Changes in family and child mediation: what have we learned from practice?

Discussion, 28th November 2001

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Asia-Pacific Mediation Forum Conference, Adelaide, 29 November – 1 December 2001

Introduction

For professional family mediation to survive, its practitioners have to change, adapt, and innovate. They cannot do this unless they draw on experience at all levels: that is from the coalface of practice, through to ways in which teaching and administration of programs have had to change over time. If we are to progress beyond anecdotal learning, it will take more than trial and error.

At least one obvious expectation of the early days of family mediation has not been fulfilled. It has not become generally popular among the people we anticipated would accept it with open arms. Mediators are very enthusiastic about their profession, but there is always a greater supply of them than there is demand for their services. No trainer can promise that those who do courses will find a lot of work waiting for them! Policy makers have also taken up the idea of supporting mediation, but are often disappointed by the public response.

Undoubtedly there are complex answers as to why this situation persists. But one thing is certain; we have had enough of a priori answers!

It is time we considered how we can better practice our trade, or even work out in which direction we should be heading?

I could not locate any systematic investigation or connection made between ways we can improve, and what we have learned from what we have been doing in available literature.[1] Thus it seems opportune, with such a gathering of experienced mediators from diverse backgrounds, cultures and nationalities, to begin to take some soundings!

Twenty years ago, (in the Anglo-Saxon tradition), we did not have too much of either theory or practice in family mediation, although we had quite a number of people writing on the subject, and a great deal of enthusiasm for an idea "whose time had come!"

We are in a much better position now, to stop and look at what we are doing, and to ask the question, "What have we learned over the last two decades?"

When I first embarked on the task, I thought that there would be a lot of clear responses forthcoming, but this did not prove to be the case.

With other professions it did not seem so difficult to get answers. For instance, I asked a GP how his day to day practice has changed since he had started out 15 years ago. He did not hesitate, and replied, "It is just entirely different. We cannot get by now unless we have a very good grasp and ever-deepening knowledge about advanced technology, and an ability to use it." A lawyer, when the same question was put to him, had a not dissimilar answer; he said, "Information technology has made everything much faster and had enormous impact on the setting and arranging of what we do. Our attitude now is different. We try to get at what the client is wanting to achieve, not necessarily how we can make the best case at law on their behalf. We also do more for ourselves, for instance, writing directly on to a computer instead of dictating our paperwork, and we answer our own phones and make calls without an intermediary."

Some mediators I have talked to have been much less sure there have been any changes, though they have given a wide variety of responses. Ideas from those whom I would term "thinking" mediators, I will cite further on. But by and large, the responses went more or less like this: "The basics are still sound and have not changed because they do not need changing!" On the other hand, there were some mediators who considered that by having a mediation orthodoxy, we have been held back.

Most people observed that there were a lot more highly skilled mediators around than there used to be. Others were concerned that some "so-called" mediators had been so keen to do their own thing, they should not, properly speaking, be called mediators at all! One remark I heard was that nothing new is ever said at family mediation conferences and that the same old ideas are rehearsed over and over! I found that once I had started out on my search, other mediators *had* asked similar questions in the past, but had not pursued the answer beyond collecting individual impressions.

I am grateful to John Wade who referred me to a useful source of ideas. These came from some experienced commercial mediators who had met as a group sponsored by LEADR and Bond. A survey of their perceptions of changes in their practice over time, showed how each of them had built up on their own mediation experience and acquired considerable sophistication and independence. None present at these sessions however, referred to ways in which the body of practitioners may have developed or changed, nor what clients, as a whole, might expect from mediation today, as compared to twenty years ago.

Nobody explicitly said "We once did y and now do x!".

Sources of Information: Impressions of leading family mediators

(These were gleaned from brief interviews or letters)

From Australia: John Wade, Michael Hunt, Susan Gribben.
From USA: Frank Sander, Joan Kelly.
From Canada: Larry Fong

Joan Kelly pointed out that ascertaining changes without being clear about a starting point, was one obstacle to answering the question. It was her view that there was not enough comparative description and discussion about process and techniques in the early models. We had had a "guru" approach to what leading early family mediators actually did, and were thus not able to compare, contrast and discuss sufficiently, to enable good theoretical development, or to establish outset baselines. Kelly sees this as an opportunity missed and contrasts mediation in this respect, with the situation in family therapy.

