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ANALYSIS OF ADVANTAGES AND DISADVANTAGES OF CO-MEDIATION



ANALYSIS OF ADVANTAGES AND DISADVANTAGES OF CO-MEDIATION

A dissertation presented by

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To Independent College Dublin

**In partial fulfilment of the requirements for the master degree in Dispute
Resolution**

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Abstract

The main objective of this study is to highlight the advantages and disadvantages of co-mediation in overall, but also to explore some guidelines for a better process. Our understanding is that when suitable, co-mediation is a process that can contribute in a positive way for both parties and mediators. We have read different kinds of literature where we found multiple perspectives on this topic, which will be described below.

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Introduction

Conflicts arise on a day-by-day basis. We can see conflicts between relatives, between friends, between consumers and salespeople, property owners and tenants, between colleagues in a workplace etc.

According to Ho-won Jeong, conflicts have existed since the beginning of human history and will probably never end. The author points out that the essence of conflicts lies in the fact that it is not possible to meet the needs and aspirations of the parties involved at the same time. (Jeong, 2008)

Conflicts emerge when the parties involved have different wishes and the attitude of one party converges in the opposite direction to the desire of the other.

In the remote past, when there was a conflict internally, generally an older person with more experience helped the parties to resolve the issues under discussion. Externally there were wars. It did not take long for the communities to decide to delegate conflict resolution to a third party.

Simply speaking, this is how the judicial system emerged, where we have a judge, an impartial third party who resolve conflicts in which the parties are unable to resolve by themselves. It so happens that, for a long time, the judicial system worldwide is no longer able to deliberate quickly and efficiently and a return to the need for the parties to be able to reach a solution for their conflicts.

Alternative forms of conflict resolution arrive in this context to relieve the justice system and to empower the parties to resolve their own conflicts.

The term ADR—Alternative Dispute Resolution—was developed in the United States as a means to find alternative ways of resolving disputes to traditional litigation. The very nature of litigation is adversarial and is generally damaging to every type of relationship. Once litigation commences, the relationship has irreversibly changed. Less costly and more expeditious methods of resolving disputes have been developed. What were historically seen as “alternative” methods to litigation have become more mainstream in Ireland in recent times.

Mediation specifically, had its initial roots in the context of family conflicts and labor relations, but today there is application of the mediation process in numerous contexts and in recent years, numerous countries have approved specific legislation encouraging mediation as an alternative form of conflict resolution.

Mediation is an alternative dispute resolution and one of its principles is voluntary. The parties choose to participate in the process with the help of the mediator whose main function is to facilitate the communication process between the parties so that they can find the solution to the conflict at hand.

Co-mediation occurs when more than one mediator works together in a mediation process combining skills in order to facilitate the process between the parties.

In Ireland, the mediation process gained more vision after the Mediation Act 2017 (The Act) that comes to regularize the process.

In that perspective, this paper has the purpose to analyze the advantages and disadvantages of co-mediation, evaluating within the mediators registered on The Mediate Institute of Ireland (MII), if

they have experience with co-mediation, the advantages and disadvantages, based on their experience and some guidelines for a better process of co-mediation.

For the purpose of the research, we chose Ireland to conduct this research, as the college is located in Dublin, we live here and the mediators that we did the survey to contribute for this research are located in Ireland as well.

The first chapter of this paper will be a deep theoretical study about the concepts, principles, types and styles of mediation, the concept, types, dimensions, advantages and disadvantages of co-mediation, the effectiveness of this approach and some guidelines for a better process for the parties and mediators..

In the second chapter, we will describe the methods and methodology that we used to conduct the research and explain why we chose a survey, the database that we used and why we decided to study the advantages and disadvantages of co-mediation.

In the third chapter, we will present the data that we collect from the questionnaire, describing the purpose of each question and summarizing the answers.

The fourth chapter analyzes the data, correlating the indicators and gaining a clearer view of how co-mediation occurs in practice in Ireland, establishing the common lines between the responses and the differences.

In the fifth chapter, we discuss. In this chapter, we correlate the theory within the reality in Ireland and the experience of the mediators who develop their job here.

In the end, the conclusion of this paper, correlated all the theory presented and the answer to the questions that led to the study of this dissertation, which is to answer whether in Ireland, in terms of mediation, two heads are better than one.

The last part is a self-reflection about the process of this present dissertation for the researcher.

In this research, we choose to evaluate just with the mediators and not with the parties, considering that the researcher would not have access to people who participated in mediation processes, especially with co-mediation to assess from the point of view of the parties.

Contacting the parties could violate one of the principles of mediation, which is the confidentiality of the process. Another limitation found in the survey refers to the choice to send a questionnaire with open questions instead of conducting interviews with mediators.

As the world is experiencing an epidemic moment, COVID-19, and the researcher had no direct contact with mediators at the time of the research, the choice we have made to prepare a questionnaire and send it by email.

The result of this research contributes to the understanding of how co-mediation is seen by mediators in Ireland, to identify limitations and to make use of the guidelines suggested not only by the literature, but also by the mediators who participated in the research. In addition, the research could contribute to the knowledge of the mediation process, in particular co-mediation, and expand the use of this alternative form of conflict resolution.

Chapter 1 — Review of the Literature

1.1 Mediation

1.1.1 Concepts of Mediation

Menkel-Meadow, Love & Schneider defines mediation as a process in which an impartial third party acts as a catalyst to help others constructively address and perhaps resolve a dispute, plan a transaction, or defines the contours of a relationship. (Menkel-Meadow, Love, & Schneider, 2013)

According to Epstein & Epstein, mediation is negotiation with the assistance of a neutral third party. (Epstein & Epstein, 2006)

Crawley & Graham defines mediation as a process by which an impartial third party assists people in a dispute to explore and understand their differences and, if possible, to settle them. The authors highlight the fact that the parties, not the mediator, dictate the terms of any agreement. (Crawley & Graham, 2002)

The Alternative Dispute Resolution guide provided by Law Society of Ireland defines Mediation in the following terms:

Mediation is a private and confidential dispute resolution process in which an independent third party, the mediator, seeks to assist the parties in reaching a mutually acceptable settlement. It is a voluntary and non-binding process that only becomes binding on the parties if and when a settlement is reached. The process usually involves some level of briefing of the mediator before the mediation itself, which typically lasts a day. The mediation is attended by a ‘decision maker’ for each party and often by their legal advisers, relevant experts, and insurers (if any). (Alternative Dispute Resolution Committee, 2018)

In Ireland, the Act supports Mediation and defines as a confidential, facilitative and voluntary process in which the parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve a dispute. (Irish Statute Book, 2017)

1.1.2 The Mediation Act 2017

In Ireland, The Act came into force on 1st January, 2018. The Act placed mediation on the agenda as an alternative form of conflict resolution. One of the main objectives of the act was to promote a viable and efficient alternative to judicial litigation.

To make this process a reality, the act brought up some relevant points that have helped the mediation process to become in fact an alternative to conflict resolution in Ireland. The guide promoted by the Law Society highlighted some points of the Act that exemplify this.

The Act: introduces an obligation on solicitors and barristers to advise parties to consider using mediation as a means of resolving disputes: provides that a court may, on its own initiative or on the initiative of any party invite the parties to consider mediation as a means of resolving the dispute; provides for an agreed “stopping of the clock” for the purposes of the Statute of Limitations where parties have entered into an agreement to mediate; contains general principles for the conduct of mediation by qualified mediators; provides that communications between parties during mediation shall be confidential; provides for the possible future establishment of a Mediation Council to oversee development of the sector; provides for the introduction of codes of practice for the conduct of mediation by qualified mediators. (Alternative Dispute Resolution Committee, 2018)

1.1.3 The process of Mediation

Goldberg et al. explains that the process of mediation consists of five stages: pre-mediation, opening mediation, opening presentation, mediated negotiations and agreement. The mediator will

conduct the process according to their own style, keeping in mind the final purpose that reaches an agreement between the parties. (Goldberg, Sander, Rogers, & Cole, 2012). This stages are also mentioned on the guide provided by the Law Society of Ireland (Alternative Dispute Resolution Committee, 2018)

The pre-mediation phase; The mediation process begins when one of the parties contacts a mediator to resolve a dispute, the same accepts and contacts the other party who must also accept to participate in that process. This initial phase can also happen if the judge determines that the case goes through an initial mediation process. The parties agree on the terms of the process, through the agreement to mediate, which will describe the day and time that the mediation session will take place, the principles of the mediation, the value, the role of the mediator and any other information that may be important for the case.

It is also at this stage that the parties can choose to have their process led by a mediator or by a team of mediators, in the case of the option for co-mediation. If co-mediation is chosen, it is important that co-mediators define beforehand the role of each person within the process, and the style of mediation that will be adopted.

The opening phase; In this stage, the mediator or mediators make a brief summary of the points mentioned in the agreement to mediate. Afterwards, the inform as to how the process will be conducted, the role of the mediator and the objective of that procedure, making clear the principles that guide the process, especially, in relation to the fact that the parties are the decision makers and that the mediator or mediators are there as a facilitator.

