.

In a number of the cases I co-mediated, the ability to have those moments of reflection with my partner and to synthesize what was happening allowed us to strategically plan our next interactions and discussions with the parties, thus making much more efficient and effective use of our time. It also demonstrated to the parties a joint and collaborative effort to assist in resolving their disputes.

DIVIDING TASKS

Dividing tasks is another very useful benefit in co-mediation. One mediator can be designated as the person to take notes and lend an empathetic ear, while the other is more involved in sifting through the interests and digging deep into the underlying motivators behind the dispute.¹ The role each co-mediator takes depends on their skill-set for that particular mediation. For instance, if one mediator is more versed in the area of dispute than the other, the second mediator may play more of the supportive role. But, each mediator's role is critical to keeping the process moving and the parties engaged and to reaching a resolution. When the co-mediation partnership is working well, it is not a mechanical division of labour but rather a natural and fluid process where the mediators instinctively know what role to play – roles which may change throughout the mediation, depending on the parties' needs at a particular time. The process becomes seamless and effortless and to the parties it materializes as an effective and efficient dispute resolution process.

COMPLEX/MULTI-PARTY DISPUTES

Co-mediation is ideal for complex or multi-party disputes with willing participants and, other than in the training model described earlier, this is where co-mediation has been most often used. The ability to divide tasks and keep people motivated and engaged greatly assists in managing such cases. Two professionals are able to more easily tackle these types of disputes.

Recently, I was involved in co-mediating a multi-party matter that would have been extremely difficult to control if I had been mediating alone. With two people mediating, we were able to assist the parties to narrow down the key issues in a timely fashion and work quickly and efficiently towards a resolution. The case resolved that day and the parties appreciated that it did not proceed to the next level of litigation, which would have been extremely time consuming, costly and emotionally draining for the participants. Had I been alone, while I may have been able to help the parties reach a resolution, I am certain it would have taken much longer – not simply hours, but perhaps at least another day, if not two, of mediation.

UNIQUE SKILLS OF MEDIATOR

Another advantage to co-mediation is that you can strategically pair up mediators with different backgrounds and skill-sets to address disputes. A mediator may possess unique skills that may facilitate resolution of a particular dispute. These unique skills may come from the mediator's work or life experiences, schooling, or something more intrinsic to them, such as their gender or cultural background. In one of my co-mediations, I believe my gender (female), assisted in obtaining critical information. In this particular mediation, my partner mediator was male. We were mediating an employment dispute where the employer was male and the employee female. Things were not moving along too well and my co-mediation partner shared with me his view that, perhaps, the employee was being unreasonable. At one point, I was able to seize the opportunity to speak to the employee alone. During our exchange, she opened up to me and shared with me some critical information which helped to move things along significantly. The employee was able to connect with me in a way that she was not able to connect with my partner. My partner, who was more versed in the area of dispute, was then able to take the information and put the parties on the right track towards resolving the dispute. The result was a very effective use of our individual skills in our pairing as co-mediators.

CULTURAL ALLIANCE

Using a mediator's cultural background strategically in a co-mediation alliance also has its advantages. There is no denying that everyone brings their own culture to the mediation room; everyone has their own individual upbringing and background that, to some extent, defines who they are – their values and biases. This is culture in the broadest sense. No mediation is devoid of culture. However, when the parties to the dispute are of a particular faith or adhere to common traditions and beliefs,

it can be very effective to have in the room a mediator from that culture or one who understands that culture. For instance, in the area of family law and family estate disputes within a particular culture, it may be useful for a family or estates mediator to co-mediate with another mediator familiar with the culture as the co-mediator's specific cultural awareness may assist the "regular" mediator in understanding what the participants' underlying motivations really are and why the parties are taking the positions they are taking. Using a co-mediator in this circumstance may increase the chances of moving through roadblocks and resolving the dispute.