From a practical point of view, Kelly adapts her own teaching to contemporary needs, by adding major components to courses she runs. These include more focus on empathy, awareness, and reframing ability in trainees, and also on stronger family law segments.

The issue of continuing shortcomings due to an inability to track theoretical change, connects to a certain extent with what Frank Sander said. Sander thinks that the question of what we have learned from experience, has not really been addressed. He agrees that what strikes an old hand, is that there are many more high calibre mediators around, than there used to be, so that one can get the impression of higher standards of practice generally. But there is no evidence that this is not solely due to the practice experience of the individual mediators themselves, rather than to an overall change in professional practice as such. Again there is nothing objective to measure present practice against. On the positive side, (and he was very optimistic), there has been a considerable amount of diversification of fields and methods, and no self-respecting law school would omit to run ADR courses. The amount of scholarly attention given to mediation is evidenced from the content and references in law journals and books. Sander believes that mediation is underused, as there are continuing deficiencies in public perception of what mediation can achieve. This could be due to lack of proper presentation. He pointed out that once clients have used mediation, they were generally

very enthusiastic about the process. This makes the over-supply of mediators difficult to explain.

Larry Fong has noted a greater sophistication not only among mediators, but among their clients as well. As far as the former are concerned, their models and methods are increasingly varied although they still have the interest-based approach in common. To ensure a diverse background, as well as focus, among his own trainees, Fong requires 50% of them to be non-lawyers. He has also noticed that family mediators in Canada are including a wider spectrum of disputes in their practice than formerly. Fong considers that it is difficult to generalise to include both private and court-based mediation as the latter has less motivated clients.[2]

As far as Australian family mediators are concerned, the general impression of Michael Hunt is that family mediators are now required to be more diagnostic and directive than once was the case. This ties in with Kelly's seeing a need for additional course segments which relate to ability to discern the client's emotional and practical needs, not derived only from what the client says, but also from the pre-existing diagnostic skills of the mediator. Hunt believes that the legal aspects of what is in dispute play a far more critical role than once was the case, and that mediators must be aware of what the limitations and possibilities for the clients are there from the legal point of view. In other words the mediator has input on content. This was once seen exclusively as the client's domain, and input from the mediator, as a threat to neutrality.

Other changes noted by Hunt relate to institutional or legal external pressures on the mediation process. These include funding limits in Government-supported agencies which affect how many sessions can be conducted, and how much mediatees are required to contribute to costs. There are now legal, rather than purely ethical constraints on conflict of interest and the process of intake, due to legislation.[3] Hunt also echoes Sander's remarks that while there is an increase in numbers of highly competent mediators, there remains an imbalance between supply and demand for mediation.

Wade has noticed that if lawyers were once unwilling to refer their clients on to mediation (for a variety of reasons), they are now more ready to do so. This trend is particularly noticeable with difficult or "enmeshed" clients. The latter are those, in fact, least amenable to a classical voluntary model with a very neutral mediator. (Such client may well be a challenge to the mediation Beethovens among us, but trying to get mutual agreements with such clients is generally unrewarding for the average family mediators, nor does it increase the reputation of mediation as an easy solution to deadlock!)

There is no doubt that many more family lawyers are trained in negotiation skills and use these to good effect in their own work without official recognition that they are practising mediation. This tendency also tends to filter out "ideal" mediation clientele. Wade sees one solution to this trend as having both better-trained lawyers *and* clients.[4] Wade is also is of the same view as Kelly and Hunt regarding the necessity today of substantive, as well as process, expertise, on the part of the mediator. There is little doubt that the average family lawyer (or other referral brokers such as social workers) simply will not use mediators who are not really familiar with the content or context of the decisions the clients need to make.