The opening presentation; This is the moment when the parties present their version of the conflicting issue. This presentation can occur in different ways depending on the case, in terms of

complexity or number of parties involved in the conflict. It is also the time, for the parties to inform their prospects, regarding the issue in conflict and if it has any initial proposal to resolve the issue under discussion.

The mediate negotiation; At this stage of the process, the parties begin the negotiation process, with the assistance of the mediator or mediators. At this point, mediators explore each other's positions, exploring the strengths and weaknesses of each position and what their best and worst alternatives are to a negotiated agreement ('BATNA' and 'WATNA').

During this time, the presence of two mediators presents itself as an advantage. In the co-mediation, one mediator can focus on some issues to be explored and another address other positions that the other did not have the perception of, increasing the range of options for the parties and assisting to reach a position that is good for both parties within the possibilities presented by the specific case.

Agreement; The aim of the mediation process is that the respective parties, with the help of mediators, are able to reach an agreement. If the parties involved are able to determine a solution to the conflict presented, the mediators will finalize the process with the settlement agreement, which will be signed by both parties. It is important to note that in some cases it is advisable that the parties send the document for legal analysis by a lawyer. (Alternative Dispute Resolution Committee, 2018) (Goldberg, Sander, Rogers, & Cole, 2012)

1.1.4 Principles of Mediation

The mediation process is guided by some principles: confidentiality, neutrality, voluntary, respect and self-determination.

Mediation is confidential which means that no document and word said during the process will be used for other purposes, with some legal exceptions. The mediator will be neutral and will not take any side; the main objective is to facilitate the communication between the parties. The process is also voluntary which means that the parties are not legally bound to undergo the mediation process. In addition, they are free to stop the process at any moment. There is no obligation to reach an agreement at the end of the process.

Kovach endorses the aforementioned principles by defining mediation as a confidential and private method of alternative dispute resolution. She adds that the process assists communication between participants to resolve a conflict or divergences in order to make an agreement. Some of its characteristics have been identified as a voluntary and conciliatory means and it intends to achieve a settlement to both parties involved through an independent third party, the mediator, who is an impartial neutral party in mediation and is not authorized to make decisions. (Kovach, 2014)

According to Kovach, it is possible to apply the process in agriculture disputes, schools and universities, divorce and family restructuring, employment and labour, public policy matters, LGBTQ matters, health care issues, internet and cyberspace, disputes involves lawyers, religious intuitions, transactional matters, wills and estates, sports teams, international and cross-cultural considerations. (Kovach, 2004)

In Ireland, in accordance with the Act, mediation may be suggested by either party or imposed by a court during the course of proceedings and refusal to participate or do so in good faith may have negative financial consequences. (Irish Statute Book, 2017)

1.1.5 Types of Mediation

Steffek brings the concepts of three types of mediation considering the relationship between court proceedings and mediation. (Steffek, 2012)

The first type is the private mediation. In this case, the procedure is completely disconnected from the judicial procedure. It is the case where the parties directly seek the mediator to help them resolve the conflict. In general, the parties resolve the matter privately without the need for any intervention by the judicial system.

The second one is court-annexed mediation. In this type of mediation, the procedure starts in court and the judge or the parties decide to stop the procedure to try mediation. In this case, the parties decide the dispute in question through private mediation and there is no further involvement of the court.

The third and last one is judicial mediation. This type is more connected with the court, however even in this case, there is no direct action by the judge, the mediator will assist the parties in the process, but the result of the decision taken in the mediation procedure will return to the judge to ratify the decision taken by the parties.

In Ireland, the three types of mediation cited to have legitimacy under the 2017 Act.

1.1.6 Styles of Mediation

a) Facilitative Mediation

Facilitative is the most structured and the most utilized style of mediation (Linden). The Act suggest this style for conduct the mediation in Ireland.

The 'facilitative mediator' is a questioner, asks questions, validates and normalizes parties points of view, seeks to understand why the parties assume that position and from there, assists the parties in finding and analyzing; options for resolution. (Zumeta, 2000)

Neutrality is a hallmark of the mediator who loves this style of mediation. The facilitative mediator does not issue personal opinions, does not give advice or recommendations.

Zumeta states that the reason the facilitative mediator does not offer advice, recommendations or opinions is because this style developed when most mediators were volunteers and, thus, were not required to have expertise in the area of the dispute. (Zumeta, 2000)

b) Evaluative Mediation

This style of mediation, evaluative mediation, was developed in the 1980's in response to the increased number of court-ordered and court-referred mediations. (Foster, 2003)

The 'evaluative mediator' intervenes in the mediation more than the facilitative mediator by making recommendations or providing opinions as to what might occur should the case go back to court. (Zumeta, 2000)

Evaluative mediation is often used when money is an issue in the dispute. The evaluative mediator often has some expertise related within the object of the dispute. In this style, the mediator will use his or her expertise to advise the parties about the merit of the dispute. (Foster, 2003)

According to Foster, a mediator using this style may also point out strengths and/or weaknesses of the positions proposed by each side of the dispute. She adds that, the parties that seek such mediators, see the advantage in the mediator's substantive knowledge of the subject in dispute. (Foster, 2003)

c) Transformative Mediation

Foster states that the newest style of mediation is 'transformative mediation' (Foster, 2003)

This style was labelled "transformative" in the book, 'The Promise of Mediation' by Bush and Folger. For the authors, the unique promise of mediation lies in its capacity to transform the quality of conflict interaction itself, so that conflicts can actually strengthen both the parties themselves and the society they are part of. (Bush & Folger, 2005)

This style is closely connected to the facilitative style, but despite maintaining the structure of the aforementioned style, the facilitative style seeks to encourage parties to put themselves in the other's shoes, understanding other party's point of view, also seeks to empower each of the parties. (Zumeta, 2000)

The primary objective of this style is to promote communication and interaction between the conflicting parties. (Linden)

d) Narrative Mediator

In this style, the parties have the opportunity to see the conflict from a distance, the use of storytelling is to allow the parties to see the conflict from the outside. This is a style that has its veins in the therapeutic process.

After hearing the version of the conflict in this position, the parties are given the opportunity to rewrite a new version for that same story, seeking a solution that will be the agreement for the conflict that the parties brought to the mediation process.

It is an opportunity for the parties to understand the conflict from another perspective and find a solution to the issue they are experiencing. The mediator's role here is to assist the parties in rewriting this story.

The goal is to get the parties to detach themselves from the conflict. Linden states that this style works well when the disputants have an on-going relationship past the mediation. It is relatively a therapeutic approach, though it is increasingly used in organizational settings, such as workplaces. (Forman, 2015) (Linden) (Zumeta, 2000)

1.2 Co-mediation

1.2.1 Concepts of co-mediation

Elene Panchulidze on her paper Limits of Co-mediation: The EU's Effectiveness in the Geneva International Discussions, defines Co-mediation as a process which involves multiple mediators, complementing each other in a way that can improve the quality of the mediation process and its outcome (Panchulidze, 2020)

Co-mediation involves two or more mediators working together to assist the parties in dispute resolution. (Epstein & Epstein, 2006)

Giyang A. define co-mediation as a model formed when the mediation process involves two or more mediators. (An, 2010)

Mason & Kassan explain that co-mediation has been defined as the cooperation of mostly two (or sometimes more) mediators in a mediation. By including different competences in the team, co-

mediation can be used as a strategy to overcome some of the challenges commonly encountered by mediators (Mason & Kassam, 2011)

1.2.2 Types of co-mediation

Epstein & Epstein mention some types of co-mediation, such as peer-mediation, lead/assistant or lead/student mediation and mediator/arbitrator. For this author, peer mediation is a type of mediation where two equal mediator's works together as a team. It usually takes places in cases when there is multiple parties and multiple issues. In this case, the mediators can divide issues and parties according to expertise, suitability, and compatibility, while also coordinating their tasks. (Epstein & Epstein, 2006)

The second type that the authors mentioned, lead/assistant or lead/student mediation, takes place when a more experience mediator works with an assistant or student mediator. (Epstein & Epstein, 2006)

Another type commonly referred to, according with the authors is Med/Arb, is where a mediator and arbitrator works together. The mediator will conduct the mediation session and the arbitrator will just listen to the information that the parties are sharing and considers the non-confidential written submission of all parties. If, in the mediation session, an impasse is declared, the arbitrator will gather the findings and decide the conflict. The authors emphasize that the presence of the arbitrator acts as an incentive to the parties to reach an agreement by themselves otherwise the arbitration will impose their resolution. (Epstein & Epstein, 2006)

1.2.3 Dimensions of co-mediation

On the perspective of family mediation, divorce to be more specific, Gold (1984) states that the process of co-mediation has three dimensions.

The first one is related to the communication and the position of each party; the second one shows the experience of the parties and the interpretation of the mediator about it. The third one is related to the psychological change after the negotiation process.

This view of dimensions that Gold brings could be applied for others mediations as long as communication is key for all parties starting the process of negotiation and the role of the mediator is to facilitate the process between the parties. The style that the mediator will apply depends on what they feel will be of use to the parties and the issues that they will bring to the table. The concepts of a traditional approach and a principle approach can be linked in that moment as soon as this psychological change after the negotiation mentioned by Gold is a result of the approach that the parties will choose to conduct the process.

