

CO-MEDIATION: A PRACTICAL GUIDE

By Paul Hutcheson.

Overview

Although used extensively overseas the practice of co-mediation for whatever reason has not been embraced by the mediation community here in New Zealand. This could be for a variety of reasons, not the least of which is the novelty of the notion: it's hard enough often to sell the concept of mediation to the somewhat reluctant party and when we as mediators introduce the idea that there might be two of us...!

There are some practical issues relating to co-mediators working together, such as coordinating appointments, whether the mediator fee ought to be doubled or shared and the big issue of synchronising two possibly quite different mediating styles. It is this latter challenge that this article focuses upon by providing some practical guidelines as to how two mediators can work together.

Co-mediation involves two mediators working together, and the key here is the goal of functioning as a team. Through appropriate preparation and by being self-aware of your own mediating style, mediators can offer parties to mediation the immeasurable benefits of a mediator team. Some of the numerous advantages of co-mediation include the opportunity of sharing tasks, the variety of skills and backgrounds that two people can offer and most importantly, the invaluable opportunity of improving mediating skills. It is this third consideration above all that ought to elevate the practice of co-mediation.

The nature of mediation means that most mediators have little or no contact with parties subsequent to the mediation. Therefore, feedback on performance is nonexistent and of course confidentiality ensures the process is 'within camera'. The junior solicitor's work obviously can be scrutinised by more senior colleagues and the counseling profession has established protocols of professional supervision. The rookie mediator fresh from "how to mediate course" may well have a good understanding of the theory, but applying this knowledge in the absence of any guidance or feedback is a big ask.

Co-mediation offers an excellent framework within which both the experienced mediator and the inexperienced rookie can monitor, supervise and develop professional skills. Advanced seminars and day-long workshops on practical skills may well all have their value, but from observing the development of mediation both here and in the States over the past ten years, no other investment can rate with co-mediation in providing as much as in terms of professional learning as by simply peering up with a suitable co-mediator. Sitting down with a honest and insightful co-mediator offers arguably the best model of meaningful and practical learning.

Co-mediators inevitably bring differing approaches and styles. This is the both the attraction about co-mediation and its challenge. Sometimes it just will not work co-mediating with a particular person.

Some Overall Strategies on Mediators Working Together

Be open minded as to the experience of your co-mediator

Within the mediation fraternity we naturally tend to equate mediating experience with quality of skills. This may well be a valid assumption but it should not blind us to the opportunity of utilising the insight and freshness of approach which often comes with the supposed inexperienced. minded. This is why I prefer to avoid designating a senior and junior role. An equal level of participation ought to be the goal for both mediators.

Agree on broad mediating strategies rather than specifics

In your preparing to co-mediate, rather than concentrating on real specifics in your co-planning (such as who should ask what questions), reiterate general strategies of mediation, for example, eliciting perspectives, managed ventilation, searching for underlying interests, enhancing communication, etc. There are so many variables that can arise within mediation, it is more effective to focus on the broader approaches with which you can work.

Co-mediation is about "cutting some slack"

Good co-mediation teams do not fret over minutia. The reality is that parties attending mediation are overwhelmingly focused on their own conflict. The occasional treading on toes of your co-mediator will go unobserved. Therefore co-mediators ought to be relaxed over polite interruptions of one another and so on. For example, if my co-mediator suggested entering caucus or private session and I felt the timing was not appropriate, I might say, "I feel we should leave caucus for the moment as I would like to follow up on something that was just referred to."

Agree on direct communication between co-mediators

When preparing I do not bother talking to my co-mediator about our respective styles. The reason is that self-assessment is rarely accurate and rather I prefer to agree on using direct communication between the co-mediators during the mediation process. Some of the problems that a mediator new to co-mediation may foresee could include the other co-mediator dominating the process, directing the process down a wrong path or generally moving too quickly. In my preparation with my co-mediator I will agree to alert her to these types of difficulties in a direct but effective manner.

For example, dealing respectively with each of these three situations I might say:

"Carroll, if you have finished with that issue I need to ask some questions of my own."

"Carroll, rather than moving down that path at this point I believe it would be helpful for us to return to the issue of compensation."

"Carroll, let's just back-track and revisit several of those issues."

Be aware

Awareness is a double-sided plate: on one hand be aware of your self and alert to hints conveyed in such questions as those just described. These should be clear messages that your style may need some modification. On the other hand, be aware of your co-mediator: how much opportunity are you providing for that co-mediator to come in with questions?

Use graduated intercessions

In working with your co-mediator, if the co-mediator is doing something you don't like, use a sequence from a mild question, to a more assertive comment, to a clear interruption.

Some specific suggestions on working together

Regularly consult with your co-mediator throughout the process either during caucuses, coffee breaks or maybe if appropriate in front of the parties.

Share mediator's opening monologue - take two items. I suggest two rather than one at a time so as to avoid seesaw effect. This gets both mediators doing some talking and being heard by the parties. Significantly for the less experienced mediator this achieves voice legitimacy.

Inoculate in your opening monologue, preparing parties for the occasional glitch in the co-mediation communication.

Co-mediators should remain together when caucusing - avoid peeling off say in family mediation male with male and female with female. This ensures that both mediators hear all that is said to a mediator and also avoids any perception of bias - siding with the party with whom the mediator has caucused.

The importance of the observer is considerable. If you find yourself in observing mode as a co-mediator, watch the dynamics, as your insights will be invaluable when suggesting ways forward.

Share overall duties and in so doing aim at some overall equal participation.

However, be mindful of the value of the "quiet observer" and we all have patterns of high and low participation in communication so co-mediators may oscillate between talking and being quiet.

"Create space and pass the ball"

Bring in your quiet co-mediator by using pauses, turn to or actually invite your co-mediator to participate. Monitor the amount of talking you are doing,

Avoid relying on gestures and signals to communicate with your co-mediator - these can be distracting and are capable of misinterpretation.

Trouble shooting

There are a number of ways in which you can assist when it appears that your co-mediator is in difficulty, these include:

- Being prepared to intercede if your co-mediator begins to lock horns with a party.
- Interceding and rephrasing when your co-mediator asks an unclear or unhelpful question.
- When your co-mediator is talking too much, try saying, "If that particular line of questioning is finished I would like to ask ..."

In conclusion, be respectful of your co-mediator and be open to an approach, which may be effective, and at the same time new to you. Communicate openly and avoid rigid structure, but negotiate to ensure that each of you has speaking time and time to observe.

The Co-mediators Debrief

As mentioned earlier the value of co-mediation apart from the other benefits is the obvious learning opportunities for both co-mediators. In order to capitalise on this the co-mediators ought to follow some structured debrief following the conclusion of the mediation. Each co-mediator should provide specific and succinct feedback to the other. This should be as positive as possible as well as including suggestions for any improvement. Comments could be invited on aspects of the co-mediation that worked well and those that could have been performed differently. As the insights come from a discussion with a fellow participant in the mediation, the learnings tend to be much more meaningful than those proffered by an outside observer.

Paul Hutcheson (Reproduced with his kind permission)