Both John Wade and Susan Gribben have recently had experience in England where there has been a legal requirement of attendance at a mediation information session, before proceeding to a divorce (this is no longer the case). Thus there has been a steady supply of clients for mediation agencies. Gribben draws attention to a recent survey of 4811 attendees at mediation information and intake sessions by the Legal Services Commission, which has demonstrated a very low agreement rate (40%), among them, also a widely reported distaste for the mediation process![5] It is possible that this finding supports the point made by Fong, that those who actively sought (and paid for), mediation, make better use of the process than those who are referred to, or obliged to use, public (and free) services.

Wade, on the other hand, considered that the main problem in the UK is that the British scheme has not been well managed. There has been an insistence on adherence to a US based model imposed by a top-down administration, as a condition of subsidy, hampers development in the field. Both Gribben and Wade have pointed out that the starry-eyed view of early mediators, that mediation would be a satisfying and constructive experience for all separating couples, is not related to real life,

in the UK at least. Gribben remarked that in her view, that while some separating couples are basically capable of reaching agreement unaided, the majority of separating spouses need support and advice, rather than the sense they are being empowered to reach their own agreement. The multi-layered levels of dispute which exist between formerly married couples, makes their situation very different when it is compared to that which exists in a single-issue commercial dispute.[6] Wade also pointed out that mediation is in fact stressful, confronting, and can be an extra expense of time and money in the short-term. But he observed that it is not as if litigation were increasingly popular; it is likely that lawyers and their clients want other settlement routes but that mediation is not always the answer to their problems. According to Wade, we should spend more time broadening our repertoire of dispute resolution methods.

Why then is mediation not taking off? By and large for Wade, preparation of lawyers and clients is inadequate and there are still too few highly skilled mediators available. Gribben's diagnosis is a fairly radical one; that is that family mediation, in the form we know it, is only appropriate in a small minority of cases

The inference of these observations. Is that we should be looking at a whole gamut of interventions, including flexible dispute resolution steps (this would include a wider range of approaches such as those currently used in conciliation). Unlike Sander, Gribben thought that the solution to the comparatively small demand for mediation was less due to the absence of community education, than having unreal expectations that it is a universal panacea.

b) CHANGES REFLECTED IN LITERATURE

(See Bibliography)

The aim here was to see if there were any differences between the type of articles written in the early eighties with those written in the last year or so. The impressions tabulated here are only of the most general kind.

Topic	Then	Now
Inclusion of children	No, although Folberg[7] said that it should be	Considerable interest is apparent, almost to the point of it becoming a new orthodoxy
Use of legal frameworks	Neither mediators nor clients were expected to understand legal implications of decisions. Clients were given help in seeking outside legal advice and how to work with lawyers.	Strong expectation that legal framework central part of pre-existing knowledge of mediator, and part of content of mediation
Voluntary entry and follow through	Necessary condition of mediation and included the choice of issues to be raised.	Notional requirement only. Mediation is now accepted as a hurdle requirement for a court order; or as a strategic step in negotiation. Attention is given to skills necessary for a mediator to work with this situation.
That mediation will be widely accepted once it is known.	Mediation was seen as nearly always congruent with clients' needs. They only had to try it to find this out!	This view is being challenged. (See Merry; Wade; Gribben)
Confidentiality of	Almost total, there was an obligation	Currently much modified.

mediation content	on the part of the mediator to mount a legal challenge if a breach were required.	Mandatory reporting of suspected abuse; obligation to contract for set number of sessions with funding body; reporting back to court on settlement or not, or even whether was mediation attempted
Growth in skills in mediation	Only acquired by better applying and practicing accepted methods. No importing of pre-existing outside professional skills encouraged.	Accumulation of research findings on outcome of applying various skills. Use of pre-existing professional skills valued
Public acceptance of mediation	Mediation was largely unknown and unused in public programs, though there were some early pilot studies. It was the task of mediator to educate the public and there was an assumption that knowledge would equal acceptance..	Mediation is now better known and widely used in public programs. However, provision of funds and requirements of funding influence delivery of service. The assumption that knowledge equals acceptance is being challenged
Research	Tended to be mostly about what clients *said* about mediation, though there were some useful descriptions of programs and comparisons of outcomes between selected mediating and litigating groups.[8] No questioning of mediators assumptions re validity of methods.	More rigorous examination of what actually *occurs* in mediation, and differential outcomes. Extensive evaluation of programs provided for when these are funded. Questioning of mediators assumptions

c) TRAINING MANUALS

A very general comparison of basic courses descriptions was made.[9]