In the book 'Getting to yes negotiating an agreement without giving in', they call the traditional approach, hard or soft approach. In the hard approach, the negotiator is hard on people and soft on the problem. In a soft approach, the negotiator is soft on the problem and on people. (Ury & Fisher, 1991)

The author also presents a method of negotiation called principle approach. This method was created in Harvard University. In the principle approach, the negotiator is hard on the problem and soft on people.

Usually, when people find themselves in a conflict, they think they have two ways to negotiate.

On the one hand, they could use the soft approach or in the other hand, they will use the hard approach.

The negotiator will choose the soft approach when the relationship in question is more important than that person's own interests. In this case, they will make concessions, or in the end, give up of their position, everything will be done to reach an agreement. The soft negotiator wants a harmonious resolution, and sometimes this solution might not be a good solution for him. The negotiator who adopts the soft approach changes their position easily, make offers, and discloses their bottom line. In a negotiation where the negotiator uses the soft approach, they will highlight the relationship between the parties. The main thing is building and maintain the relationship.

The hard negotiator, however, wants to win no matter what he needs to do. He has a strong position to maintain, even when the other party responds in the same way, and it becomes clear that if one of those do not give it away no agreement will be settled. He does not care about the relationship with the other side, the objective is clear; he wants to be the winner.

The 'Harvard Negotiation Project' brought a whole new approach that falls between hard and soft approach. It is a third way to negotiate neither hard nor soft, but rather both hard and soft (Ury & Fisher, 1991). The focus is on the problem not on the positions. It is a process of mutual gains where possible, the objective is to be fair on both parties.

The method of principled negotiation is hard on the merits, soft on the people. It employs no tricks ' and no posturing. Principled negotiation shows you how to obtain what you are entitled to and still be decent. It enables you to be fair while protecting you against those who would take advantage of your fairness. (Ury & Fisher, 1991)

Ury & Fisher explain that any method of negotiation may be fairly judged by three criteria: It should produce a wise agreement if agreement is possible. It should be efficient. In addition, it should improve or at least not damage the relationship between the parties.

They define four points that a straightforward method of negotiation could, under almost any circumstance, employ. People: Separate the people from the problem. Interests: Focus on interests, not positions. Options: Generate a variety of possibilities before deciding what to do. Criteria: Insist that the result be based on some objective standard. (Ury & Fisher, 1991)

1.2.5 Advantages of co-mediation

Co-mediation provides an opportunity for the parties and for the mediator's works as a team, especially in cases that involve different dynamics such as gender, multi-parties, ethnicity and cultural background. It is an opportunity for the mediators to learn and teach, to divide the tension and listen to the other point of view. No matter how experienced the mediators are, it is always an opportunity to seeing other forms of approach, to understand the dynamic and the flow, thinking in the better way to help the parties involved to come up with a solution that could be helpful for the parties involved in the conflict (Keys, 2009)

An, G. states that is a method of mediation that has become more popular and presents many advantages. While there are some disadvantages of co-mediation, the general popularity suggests that any disadvantage is outweighed by its many advantages. (An, 2010)

The author argues that in cases that involve power imbalance, the mediation process could be useful if the mediators are trained to balance out the power during the mediation process. This

scenario of power imbalance can be seen in cases of divorce, domestic violence and are common in many other kinds of disputes. (An, 2010)

It is very advantageous when the mediator can combine the expertise. For example, in a divorce case, a male and a female mediator can leave the parties more comfortable to sharing their points of view.

An, G. explain that in the case of domestic violence involving cultural components, it is very advantageous to have two mediators combining their expertise. For the parties, it will be more comfortable to have male and female mediators so that they can open up, without the possibility of judgement or misunderstanding by the opposite sex. In addition, for the mediators, one can focus more on the cultural parties and the other can focus on the domestic violence. Doing so, the author mention that the mediators will be less overwhelmed by the facts of a complicated case. (An, 2010)

The author raises the possibilities that co-mediation can provide the parties with variety, a flexible and integrated approach, turning mediation, an attractive option for all parties. In addition, the importance of the co-mediators presents a united front. He mentioned that the mediators acts as a role model for the parties, so it is important to show respect and cooperation, no matter the age, sex or experience of the mediators. He highlights that behaviour is paramount. Moreover, describing the importance of the background that a mediator brings to the mediation session can generate in the parties the sense of comfort, open discussion and the opportunity for the parties to use creativity to generate options. (An, 2010)

In the workplace, mediation is commonly used as a way to avoid legal proceedings. The literature even invokes the importance of co-mediation in cases of team mediation due to the multiplicity of parts.

In the book, 'The Essential Guide to Workplace Mediation & Conflict Resolution' by Doherty & Guyler, the authors define team mediation, in another perspective, as a structured process whereby an impartial mediator will facilitate the communication between a number of people in order to clarify the issues between them and to encourage them to come up with mutually beneficial solutions and agreements that will improve their working relationship in the future. (Doherty & Guyler, 2008)

They advocate working in a model of equal co-mediation for the team, where the two-experienced mediators will work together with the group. They also explain the dynamics of listening to the individuals first and then plan the mediation day, how that day will be organized and the issues that can occur. (Doherty & Guyler, 2008)

Another scenario where co-mediation is powerful relates to cultural or religious conflicts. According to Manson and Kassan it is important that the constellation of the co-mediation team bring some cultural proximity in order to have better understand between the parties and the mediators. However, it is not necessary to mirror one to one. (Mason & Kassam, 2011)

David Richbell in his book 'Mediation of Construction Disputes' advocates that in case of multiplicity of parties, as most of constructions conflicts, co-mediation is particularly suited. The author adds that, apart from the construction field, the co-mediation can be used in both matrimonial, community mediation and in commercial mediation. (Richbell, 2008)

Parkinson summarizes when co-mediation could be use and different purposes. The author mentions the possibility to use co-mediation as a training, assisting new mediators, insofar as they can participate in the co-mediation process with a more experienced mediator. It is beneficial not only for the mediator in training who has the possibility to experience in practice how a mediation process occurs, but also for the more experienced mediator who can have feedback on his performance and a different view on the mediation performed. (Parkinson, 2014)

Another issue mentioned by the author refers to the possibility of providing gender balance. Especially in family processes, co-mediation that involves a man and a woman promotes this balance and is beneficial not only for the parties but also for the mediators. (Parkinson, 2014)

Co-mediation can also assist in cases of need to manage high conflict, entrenched positions and difficult dynamics as well as providing a balanced understanding and response to different perspectives. The presence of more than one mediator can assist in a greater number of questions, helping the parties to reflect on the conflict itself and trying to find a solution. (Parkinson, 2014)

When there is a need for special expertise and knowledge, co-mediation can make a significant contribution. In family cases, for example, the presence of mediators with the background as a lawyer or therapist can assist the parties in a large number of issues that will arise during the mediation process. Making it clear that the medication does not lend itself to providing legal advice, but the knowledge of a lawyer in this case can be of great help.

As already mentioned, in cases of cross-cultural mediation, co-mediation is of great value, as it brings the opportunity to have co-mediators from different backgrounds and who have cultural knowledge about the parties and can assist in a more assertive way.

Co-mediation helps to the extent that the tasks involved in the mediation process can be divided among co-mediators in a way that maximizes effectiveness.

The author also adds the hypothesis to give scope for more complex strategies and to bridge geographical distance, where participants live too far apart to travel to the same location. A mediator in each location may meet with one party and liaise with the other mediator. (Parkinson, 2014)

Therefore, authors such as Love, Stulberg and Parkinson, state that co-mediation has several advantages, namely:

- a) There is an improvement in the knowledge, perceptions and listening skills of the mediators, who may have ethnic diversity, backgrounds and professions. Co-mediation enables the merger between two professionals who complement each other in terms of their qualities, work styles and the use of specific skills.
- b) Create balance in the mediation team due to the diversity of mediators (for example, women and men; Caucasian and African; lawyer and psychologist).

If the mediators are male and female, there is a gender balance in the room and a model for the balance of powers, especially in family mediation; when the mediators are from different cultures and one of the mediators knows the traditions, it is central to the development of the process. If the mediators have different backgrounds, it makes the process more enriching in the sense that they complement each other at the level of knowledge, bringing each one their experience to the process.

c) Promote a model of communication, cooperation and interaction to the parties. Mediators are a model for those mediated in the sense that they convey a model of cooperative attitudes, communication and interaction.

d) Maintaining good practice. During the mediation process, the presence of a co-mediator helps to avoid forgetfulness and omissions.

e) Support for mediators. The mediators can share the responsibilities and divide tasks. The presence of two mediators gives security to each other and allows support.

f) Mediators benefit from each other's work, in the sense that they have the opportunity to train, learn and enrich. There is mutual learning and allows for the practical training of inexperienced mediators. (Love & Stulberg, 1996) (Parkinson, 2014)

1.2.3 Disadvantages of co-mediation

One thing that needs to be clear relates to the fact that sometimes a powerful tool, no matter how good it is, cannot be applied to every situation. Obviously, that mediation or even negotiation within a soft approach for example could solve many conflicts, but sometimes it is necessary to be open to choose the better method that applies for each situation. (Mason & Kassam, 2011)

Conflict is not necessarily a negative thing, in fact it is the opposite. If well-managed, it can provide innovative solutions, or an opportunity to see the situation from another point of view. The fact that one party is “right” in their perspective does not mean that the other party is “wrong”, sometimes it is just another perspective.