SENSITIVE ISSUES: DOMESTIC VIOLENCE

Co-mediation is, in my opinion, particularly useful for some extremely sensitive disputes, such as family disputes with domestic violence. This is an issue I am actively involved in and very passionate about. I was pleased that in 2013 mandatory family violence screening in BC was introduced into family law, requiring all "family dispute resolution professionals" (including mediators in the family law area) to screen for family violence. However, the objective of such screening tends to rule out cases involving high-risk intimate partner violence as being unsuitable for mediation. That makes sense in the traditional model of a sole mediator. However, if the co-mediation model is adopted, mediations could be structured in a way that the parties are kept separate at all times, even in different buildings. Safety would be the paramount consideration in planning the mediation.

It is my belief that in the co-mediation model, two mediators could work together to mediate even these most sensitive cases. I would even argue that to rule out mediation for high-risk cases, is, by default, to drive such cases into the courtroom where the vulnerable person is face to face with their perpetrator. This does not increase safety and in fact may well compromise it, especially as so many family law litigants are now coming to court without counsel, thereby leaving the victim of domestic violence at an even greater risk in the courtroom than in a carefully structured and facilitated mediation.

I recently attended the 2015 Annual Conference of the American Bar Association Section of Dispute Resolution in Seattle, Washington, where one of the topics considered was: "Should cases with a history of serious intimate-partner violence or abuse be screened out to the courts or can they be mediated?" In one session I attended, a university professor and a representative from a dispute resolution organization based in the courthouse discussed a recently initiated research study. In the study, cases with a history of serious intimate-partner violence deemed too violent for joint mediation are being randomly assigned either back to court or to co-mediation using one of two specialized forms – shuttle or videoconferencing mediation - but using a co-mediation model.² Both groups will be followed for a period of time to measure the success of resolution and satisfaction with the process assigned. My own preliminary prediction is that, so long as the victim is a

willing participant and appropriate safeguards are included in the process, the co-mediation process will be found to be the preferred method. It is certainly the more sensitive process; one which gives the victim a real voice in a way that may not be possible in an intimidating courtroom setting. I truly believe that properly structured co-mediation – with willing participants and appropriate safety parameters – can be a very effective model of mediation in even the most sensitive cases.

COST-EFFECTIVE

Even though the combined fees of the co-mediators will likely be higher than in the solo mediator model, the price of two mediators is well worth the money as, in co-mediation, you have two skilled professionals assisting to resolve the matter. My experience is that two mediators are typically able to cut to the chase and save on the number of hours that it may take with just one mediator. In addition, when you balance the cost of litigation and the many years it takes for matters to be heard in a court, it is worth spending the money on a model that increases the odds of an early resolution. In my opinion, clients are better served with a timely resolution of their disputes and will be a more likely source of future referrals. Co-mediation is actually very cost effective given the dual skill set being provided.

SUMMARY

With all these benefits associated with co-mediating, I was surprised to learn that there were not a lot of mediators, locally, participating in the co-mediation model. In BC, co-mediation is almost exclusively used as "training wheels for mediators" - as one author has described this process.³ In BC, as noted earlier, co-mediation is commonly used during practicum training of mediators and in assisting junior mediators to establish a list of references who can attest to their abilities in order for them to secure an official mediation designation.

In my view, it is unfortunate that the model has been limited in this way. In fact, co-mediation is an advanced form of mediation; the skills required to co-manage a mediation process towards resolution are not undemanding. Co-mediation requires a carefully planned and thought-out process by the co-mediators. Utilizing co-mediation simply as a training grounds model fails to recognize the unique skill-set required for this form of mediation and the significant benefits that arise from it. Next time you have a complex case, or a mediation that has a cultural component, or one that you consider will be difficult to resolve, consider co-mediation. I believe that if you do, you too, will become a believer. ✓

1 *Co-Mediation A Different Opportunity* www.mediationwise.com/resrouces/comediationv3.pdf
 2 Jeannine Adams and Amy Applegate: *Evidence Based Practices in Mediating Cases with a History of Serious Intimate Partner Violence or Abuse*: Workshop at the ABA Section of Dispute Resolution – 17th Annual Spring Conference – April 16-18, 2015, Seattle Washington
 3 Barbieri, Richard: *Co-Mediation Training Wheels or Obstacle Course*, December 2013 (Mediate.com)