This search was too limited to be of much value, but the overall impression was that no great changes in basic or introductory courses could be detected over the past two decades. Perhaps there is now less spelling out of abstract concepts and definitions and greater focus on briefer, more compact, outlines. Previously there were more attached reading materials than there are now, but the additional segments mentioned by Kelly and Fong were not evident in these basic materials. However it could be said that, in general, there has been progression over time from a more, to a less, doctrinaire tone.

MY OWN GENERAL IMPRESSIONS OF THE TREND OF CHANGE

Background of mediators

There was a belief among the first mediators I met that if you were of the right temperament to accept and practice strict adherence to process principles, then it followed that you would be a more neutral and effective mediator. Now the background, at least of family mediators, is almost universally from another profession: predominantly lawyers, but also psychologists, social workers, industrial relations practitioners, accountants, and educationalists). Accreditation protocols, the major development in standards of practice, conditions of subsidy, and legislation requirements, have reinforced this trend.

Settings

It is my impression that the typical setting of family mediation has moved from neighbourhood organisations, and some family counselling agencies, (which were free or at minimal cost), to tribunals and courts, accredited and regulated agencies and to professional offices run in conjunction

with private counselling or legal practice. Additionally, mediation is a now a regular course of action in very large-scale disputes between large organisations, government departments, ethic groups as well, as we are all aware, in international diplomacy. Few institutions question its value in complaint pathways. Whether, in some of these instances, the classic process stages of small-scale mediation would be recognisable as what we are accustomed to teach in basic mediation training, is a moot point. For example, in court-referred mediation the mediation task is often simply to get the parties to settle out of court, *not* to allow them untrammelled free choice between a negotiated agreement and a day in court!

General direction of change in method

The setting will now, more often, influence the way mediators go about their task. Voluntary entry is less certain in litigation related mediation than it was in outside organisations. For instance, mediation could be court ordered, or even a hurdle requirement for further steps in litigation. The influence of the growth in public interest and funding is an evident influence in accredited agencies in Australia, and apparently, according to Wade and Gribben, this is even more the case in the United Kingdom.

Confidentiality is still crucial as it is in any professional/client relationship. But the existence of legal limitations in child and family mediation under Australian family law means a lot more thinking about its significance in individual cases is necessary. This need to balance the rights of clients against those who may be affected by the client's decisions, has become a preoccupation for family mediators. An example of this difficulty is that judgment must be exercised either where there is an apparent allegation of the existence of child abuse, or even where its possibility is implied by the circumstances. Reporting to Court on whether a mediation is finalised or not, puts another sort of pressure on confidentiality, as the clients, their lawyers, or the mediator, may not all be of the same view of the matter.

A *mediated agreement does not have legal force.* This is still the case, but involvement of lawyers in the mediation, can blur this principle. This could be due to the clients' perceptions, or because the lawyers immediately proceed to draw up documents for signing, when agreement has been reached and all concerned are present.

Equality of bargaining power. This still an important aim in mediation, but there is more recognition that inequalities of power are complex or, many dimensional. At times they must be taken into account, rather than eliminated from the process.

Neutrality. It is probably somewhat illusory to say that we are neutral to outcome in family mediation. If an agreed settlement is outside the Family Court likely approval limits, for instance exploitative to one party, or even more, disadvantageous to children (whatever the parents think or want), it will not be acceptable to a family mediator. This divergence from strict neutrality has been clearly strengthened by the inclusion of children as participants in mediation; the latter are not deciders but affected parties.[10]

Use of the Facilitation method is still predominant in family mediation (see *FLRegs* 64(a)), but it is probably practiced more adventurously now, than the prescription denotes. This would be the case where the needs of parties mean more a more active style of intervention is appropriate.

it is my impression that conceiving the mediation process as a *succession of stages*, is currently observed more in training than in practice.