Within this, mediation, “per si”, it is very useful in some situations and in others it is completely out of question. The same reflection needs to be done for co-mediation. (Mason & Kassam, 2011)

The literature describes some disadvantages of mediation that could be applied to co-mediation, such as the time delay in resolution or if there is a failure to engage by one of the parties. If a conflict is raised between people who have different levels of power and/or financial situation, the mediation might not be suitable for them, as one of them might not be able to bargain and defend his/her own interests properly and in the future this person can submit the same case to the court to get a different provision. (Menkel-Meadow, Love, & Schneider, 2013)

Another criticism about the process of mediation consists of the partiality or neutrality of the mediator. Obviously, that impartiality is a goal of the mediator, but when we talk about a human being, there is a background and a history involving, and as said by Menkel-Meadow et al. impartiality is a myth (Menkel-Meadow, Love, & Schneider, 2013). Moreover, this criticism could be applied to a judge, arbitrator, mediator etc.

Analyzing all this context of the process, the benefits of the mediation is a fact and an effective mediation provides the main goal to achieve a settlement to parties involved without risk the uncertainty of a court.

A critical analyses of co-mediation work shows us some disadvantages, as follows:

a) Conflict and competition can make the mediation process more difficult. When mediators have different perspectives and ways of working that they cannot manage, they can enter into competition, which is not beneficial for the development of the process.

b) Co-mediation can take longer than mediation by a single mediator. In addition to the mediation sessions, it is necessary to spend time organizing and planning them (mediators have to negotiate about each other's tasks and roles) and, subsequently, do an analysis of the sessions.

c) Logistics. The travel of one or both mediators entails additional costs and time.

d) The parties may try to divide and win over the mediation team, focusing on the most sympathetic mediator instead of having a single focus. There is a risk that mediators will be manipulated and divided by the mediated ones. They often try to persuade mediators to take sides.

e) Mediators working together may act differently than they would act individually. To avoid overlapping the other, as your work may be deficient and limited. (Love & Stulberg, 1996)

1.2.4 Guidelines for better practices

In view of the analysis of the advantages and disadvantages of teamwork, it is essential to choose the partner to co-mediate, with several aspects to be taken into account. Love and Parkinson suggests some practices guidelines for a better process of co-mediation

a) Choosing a partner who has a similar vision of the objectives of the mediation and is compatible with the strategies used to carry out the work. In order for mediators to be able to work together, dialogue and alignment regarding the objectives of that mediation is necessary so that they can fulfill the role for which they were assigned. The objectives can be varied and must be evaluated on a case-by-case basis in order to offer the best possible outcome for the parties that will be part of the process. Based on this, it is essential that mediators maintain an open dialogue and have similar styles and strategies so that the mediation process is the most productive and actually helps the parties to achieve the objectives sought. Thus, basic questions such as the format of the room,

whether lawyers will be allowed or not, which approach will be used, who will open the mediation session, among others, should be discussed and planned before the mediation session, generating security for mediators and consequent trust for the parties.

b) Establish leadership roles for co-mediators - continuing in line with the need for good preparation, it is important that each co-mediator is responsible for a certain phase of the mediation. This definition is important, but it must be flexible. The definition of roles and the clarity of the parties regarding this helps in the process. If there is any disagreement between the mediators, it is expected that the one who is conducting the process will maintain control so that there is no interference in the session.

c) Use strategically the position in which they are seated to maximize the chances of success of the mediation process - The disposition of the parties and mediators in the room can help the visualization of the parties regarding the position of equality and also the opportunity to favor communication between mediators, between the parties and between mediators and the parties.

d) Assign tasks to each mediator so that mediation is the most efficient and productive - During the mediation session, several tasks need to be performed by the mediators. Dividing them in order to make the mediation process as dynamic as possible is highly recommended. One mediator, for example, may be responsible for asking questions while the other takes notes. While one mediator reframes the points raised by the parties, the other can summarize the points where the parties have already reached an agreement.

e) Allow each other space to participate in the discussion – Usually, during the co-mediation process, one mediator is more active and the other is more of an observer. However, it is important to demonstrate cohesion between the mediators and maintain communication, asking at the end of

each point, if, for example, the other mediator would like to ask a question or add some information. A good dialogue between the mediators and the presentation as a team, always referring to the team, and not only to the individual as a mediator, is of great contribution to the mediation session.

f) Take full advantage of the diversity of the mediation team - in a mediation process, all details are important. Therefore, it is important to demonstrate to the parties that there is a balance between the mediators, especially when the parties involved in the process demonstrate any type of power imbalance. From the layout of the room, to the mediator who will lead the process, the strategy that will be used, all details must be taken into account.

g) Maintain a unified approach so that common understandings are reached - The presence of more than one mediator can provide an attempt at parallel conversation. Therefore, it is very important that if a situation like this occurs, the mediators do not allow this attempt, making it clear to the parties that the mediation has a unique focus and that although one of the mediators is less active at that moment, it does not mean that the mediators have left to be a team. The objective of the process must be unique and the focus must remain throughout the session.

h) Have a resource plan if co-mediation does not work. Co-mediators, especially when starting to work together, need to be aware that co-mediation may not work. Therefore, it is necessary to discuss and reflect on whether the process as co-mediators is working and, if not, how they will conduct the process. It takes self-knowledge to evaluate and act as soon as it appears that co-mediation might not be possible, so as not to harm the parties and their process.

i) Be flexible - As mentioned earlier, despite the importance of planning, co-mediators must be flexible and understand the needs of the parties and the specific case. In some cases, for example,

an issue in which the mediator who would be least active has expertise comes up and he can contribute more effectively. It is important that mediators are attentive to latent issues and change positions while maintaining a focus on helping the parties in the best possible way.

j) Come to a conclusion after each session in co-mediation - as important as the preparation before the start of the mediation process is the conclusion after the mediation session. It is an opportunity for the team of mediators to make an analysis of the session, verifying the strengths and weaknesses, and from that, assess how they can improve their intervention. It is also time to plan the next session and exchange information about the session. It is essential that mediators are open to constructive criticism.

k) Support the other - it is common that in a team of mediators, one of the mediators has more experience than the other. It is important that the exchange between mediators takes place, regardless of experience, and that the more experienced mediator makes room during the mediation process, so that the less experienced mediator can make his contribution, stimulating his participation and questioning his perception of the case object of the mediation.

l) Use a consultant or a supervisor - If mediators regularly use a consultant or supervisor combined with continuous training, it will contribute to enrichment and new ideas (Love & Stulberg, 1996); (Parkinson, 2014)

Chapter 2 – Research Methodology and Methods

To start the study, it is pivotal for the researcher to define the method and the methodology that will be used to conduct the research. Sanders, Lewis & Thornhill developed the research onion, a helpful instrument for the researcher follow to define the pillars that will guide the research process. (Saunders, Lewis, & Thornhill, 2007)

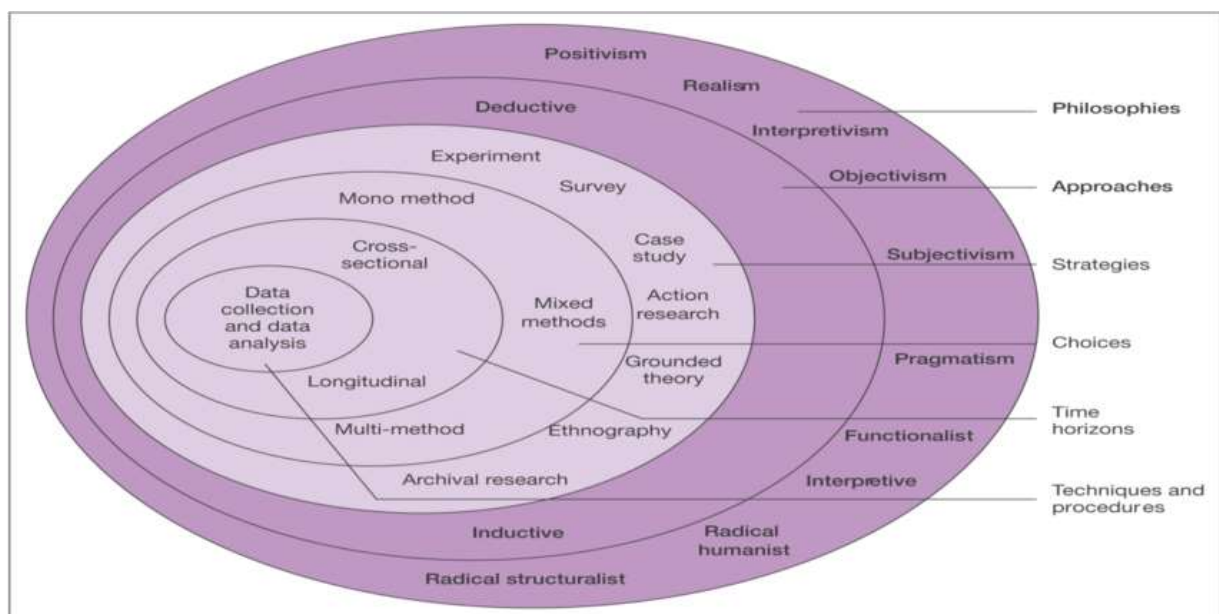


Figura 1. Research Onion

Following the layers of the research onion, the researcher has to define which philosophy will be adopted. After that, they will also need to decide which approach and consequently the strategy will be used to collect the data, the choices and the time horizons and. in the end, techniques and procedures to analyse the data collected.

