

COLLABORATION: PRACTICING WHAT WE PREACH

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A basic definition of mediation is a facilitated negotiation that encourages collaboration, or at the very least, cooperation between parties as they seek to resolve their disputes. However, as an industry or emerging profession, mediation does not seem to foster these values among its practitioners.

New mediators face the extremely difficult challenge of there being no clear pathway to begin their career. You work hard to obtain training and perhaps a designation ... but then what? How do you gain the experience necessary to develop your craft? Much could be gained from learning in multi-mediator practices and team environments as we see in the civil service and other organizations. Private internships cost thousands of dollars and this highlights the lack of opportunity for those who have invested so much in ADR programs and courses already. Mentorships need to be encouraged, so that the next generation can learn from the talents and experiences of established mediators. More team-based practices and structured mentorship opportunities should be developed.

As a new ADR practitioner, I was fortunate to have the opportunity to join the ranks of ten talented and experienced mediators and work with a team in the public service. The Canadian Transportation Agency (CTA) is a quasi-judicial tribunal and regulator that works to resolve disputes between transportation providers and their clients. After settling in and beginning to take on files, I could see the rapid growth of my ADR learning.

Participating in co-mediations exposed me to many different mediator styles and techniques. There was always an opportunity to ask questions and discuss all things ADR. This type of supportive environment enabled me to transition from an unseasoned mediator to a professional that was able to craft their own style. With

a range of disputes from air travel and accessibility to rail and marine disputes, having colleagues with expertise in different areas was vital to my learning and provided me with a wealth of knowledge. Another advantage with this group approach is flexibility in the assignment of work, so that a high quality of service can continue to be delivered even when some mediators are over-burdened. The ability to share caseloads, without losing work, can give these groups the upper hand over sole practitioners. It is a setting that promotes development and efficiency. This dynamic helped to create and refine my craft, my confidence and the know-how for me to implement the best conditions for parties to negotiate.

This dynamic and the benefits of teamwork should be possible and encouraged in the private sector also; it should not be exclusive to government and larger groups. Private practices should develop a team-based approach to encourage the growth of benefits that I've experienced at the CTA. Experienced mediators could merge into a larger network where they work collaboratively. There is a sense that some cooperation already exists, but imagine ADR practitioners building something together rather than just maintaining professional relationships with each other. New mediators could then have a space to work with, and learn from, accomplished mediators on a consistent basis. At the same time, fresh minds in the industry have a great deal to offer those who have been doing this for years.

An experienced mediator, who has practiced law prior to becoming an ADR practitioner, generally has learned through experience to think in a very structured, linear way. I see mediators, who do not possess a law

background, look at problem-solving in a different way; they can sometimes see more creative and outside-the-box solutions, based on interests, or in a different framework, based on rights. Having practitioners with both experiences could give a balance that would enable a variety of disputes to be tackled. That flexibility is important because our personal lives can become incredibly busy or complicated, sometimes overnight. It is crucial to prioritize mental health; a team could protect mediators from burnout and high levels of stress. We can all use a shoulder to lean on at times.

The ADR community in Ontario has an impressive number of expert mediators in all areas of practice. As a member of the new generation of practitioners, I believe we need the opportunity to learn and seek guidance from these practitioners. Many are willing, and do help new practitioners, but not everyone has access to those individuals.

There needs to be more organization on this front, and a solution I am suggesting, although it may come across as radical, would benefit the ADR community. As part of maintaining best practices and the obligations of professional membership, the ADR Institute of Ontario should look to establishing a mandatory mentorship program; for members to maintain their designations,

they would have to take on a new practitioner and be their mentor – with suitable standards being maintained. For example, a mediator who has been a C.Med for over 4 years would be required to act as a mentor for a stipulated (reasonable) number of hours/individuals at no cost to the individual. To ensure mediators who are experienced do not avoid this obligation by remaining a Q.Med, Q.Meds who have held this designation for more than 7 years would also have to take on a mentee. Innovative measures are necessary to ensure future generations of mediators can have the resources they need to reach their potential.

It is not easy for new ADR practitioners in Ontario to find their path to success. Large practices - like those found in the public service, with easy access to mentorships - will aid in the development of new mediators. Collaboration in this way would be a benefit to new mediators, to those we work with, and to the clients we service. The future looks bright when we all work together.

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Conor Brannigan is a Mediator with the Canadian Transportation Agency in the Capital Region. He deals with railway, accessible transportation and air passenger related disputes that come through the tribunal.

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