Educative aims of mediation. We no longer have to argue that there are advantages in out-of-court means of settlement, in any setting. However, it is not clear how many practitioners use a people "transformation" type of mediation, which involves teaching participants how to better handle disputes in the future. This lack of knowledge of what happens in practice in the field, is largely because there is little close monitoring of what actually occurs in a mediation session.[11]

Family mediators were once seen as *divorce or separation* specialists. Most family mediators,

particularly those in private practice, have broadened and diversified the field of disputes in which they are willing to mediate to include other aspects of family disputes besides marital ones. Examples would be distribution of deceased estates, disputes involving family businesses. or the care of disabled members. The commercial mediators reported becoming more aware of the need for communication skills as they become more experienced. While this has undoubtedly occurred in family mediation as well, it is more innovative in the former. In the past, legal frameworks have tended to play a more prominent part in commercial mediation than they have in family mediation. But in the recent survey commercial lawyers report that they now play a lesser role. The contrary seems to be true in family mediation, according to the views of Kelly and Hunt, as finding legal solutions to disputes has now assumed importance in family mediation. than once was the case.

Independence of mediator. There seems now to be a trend towards multidisciplinary practice, or team work in family mediation. A variety of experts who contribute expertise directly, can be involved and present during mediation. This is different from sending clients away to get information from outside experts about the content of their options, then bringing this back to the mediation. For instance, having a case manager of an elderly person's care, present and contributing, in mediation about a future management. In the case of separation mediation, the contribution of accountants at the time the issues are discussed can be invaluable.

Government policy, Legislation and Funding

In 1985, in Victoria some community mediators were accorded profession privilege in legislation in relation what has been happening in practice. In 2001, what mediators should, can, and cannot do, their privileges, and who can be a mediator, are all enshrined in various Acts and Regulations. Additionally, conditions for subsidy, applicable codes of practice, and requirements of appointment of appointees to organisations, require specified background qualifications in family and child mediators. While there are many more people who meet all these criteria in practice today, than there were 15 years ago, there are more still who would like to be mediator, but for whom insufficient work is available. People of good will but who lack previous professional training, are rarer in the field now than once was the case, although there is no direct bar prohibiting them from setting up as mediators.[12]

Increased subsidy, regulation, promotion, and public acceptance, has profoundly affected family mediation practice, but not altogether in the way that was hoped, that is by making its use more widespread.

The trend to oblige people to use mediation has had a double effect.. On one hand there is easier access, less opposition on the part of lawyers, and a generally higher standard of practice and accreditation in family mediation.[13] However, the old belief that mediation would turn round escalating adversarialism in the population of separating couples, has not been justified. The comments of Wade and Gribben on the situation in the United Kingdom where the requirement to be at least informed about mediation, has not apparently made people any more eager to avoid an adversarial process. Similarly, in Australia, the development of primary dispute resolution in legislation, and its encouragement in parenting disputes, was accompanied by an increased the use of litigation in these disputes after the 1995 reforms.

Questions we still need to ask are: "Does subsidy and government regulation mean a narrowing or over simplification of methods? Has Government interest discouraged development of an independent professional body that would have had a special interest in keeping the momentum of improving practice going?"

On the positive side, the growth of statute recognition and its promotion and regulation of mediation practice, has meant a sort of official recognition which was certainly not the case two decades ago. There has been an exponential growth in legislation which refers to mediation in the Western world. Sander has remarked on the need to reduce its diversity and effectively standardise what is already in existence. His own school (Harvard Dispute Resolution Centre), is working on a Uniform Mediation Act for this purpose. Legislative development in Australia has also been remarkable.[14]

Hunt has commented on the fact that Government policy on promotion and use of subsidized mediation services is good as it leads to wider use and awareness of services available. But that it can also have a negative effect on standards, because of the way these subsidised services work in practice. For instance either the public purse, or one only of the participants, may be responsible for costs. This breaks what has been a fundamental rule in mediation, that is that each client takes full responsibility for his or her own participation. This is similar to the point made by Fong cited above. Hunt also points out that statute-based practice can limit innovation in method and inhibit innovation and development.[15]