According to Fisher, Auguste Comte (1798-1857) coined the term positivism in the nineteenth century, relating the term to the power of science while rejecting metaphysics and subjective ideas focusing only on what was tangible. Positivism holds that an accurate and value-free knowledge of things is possible. (Fisher, 2010)

Considering positivism as a philosophy that uses existing theory to develop hypotheses and during the research process test these hypotheses, positivism was the philosophy behind this research.

The literature highlights that co-mediation is a helpful tool to conduct the process of mediation specifically in some contexts, for example, family mediation but most of the texts advise some attitudes to guarantee a better process for the parties and for the mediators.

Within this, the research had the purpose to analyze co-mediation in Ireland, evaluating which criteria mediators use to choose co-mediation or single mediation, the positive and negative indicators and also the effectiveness of the process.

Saunders states that in a research that uses deductive approach, the research will test a theory. Which means the research is deducing a hypothesis from the theory. In our research, the hypothesis is that co-mediation is not common in Ireland although it is effective. The theory, even though it recognizes that there is some negative indicators, it expresses that the positive indicators are superior. Within this, this research chooses the deductive approach to conduct the research. (Saunders, Lewis, & Thornhill, 2007)

Our strategy to achieve the necessary data to conduct this research was through a survey. The survey contributed to obtain information about the use of co-mediation in Ireland, verifying the criteria that the mediators uses and the effectiveness of this approach.

We used a questionnaire mostly with open questions in order to have the more clear responses to verify if the reality in Ireland is in accordance or not with the literature that we used to theoretically support the research.

To identify and contact mediators working in Ireland, we chose the database of The MII. The MII started their job in Ireland in 1992. This institution promotes training and qualifications for mediators and sets the standard for mediation in Ireland.

It is an institution created by mediators for mediators and has a partnership with other international institutions for the development of mediation, such as Australia, Canada, the UK and throughout Europe.

The MII regulates the work of mediators and promotes improvement courses. It also has a code of ethics and has expanded the number of registered professionals over the years.

The MII also has comprehensive and functioning complaints and disciplinary procedures to protect users of mediation. (The Mediate Institute of Ireland, 2020)

There are four hundred and five mediators registered at MII available to mediate. We sent an email with the questionnaire to them all. Discounting the undelivered emails, we sent three hundred and sixty eight emails. The goal was to receive at least ten percent of responses. However, we received only 15 responses, which means four point zero seven percent.

We sent the emails on the eighth and ninth of April, and the questionnaire was open to receive responses until seventeenth of April. As mentioned, we received just fifty responses but in fact, we could use only fourteen, as one responded just filled the first questions and does not have the experience with co-mediation. (See Appendix B)

Apart from the questionnaire responses, we received loads of automatic responses saying that in reason of COVID 2019, the offices were close and a telephone number to contact in case of emergency that was not the case.

The researcher, also received a couple of emails, saying that although the person were a accredited mediator they do not have any experience within co-mediation or who have not practised as a mediator in a long time.

Considering that we the research conducted collided with a pandemic situation, COVID-19, and that social distancing has become the new norm, the research faced more limitations than expected.

Firstly, due to the closure of the college, we could not access the library. Secondly, instead of interview, we choose to conduct the research within a questionnaire with open questions which is a challenging method to receive responses but if we had choose in another way the responses would not be so natural and in accordance with the reality of the mediators.

Following the layers, the method that we used was mono-method, as we used just a single data collection technique, as previously mentioned, a survey.

The time horizon that we will use is cross-sectional because we studied what is happening now. We conducted this research during April 2020. All the data collected in that period we analyzed and used to achieve the purpose to analyze co-mediation in Ireland.

We conducted the research following this aims and objectives.

- Evaluate which criteria mediators use to choose single mediation or co-mediation in Ireland
- Analyze the positives and negatives indicators in co-mediation

- Evaluate the guidelines for a better process of co-mediation
- Critically analyze the effectiveness of co-mediation in Ireland

Chapter 3 – Presentation of the data

The judicial system, in almost all countries, receives numerous actions from people because of conflicts existing in a scenario in which people themselves have not been able to reach a solution. Therefore, it is necessary to delegate to a third party, with legal power, in this case the judge, to decide the existing conflict.

In doing so, the judicial decision puts law between the parties and often affects third parties depending on the specific case and the laws of each country.

In the end of this situation, a lot of process without a decision in a reasonable time, comes up, not only against the judicial issue itself, but it also influences the economy, politics and affects, to a greater or lesser extent, the entire population of countries. The reality of countries without an efficient judiciary capable of really resolving issues inherent to the power of the State corroborated the need for alternative forms of conflict resolution.

We have numerous alternative forms of conflict resolution, such as negotiation, mediation, arbitration, conciliation, among others.

Mediation brought special interest to the researcher in order to present a balance and union between alternative forms of conflict resolution, which means the help of a third party, the concepts of negotiation, and the maintenance with the parties of the power to decide for them a solution to the conflicting issue.

During the study of mediation and understanding that in the current scenario, teamwork brings countless gains for the parties who act as mediators, as well as for the parties who participate in the process, co-mediation brought to light the combination of concepts and form of work. This

model of teamwork generated curiosity in the researcher who felt the need to delve deeper into the subject and to understand from the point of view of the mediators how the practice of teamwork as mediators occurs in Ireland.

Hence, the choice of an open questionnaire as mentioned, was adopted to have a clearer view of the mediators' experience in Ireland and to understand from the mediator's point of view how co-mediation is seen and to analyze whether the practice of the co-mediator was in line with the concepts presented in the literature.

The questionnaire had seven blocks of questions and eleven questions in total. We made the decision not to include social demographic questions thinking in a way that these questions were irrelevant to analyze the scenario of co-mediation in Ireland. This decision was made also in the interest of data protection. We used the platform “Google Form” to elaborate the questionnaire that brought the confidentiality into the process.

The first block of the questionnaire, it was a framework and the purpose was characterize mediators as to their path. We had fifteen responses in this block, which had two questions. The first question asked the respondent how long they had been a mediator and the second one was in relation to the experience of the mediator within co-mediation. The responses are illustrated according to the graphics below.

Question 1.

How long have you been a mediator?

15 responses

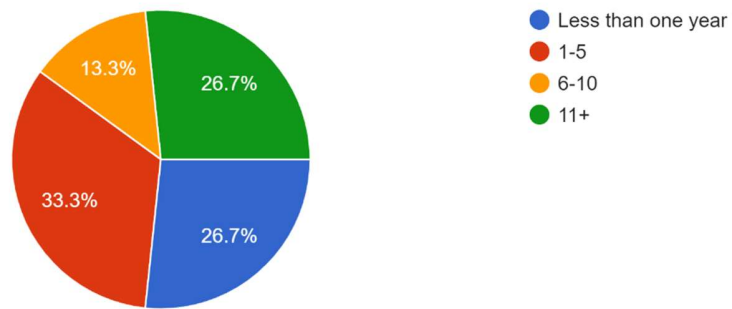


Figura 2. Graphic Question 1

Question 2.

Do you have any experience working with another mediator during a mediation process?

15 responses

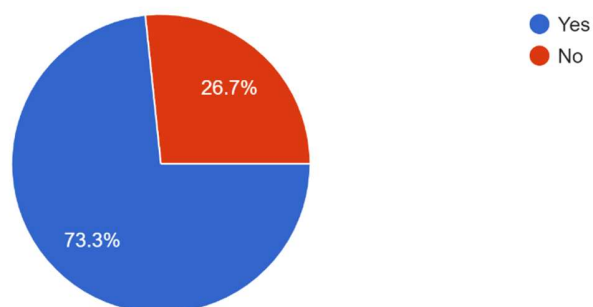


Figura 3. Graphic Question 2

The second block was related to decision criteria. The purpose of this block was to understand the decision criteria that lead mediators to choose to work individually or in co-mediation. There was also two questions. In this block, we had fourteen responses for each question. The first one was specifically related to the criteria and the second one was related to relation between the decision criteria and the outcome of the process.

Question 3. Which criteria do you use when you choose to work by yourself or with another mediator?

Question 4. In your opinion, this decision, work individually or in co-mediation, affects the outcome of the mediation process?

About the criteria, the responses were, in one hand, a decision made by the parties according to the financial situation and their needs or knowledge about the advantages of co-mediation and on the other hand a necessity by the mediator as far as the presented case, experience of the mediators, trust between mediators or the necessity of complementary skill.

As for the outcome, it was mentioned that it was a difficult question to answer because it varies from case to case. Most of the responses were that the decision regarding single mediation or co-mediation does not affect the outcome of the process.

It was also mentioned that although both forms are beneficial, co-mediation has its advantages, mainly in relation to the process flow. Some responses however did suggest that co-mediation could cause the sensation of overwhelming by the parties and cause confusion and delays in the process.

In addition, some responses explained that the outcome depends more on the interpersonal relationship between the mediators and with the mediators and the parties and the willingness of the parties.

The third block was about the concept of co-mediation. The purpose of this question were to understand how mediators defines co-mediation. If is a strategy, a method, a technique or a style of mediation.

Question 5. According to your experience, how do you define co-mediation?

Overall, the literature brings some concepts of co-mediation. David Flynn presents co-mediation as a technique, same as caucus (the mediator talks privately with each party) supportive third parties and the use of short-term agreements (Flynn, 2005).

Keryn Foley declares, co-mediation exists as a method of working that can be very practical in a wide variety of circumstances. (Foley, 2017) In the same path, Epstein states, co-mediation can be an effective and efficient method of dispute resolution where two or more mediators work together. (Epstein & Epstein, 2006)

Karen A. Forman defines co-mediation as a style of mediation that involves multiple mediators, usually two, which in some way may complement each other by gender, personality, culture, professional background, or by other ways in a manner that can improve the quality of both the mediation process and its outcome. (Forman, 2015).

Manson & Kassan brings the concept of co-mediation as a strategy to overcome some of the challenges commonly encountered by mediators, e.g. lack of leverage, arrogance, partiality, ignorance, inflexibility, haste, and false promises. (Mason & Kassam, 2011)

In the responses, we did not receive the mentioned concepts directly speaking, but most responses mentioned the terms “team” or “teamwork” demonstrating the possibility to add skills and work together as a complimentary team.

It is where 2 mediators complement each other and work together as a team. (Mediator 1)

Two mediators jointly taking a mediation session. (Mediator 2)

Very good dealing with very difficult cases. (Mediator 3)

Two Mediators working together with parties to mediation. (Mediator 4)

Co-mediation is a way of extending the insights and possible solutions of what is on the table because co-mediators complement each other by personality, culture, professional background gender and the mediation style/manner they use. (Mediator 5)

An opportunity to have two perspectives. (Mediator 6)

The parallel complimentary working of professional qualified mediators to facilitate the process of mediation for the benefit of the parties with the added benefit of peer feedback from co-mediator during and post the process. (Mediator 8)

When more than 1 mediator assume the role of mediator in a mediation. (Mediator 9)

Is when two mediators agree to be a communication pathway between parties, and due to the complexity of issues, they per-agree the subject matter with each will focus upon, so that the pathways of communications are clear to the parties. (Mediator 10)

Two mediators facilitating the process. (Mediator 11)

More than one mediation managing the mediation process. (Mediator 12)

Two mediators working together in a complementary way but with a unified understanding of the process and how they wish to manage it. (Mediator 13)

Co-mediation is team work. (Mediator 14)

Working in collaboration with another skilled mediator in an attempt to support disputing parties mediate a mutually beneficial agreement (Mediator 15)

The quarter block, split into two questions, questioned the positive indicators of co-mediation. The first question in this block was direct about the benefits of co-mediation (twelve responses) and the second addressed the factors that could contribute to the success of co-mediation (fourteen responses). The purpose of this block was to realize the benefits of teamwork.

Question 6. Can you tell me from your experience some benefits of co-mediation?

Question 7. What factors can contribute to the success of co-mediation?

For the first question of this block, most of the answers were in the direction that the presence of two mediators with different skills, gender or background generate a better experience for the mediation process. Was also mentioned the opportunity to have one mediator observing the non-verbal signals when the other one were leading the process. Another benefit that were mentioned was related to the possibilities to share the point of views, reflect together, also the moral support. In addition, the increase of all aspects of communication.

Regarding the second question of this block, about the factors that can contribute positively to the success of the process of co-mediation, the answers were in the sense not only on the part of the mediators but also on the positioning of the parties regarding the process. Were mentioned the openness of the parties, the good relationship between mediators, the importance of know each

other and their style, the communication between mediators before, during and after the process and the trust between the mediators.

The fifth block was about the negative indicators of co-mediation. The purpose of this block were to realize the limitations of teamwork in the mediation process. This block had two questions. The first one regarding the problems that mediator encountered and how they solved it (thirteen responses) and the second one some situations that co-mediation did not work (thirteen responses).

Question 8. What problems do you encounter and how do you solve them when using this way of working in mediation?

Question 9. Do you remember some situations in which co-mediation does not work?

As for the problems, the responses were in the direction that, if the mediators were well-prepared, probably they would not encounter problems in the process, so the importance of knowledge about each other's style, the presentation as a team and the preparation beforehand it is pivotal. Within this, the mediator will not allow the parties to try to divide them and the ego of the mediator will be untouched.

As for the question regarding situations in which co-mediation did not work, most of the respondents (nine of thirteen) declared that do not remember a situation that the co-mediation did not work. The respondents that gave the responses in a positive way mentioned the lack of experience, lack of active listening, different approaches, imbalance, loss of focus and problems with the communication.

One of the respondents (M15) said, "The outcome of the mediation was not what could be defined as successful but the mediation process and co mediations usually work very well".

The sixth block with only one question and thirteen responses were related to the objectives of mediation. The purpose was to understand in which situations co-mediation is most effective and made the parallel between the co-mediation and the single mediation.

Question 10. Does your experience of working in co-mediation achieve the same objectives as working alone?

Most responses were in accordance that the process achieved the same objective in co-mediation or working alone. In addition, some of the respondents pointed out that co-mediation is more comfortable for the parties (M1) and a “greater potential for discovering a depth that is not possible working alone” (M15). However, another decided to work alone after their experiences with mediation (M10).

The seventh block concludes the questionnaire asking for guidelines for good co-mediation practice.

The purpose of this question were to explore clues that allow improve co-mediation work. We had thirteen responses for this question.

Question 11. What are the guidelines for good co-mediation practice?

The responses briefly speaking were about the importance of work well together, complement each other, understand styles, experience working together, balance or equality, respect, preparation and reflection, knowledge by yourself and trust between the mediators.

Chapter 4 - Data Analysis/Findings

Mediation is a process that has been taking place in the world for some time and only in recent decades has it officially entered into the legislation of the countries. Specifically in Ireland, mediation was already a reality although the act only surfaced in 2017 and came into effect in January 2018.

This can be seen with the first question where a 26, 7 percent of survey participants have been mediators for more than 11 years. However, the support of the Act brought the same percentage of new mediators. The number of mediators registered with the MII available for mediation is still a small percentage, in population terms. This is also observed in the study of mediation as an alternative form of conflict resolution in universities, only the course at Independent College and Trinity College.

Specifically with regards to co-mediation, a portion of those who responded did not have experience (26, 7%) and I assume that from the emails we have sent a good part also have no experience with co-mediation and therefore did not answer the questionnaire.

Analyzing the responses of the mediators who generously donated their time to answer the questionnaire, there is a clear agreement between the answers and the theoretical basis used for this research.

It was clear from the responses how much co-mediation can be beneficial not only for the parties but also for the mediators and for what is necessary to overcome possible issues that may arise.

Even the mediator that did not have a good experience with mediation and declared that he prefers to work alone, recognized that co-mediation is useful and mentioned that the co-mediation process

brings the opportunity to while one mediator is conduct the process, the other can observe the parties (M2).

Important to be noted that despite the recognition of the benefits of co-mediation, most of the responses reported that there is no difference in relation to the outcome (Q.4) or objectives (Q.10) of the process the choice of mediation or co-mediation. Other factors were indicates as influencers.

“(...) the outcome is directly related to the interpersonal relationship with each party, each individual mediator has a different (sometimes better!) relationship (...)” (M10). “The outcome of mediation depends on the willingness of the parties to find a solution and the skills of one or two mediators in getting then there”. (M13)

Analyzing the responses of mediators with eleven years or more as a mediator (4), three of them (M4) (M8) (M13) demonstrate that their experience with co-mediation is more positive than negative. Moreover, one of then presented a bad experience that leads the choice to work as a single mediator (M12).

M4 and M13 stated that there is no problem with co-mediation if the mediators begin the process with good preparation

“Fortunately I haven’t encountered problems because of clear contracting and dialogue in advance” (M4). “I have not found it problematic. Preparation is key to success and knowing and trusting your co-mediator” (M13).

The M12 identified as a problem the inexperience of one of the mediators, also the imbalance between the mediators. The inexperience of the mediators was also mentioned by M8 when questioned about an experience where co-mediation did not work.

“I worked in co mediation with a number of people who I felt were not sufficiently trained. As the male in the equation they felt they had the right to lead the mediation. I don't co mediate any more” (M12)

If a mediator finds another mediator who has the same style of work, that both seek to work in the best possible way, preparing before the mediation, talking and providing feedback during the process, gaining experience and getting to know each other, the work is enriching not only for the parties but for the mediators.

As one of the mediators said, using dance as a metaphor to illustrate. With time and synchronicity, the process becomes fluid and even issues such as time and cost can be reduced because the process is flow.