Research

As has already been noted, few studies actually describe and evaluate what happens during the mediation practice in relation to immediate and longer-term outcomes. There are exceptions. Kessel and Pruitt got away from what were largely unanalysed case studies, or imprecise comparisons of approaches, in the late eighties. But there have also been many of what can only be described as 'wish-fulfilment' studies which sought to illustrate how other ideals, other than simply reaching agreement, could be met by using mediation. For instance that the use of mediation could make people better citizens, or family members, and encourage the development of non-racial, more caring communities. The work of Bickerdyke in 2000 in examining not what is conjectured, but what actually happens, has already been mentioned.[16]

Honeyman makes a similar criticism to that of Kelly: that there is a gulf between practitioners and researchers. This has undermined the opportunity to have a baseline when mediation was setting out in early eighties. The result has been, as Gribben also remarks, that research has been slow to permeate practice. Wade also comments on the lack of correction or of testing of the individual work of practicing mediators. He considers that this could be counteracted if close de-briefing, and on-going peer supervision, were a matter of course. He comments on missed or squandered opportunities in this respect. This means that. practitioners only want "news they can use" and researchers remain detached and generalised. Honeyman's article sets out to tackle this tendency by proposing protocols for practitioners and researchers. He points out for instance, that good description of ways in which practitioners perceive their own direction of change, or what they have found to be the case in their own work, can give insight into what would be worth researching.[17]

The insightful comments of the commercial mediators demonstrate that, as a group, these mediators had, over time, become less solution-oriented and more attentive to what was said to the left and right of the legal issues.[18] In other words, they had seemingly moved towards, and not away from the original basic facilitative model which emphasises that mediators are in charge of process and participants in charge of dispute content. Commercial mediators, as distinct from family mediators, have never been shy about having expert knowledge in the area of the content of the dispute.

We also do not know, given the limitations of such a sounding, whether these commercial mediators were now learning to use what they had been taught in a basic mediation course, or whether, on the other hand, if they had made the discoveries for themselves. The accuracy of their self-perceptions would also be difficult to judge without some independent and objective research assessment of what they were doing when they started out, as distinct from what they were doing now. However, looking at these practitioners' lists of what they have found inimical to good mediation, is useful, and typifies the sort of information we urgently need about current family mediation practice. Difficulties they noted were:

unrealistic legal advice; antagonistic or incompatible lawyers; clients who will not use legal/accounting/therapist advice; concentrating on legal arguments not clients' interests (clients may aid and abet this; want to win an argument more than get an outcome; going along with emotional roller coaster; no mechanisms for failure to enforce; assumption that there is a single truth about event or fact situation; not allowing for face-saving; allowing each to focus on what the other gains; presence of an outsider saying "don't give in"; and the client feeling betrayed by compromise.

As we have seen, Gribben gives an excellent account of a very large-scale social experiment using mediation on the grounds of what it was expected to achieve, and not what it had been shown to

achieve. If the researchers in this study she mentioned had sought the information, not only on what clients thought of what was introduced to them as mediation, but also on the way mediation was presented and practiced in the program, the findings might have been very enlightening. While what Gribben has to say is relevant to changes in policy in general, it is probably is even more valuable in what it teaches us about the *effects* of mediation, as it is currently practiced in England. Gribben reaches some pretty radical conclusions as we have seen. For instance that many couples do not need any help to settle their affairs; mediation, as we know it, may be suitable for far fewer separating couples than we once assumed; and that obligatory attendance, even at information sessions, does not necessarily result in increased productive use of mediation. While we cannot just import these findings into the very different Australian scene, we *can* be aware of aspects of policy implementation we may have missed, and which merit attention. Fortunately Gribben has a second article in the pipeline which will do just this!

Working Hypotheses

What sorts of productive lines of enquiry spring to mind if we were to attempt to answer our question? First of all, we must change the question from: "what *have* we learned" to "what *can* we learn" from what we have practiced over the last two decades?