A question that becomes clear when analyzing the responses and regarding the importance of preparation before and during the process, as well as communication between mediators and between them and the parties. In a process in which the position of each party in the process is clear, where there is respect and synchronicity, and more than that, a common objective of reaching a solution for the case presented, regardless of the choice, the result will be positive.

One of the limitations of the research is that only the view of the mediators was addressed. Despite this, with regard to the decision criteria on single mediation or co-mediation, the parties appeared as an important criteria decision. The M8 described in the answer the cases where the literature exemplifies the greatest incidence of the use of co-mediation.

“Complexity of Case, multiply of parties, specialist expertise, gender balance skill set and experience” (M8).

In our research, most of the cases present co-mediation as related to family mediation. However, co-mediation does not appear only in these cases. Co-mediation is also seen in cases of team mediation in the workplace, it also occurs when it is a case where a specialist is needed, and is found in cases of community mediation and others.

Another issue raised by the mediators was the possibility of the parties trying to divide the mediators. Not only that, but almost all the questions posed as possible problems, such as interrupting the other, imbalance, all of which can be reduced if there is open dialogue and good preparation.

It is obvious that not everyone works well together, and that is not the point. Moreover, there comes the point raised in the need to know yourself and find a co-mediator who has the same style or a complementary style of work, which creates an opportunity for growth not only for the mediators but also for the parties.

In addition, the experience working together, and an extra advantage, and as suggested by one of the mediators, role play (M1), can help so that some situations are placed and the mediators find together a solution to overcome. Synchronicity and rhythm come with time and this is true not only for co-mediation but also for mediation. The more experienced the professional the more opportunities and different situations that are presented to him and the learning is constant.

A previous experience, can be useful to use in a specific case and that is why having two mediators can be even more advantageous, because the chance of at least one of the two having experience or experiencing a situation that may help the parties are even greater in the conflict being mediated.

As for the question of time and money, it is a very relative question since, a well-planned co-mediation can be faster and more efficient than a mediation, the opposite can also be true, as well as sometimes even a litigious process can also be faster. Therefore, the analysis of the specific case, the experience of the mediators or co-mediators and the openness of the parties to reach a solution are variables that can be beneficial or not depending on the specific case.

An interesting point that was raised by some mediators was related to respect and trust. In a process of co-mediation, co-mediators present themselves as a mirror in some way and it is essential that the mediators clearly demonstrate this so that the parties also present the same.

The parties need to feel confident in the process, and the principles relating to mediation help to some extent because it is a confidential, voluntary process and the mediator is neutral. The parties must also trust the other party and the mediators who are leading the process.

If the co-mediators do not show respect and trust to each other, it is difficult for the parties to trust the process and the mediators as facilitators in the negotiation process.

Despite the negative indicators and the possibility of avoiding them with good preparation and experience, co-mediation does not work in all situations and not for all professionals. Especially when there is an episode, or some episodes that the mediator did not feel comfortable in the position of co-mediator. In addition, it is important to say that the co-mediation process requires a match between two professionals, who want to work in this way and that in some way adds skills that can assist the parties in the process.

This reality could take some time but from the experience of the mediators in the survey become clear that once two mediators find that balance, the work is beneficial for the mediators and the

parties. As exemplified by one of the mediators as “being similar to a dance partner, someone whom you are naturally and effortlessly able to move in step with”. (M1)

Chapter 5 – Discussion

Once underway, conflicts often escalate and widen. What begins as a simple disagreement over facts can broaden (and intensify) into personal attacks that more both parties defensive and unable to deal with the original disagreement (Schmidt & Hateley, 2001)

When the parties choose to resolve the conflict through the negotiation they maintain the control of the process and decide about the best solution according to their terms. If there is no agreement between them, a third party must get involved and depending on the choice they make/have, the parties will not have any control over the solution that will be offered to them.

Mediation is an opportunity for the parties to have the third party in the process helping to find a solution to the conflict without losing autonomy over the decision.

The purpose of this paper is to evaluate the advantages and disadvantages of co-mediation and obtain from the experience of the mediators in Ireland some guidelines for the co-mediation process to be beneficial not only for the parties but also for the mediators.

We firmly believe that mediation, when it is possible to use it, brings many benefits to the parties, since with the power to decide together on the outcome of that conflict, as a rule, it leaves both parties satisfied with the outcome and beyond that, in more often than not, the relationship between people in conflict is maintained.

The process of mediation, most of the time, is an opportunity not only to reach an agreement but also is an opportunity of reestablish links.

Mediators in the mediation process have an investigative function, since through questions asked by the parties, they open an opportunity for them to reflect on their position and attitude and start to think about the other party's point of view.

And the opportunity to put yourself in the other person's position and together find a solution to the conflict under debate. Another belief that we have is that the possibility of having more than one mediator leading the process, can be even more advantageous for the parties, but mainly for the mediators. Teamwork is of benefit both personally and professionally. In addition, it is an opportunity for mediators to learn together and have other perspectives on the same case.

The literature is very clear in establishing the advantages and disadvantages of the co-mediation process. Despite the not so expressive number of responses to the questionnaire, the fact that the questionnaire is composed of open questions, brought to light the queries experienced in practice by mediators in Ireland, and made it possible to assess the consonance between theory and practice.

5.1 Advantages of Co-mediation

Somehow, the advantages related to co-mediation brought by the literature were mentioned by the mediators when answering the questionnaire.

Teamwork allows mediators to learn from each other, to develop the process of active listening and body reading of the parties and the other mediator. When it is possible to have two mediators who have different backgrounds, and the process is even more enriching, since a mediator can learn issues related to legislation, for example, or even better understand the customs and culture different from his own.

It is also an opportunity to serve as a model for the parties or to show balance in a relationship, especially when it comes to family mediation.

The union of mediators' experiences can serve as a major facilitator for the parties in terms of creating empathy and trust so that the parties who are there looking for a solution to their conflict, can dialogue and feel comfortable, to some extent, to overcome possible impasses and find a solution that is beneficial to the parties involved.

When two mediators manage to promote a unified speech, showing unity and cooperation, communicating clearly and objectively, with respect and trust, this reflects as a model for the parties that may feel encouraged to cooperate with the process and find a common mediator for the conflict object of the mediation.

This cooperation between the mediators is also relevant so that all necessary issues are discussed, since during the process if something is forgotten, one of the mediators can bring it up, as well as through the observation of the parties, questions are asked to ensure that the process mediation takes place in the best possible way.

In addition, the exchange between mediators, with different experiences, allows them to improve as professionals. With a co-mediator too, responsibilities for the process can be divided, and an opportunity to discuss skills, listen to constructive criticism and have moral support.

It is a real opportunity for personal and professional development. No wonder it is widely used as a learning process.

5.2 Disadvantages

One of the objections raised not only by the mediators when answering the questionnaire but also by the literature concerns the financial question. The fact of having two professionals working generates an increase in the value of the service provided and the parties are not always able to agree to pay the price.

Another disadvantage brought up refers to the fact that as much as good communication between mediators and positive for the process, the reverse is the reality. If there is any kind of conflict between the mediators, this needs to be well managed; otherwise, it can harm the parties a lot, since they are there to resolve a conflict and not to judge one another.

Given this scenario, one of the points addressed by the mediators refers to the mediators' inexperience. Experienced mediators present a better perception of the situation, which can help to overcome and manage a possible disagreement that occurs during mediation.

Another disadvantage pointed out is related to the time of mediation. As for the assisted negotiation process itself, this is a variable that depends on factors other than having a mediator or more than one. However, the mediation process requires adequate preparation before, during and after and this time must be placed in the equation.

Another issue raised refers to the fact that the parties can make an attempt to divide the mediators, drawing attention to the meter that the party has felt a sympathy, either by the attempt to maintain parallel dialogue, as well as an attempt to persuade one of the mediators to take sides how.

5.3 Guidelines

Regarding the guidelines, we can summarize and prepare well beforehand and also summarize afterwards. Preparing well for the process can minimize or even exhaust the disadvantages presented by the literature and the mediators.

Disadvantages such as time and money can be minimized if good preparation is done, mediators work well together and the outcome for parties is worthwhile.

Another important point concerns self-knowledge and the knowledge of the co-mediator. When two mediators have complementary styles, the process becomes more fluid. In addition, when mediators have experience working together, the flow of the mediation process and more leads to those involved.

Respect, compassion and trust between mediators is also crucial for the process to achieve a good outcome.

Balance and equality are also fundamental because mediators need to work as a team, I understand the importance of each one within the process, and allowing both to deliver the best possible contribution to the parties.

Therefore, even though the mediators have planned to conduct the process in a certain way, if during the session, the movement of the parties turns off this predesigned path, if the other mediator has tools that can help, he / she must change positions because the main objective and facilitate the process for the parties.

For the process to flow in this way, experience working together is extremely important. And for that, the ego must be left at the door.

Conclusion

The research mixes topics that causes huge interests. Conflicts are common to see and sometimes the form that people choose to deal with this could affect them in ways that will not be good for either parties.

Co-mediation is an alternative form of conflict resolution that can assist the parties in the negotiation process.

The main purpose of this research was to understand the process of co-mediation in Ireland and identified the positive and negative indicators. To obtain these answers, we needed to evaluate which criteria mediators uses to choose single mediation or co-mediation in Ireland, analyze the positives and negatives indicators in co-mediation, evaluate within the mediators in Ireland the guidelines for a better process of co- mediation and, in the end, critically analyze the effectiveness of co-mediation in Ireland

Overall, we achieved the purpose of the research, although the number of responses to the questionnaire was not significant. The number of responses received, left some doubts. We do not know if it was regarding the effective use of co-mediation in Ireland or if it was due to the time of the COVID-19 pandemic.

We chose the database of MII but we are aware that in Ireland, there is mediator that pursues certification from others institutes.

In spite of this, the respondents contributed in a valuable way, since to some extent they addressed almost all issues raised by the literature, demonstrating that from the experience of mediators in

Ireland, the process of co-mediation has more advantages than disadvantages and that in practice two heads are better than one.

One issue that is clear and that despite the growth of the mediation process, not only in Ireland, but also in other countries, is that mediation is not suitable for all issues and the same is true for co-mediation.

Aware of this, it is not only the mediators but also the parties, aware of the conflict they intend to mediate, to verify whether the process of co-mediation can assist the parties in order to reach in the agreement.

Another very important issue refers to the fact that the success of a mediation process is not closely linked to an agreement. Obviously, the parties seeking mediation have as their initial objective to obtain an agreement that is good for both parties, however other factors or even the conflict per se, are not suitable for an agreement at that time.

Sometimes the beginning of the mediation process can be an opportunity for the parties to reestablish the dialogue that had been interrupted due to the conflict, or it may also happen that during the mediation process something happens that forces the mediators to interrupt the process and respond appropriately according to Act 2017.

Aware of these issues that precede the mediation process, the decision to work as a single mediator or with co-mediation has numerous variations, from a decision made directly by the parties, taking into account their economic capacity and the time available, as well as by the mediator who has their way of working and sometimes makes the decision to work in this format because he believes it is a tool that can benefit not only the parties, but also the work of the mediator himself.

From the research carried out it became clear that the mediators working in this format try to demonstrate to the parties the benefits of co-mediation, in how the process can be more fluid, and how the presence of two mediators can contribute positively to the solution of the conflict to be mediated.

Some cases of co-mediation are easy to see the need to have more than one mediator, such as the case of team mediation in a workplace, due to the number of people involved in the negotiation process, or even in cases where the complexity of the case requires the presence of mediators with different expertise.

In cases of family mediation, there are already studies demonstrating the benefits of having a team of mediators of a different gender to ensure a balance in the negotiation process.

What can be concluded about the first aim of the research is that the criterion for choosing single mediation and co-mediation has some variables. The decision will be made according to the specific case, the availability of the parties, and the chosen mediators, the choice will be in a direction or other, but in the end, what matters is that the parties benefit from the mediation process and are able to find a solution to the conflict.

The second aim of this research was to analyze the advantages and disadvantages of co-mediation. Based on theory and research, it is clear that co-mediation has much more advantages than disadvantages, since most of the disadvantages pointed out can be surface with good preparation and communication between the mediators.

In a direct comparison with the single mediator, the outcome has numerous variables and that sometimes is not directly related to the choice of how the conflict is being processed.

What is concluded by the research that is carried out and that it is very important that the parties are in fact engaged in the process and open to having a negotiation process with the help of the mediator or mediators, and do not use the process as a way to achieve obscure goals.

This finding is based on the fact that if the parties are in fact open to a successful mediation process, there will be no attempts at manipulation, or wanting to divide the mediators. The same is true of mediators. If mediators understand their role as facilitator of the process, leaving the ego off the table and trying to achieve maximum neutrality, it will directly influence in the process and outcome.

The guidelines proposed by the mediators are intended to try to minimize the possible disadvantages that co-mediation may present. As already mentioned, the key to the process is preparation and the choice of the co-mediator.

We believe that teamwork is the future, as well as alternative forms of conflict resolution, especially co-mediation, which empowers the parties as to reach an agreement in their terms. Teamwork allows people to learn from each other's experience, to increase their view on certain issues.

It is an opportunity to empathize with others, understand the many points of view, practice non-judgment and promote a culture of peace. Furthermore, conflict can be beneficial, in an instance in which relationships can be reestablished, and the solution found by the parties can promote creative and positive changes in their lives.

In the mediation process itself, as mentioned by some mediators when answering the questionnaire, it is an opportunity to observe other means of communication, such as non-verbal (gestures) and

para-verbal (sounds). It is also an opportunity to expand the capacity for active listening, to not only hearing but to listen to what each party has to say, and from there bring up questions that can instigate in the parties involved the search for solutions.

The process of co-mediation is teamwork. Each team of mediator will choose the better way to work through this process. They will define, according to the case, if they will meet the parties before, if one will lead and the other one will take notes, or if both will be conducting the process at the same time. The important thing is to assure that they will work together, in a structured way, to turn the process of mediation more effective for the parties.

In the end, no matter the background of the mediators, if they are of the same sex or not, if they are from different countries, the important thing is to be aware of their job and the better way to facilitate the communication between the parties.

Aware of this, the key for an effectiveness co-mediation is to have a team that work coordinate and follow a productive and non-competitive way. It is helpful if the mediators, before the start of the mediation process, get together to reflect about the conflict that they will face and define strategies, in order to prevent conflict during the mediation session.

Reflection

A long time ago, I chose to help people to solve their problems and facilitate through advice and dialogue. Because of this, I studied law and spend a couple of years doing negotiation, deals and, when it was necessary, going to the court.

When I came to Ireland to study English I decided to continue my studies and start to search for some option to study something involving my area. Therefore, study about alternative dispute resolution appears to me as an opportunity to use all my background and if it is possible to start a new career here in Ireland.

During the entire course, we had the opportunity to understand various types of alternative dispute resolution but as the focus were in mediation, I've decided that my dissertation would be around this topic.

Apart from my degree in law, I've study social psychology based on Enrique Pichon Riviere and his theory of operative group. Because of this, my research proposal was to understand team mediation on the perspective of his theory.

The technique of the operative group aims to learn together. It is a continuous process in which communication and interaction between the involved subjects are indissociable since there is a learning from the relationship established with the other.

The operative group based on Enrique Pichon-Riviere are groups with the focus on the task. With the group technique, those who are committed to the group will consequently contribute to completing the task. Each individual brings his or her personal experience, and in the

interrelationship between the parties, one will move out of a dilemma or stagnant situation into a dialectical or movement situation. (Pichon-Riviere, 2009)

The task for the group will be to solve the conflict and when the group is task-centric, the emergency points will be operative according to the group configuration. (Pichon-Riviere, 2009)

Pichon-Riviere highlights the fact that more than a common task it's pivotal that the group develop a dynamic structure called a link. Pichon describes the link as a particular way that people develop a relationship between them and the others, developing a particular structure in each case and in each moment. (Pichon-Riviere, Teoria do Vinculo, 1998).

The problem that I face were that I did not find the English literature about his theory. So I decided to change my topic but to maintain the scope of working in team. During my research, I founded some mentions to co-mediation and this topic sparked a curiosity to study better, considering that it was not an in-depth topic addressed during the course.

Therefore, I realized that work among co-mediators was going over Pichon's theory in some way. All parties involved in the co-mediation process, mediators and parties, form a kind of operating group that together have a task and must work together to achieve it.

Furthermore, the link established between the mediators and between the mediators and the parties is fundamental for the flow of the mediation process and even for the willingness of the parties to reflect on the issues that will be discussed and reach a common denominator.

One of the challenges that I faced during the research were about to write in English in an academic way. Therefore, my strategy was to read as much as I could to appropriate of the terms and the

way to write. In addition, I did some private English classes within a native speaker teacher to help me out during this process.

Another challenge that presented was the management time. Taking a master degree course in a language other than your own, working and doing research is a challenging process. It was necessary to create a schedule and follow it as faithfully as possible to be able to deliver the present work.

In addition to the issues mentioned, the year 2020 will be marked in history. A pandemic has ravaged the world, college has closed, and the uncertainty of the future brought anxiety, fear and loss of focus.

Fortunately, the due date was extended by two weeks and my dissertation will be uploaded on time.

When I decided for this topic my intention was to contact some mediators to try to schedule the interviews. However, because of the situation, and within the offices being closed, I decided to create the form on Google Form with open questions and send it by email.

I felt that the mediators who answered the questionnaire were very kind to share their time and contributed a lot to get this work done. In addition to those who answered the questionnaire, I was very happy to receive responses from mediators who did not answer the questionnaire, either because they no longer work with mediation for a while, or because they had no experience with co-mediation or even those who reported that although it is accredited mediators do not work with mediation.

I was aware of the difficulties of the moment but there was hope to receive more responses. However, the responses received demonstrate the alignment with the theory and considering that mediation is quite new regulated in Ireland it was possible to face the consonance of the literature and the reality of co-mediation.

In the end, with all the challenges that I faced, considering the current situation the world is facing, the difficult to access the library etc, I finish this step aware that the course was of great contribution to my personal life. I hope that alternative forms of conflict resolution gain even more visibility and accession in Ireland, and in particular that co-mediation can be a choice for people who want to resolve their conflicts, focused on the issues at hand and maintaining personal relationships.

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