We must also bear in mind that the inquiry, so far, has been a very limited one. To continue to pursue it, without a wider search, or plumbing of ideas, would not be very rewarding. What is important is to make a start!

Nevertheless a few fairly certain things are worth noting. Clients as a group have been less enthusiastic about mediation than mediators (or policy makers!)

We have not yet been able to build a sound empirical baseline about what mediators did in the early days, but we are beginning to get some glimpses now, about what actually happens in mediation and that will put us in a better position in the future. This is sorely needed as mediation practice is not standing still.

We were probably very much more doctrinaire in the past about a priori rules of the process (guru approach), and the moral superiority of mediation over other forms of dispute resolution, notably adjudication. This made us want to measure our success by how closely we came to meeting the ideal set before us or which we had set ourselves. The old orthodoxy is now being challenged. If we describe what we aim at, accurately do, and then impartially investigate the intended, and unintended effects of our interventions, we will give our profession real roots.

Next steps

A hard look at what we actually *do* when we practice, has more chance now of being monitored than it ever has in the past. So someone giving this sort of paper in 10 years' time will be much better informed than I am, or could be, at this stage.

What I have mentioned here are various practitioners' and my own impressions, of where we have come from.

I firmly believe that our most valuable resource as a profession, is our experience. We can use it, or let it wither on the vine. One very useful starting point would be to follow the lead of the commercial mediators and get a group of really experienced family lawyers together to contrast and compare what they themselves have learned over the years. This presupposes what Tom Fisher, one of the participants at the conference session, observed, and that is that it is necessary to become reflective mediators.

However it is fair to say that here have already been great benefits, expected, and unexpected, from two decades of mediation practice. For instance, there has been a growing acceptance of the inherent value of a neutral third party being involved in settlements, and orderly negotiation between disputing

parties. Family mediation has had its own additional benefits. Very importantly it has raised awareness of a very significant group in our society; that of separating families. This includes not only the children involved, but also the former spouses and partners as well. Much of the research done on this population has been done in the context of mediation, as well as that of law reform directly. We now have evidence of what actually happens to people who go through a marriage breakdown, thanks to the interest of mediators. We do not yet know how to really lighten all the burdens and difficulties of this group, but we will continue to work on it!

However, if we rely on doing just what we have always done, or looking only for what we expect to find, we will not move very far beyond our starting point. The consequence will be that mediation will remain an ideology that had a place in the sun for a couple of decades, then was superseded by goodness knows what else!

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Endnotes

1. Though better times may be coming. See Symposium on the Impact of Mediation 25 Years After the Pound Conference.

2. Presumably because they are not paying their own way. It may also be due to the lack of voluntariness when mediation is court-ordered, and a sense of getting second-class justice. This view comes out very strongly in Merry, Sally Engel (1990) *Getting justice and Getting Even : legal Consciousness among Working-Class Americans* University of Chicago Press

3. This is explicit in the *Family Law Act* 1975 ss14 C,D,E,&G, ss19A&AA and very particularly in the *Family Law Regulations* 51-67.

4. Wade wonders why even more skills have not been acquired by family lawyers, given the fact of their repetitive attendances at O24 conferences!

5. See Gribben, S

6. In marital or post-marital disputes, what is at the centre of the dispute, is frequently the different picture both spouses have retained of their marriage (Gribben interview).

7. See bibliography.

8. The work of Joan Kelly is well known in this regard.

9. See Relationships Australia (1985), CDR (1989), Bond University (1991), John Haynes (1995,) Bond University (2001).

10. See Fisher.

11. A notable exception is the work of Bickerdyke et al.

12. Theoretically, unless they use the term "family and child mediator." See *FLRegs* Part V.

13. Government support for over-arching projects such as those carried out by NADRAC, and earlier by the NSWLRC , among others, to enable consultation, research, and the production of reports has been a significant influence here. See Charlesworth et al p.271.

14. See Charlesworth, S. (1995) 'Review of legislation covering Out-of-court dispute Resolution in Australia and

New Zealand' in Consultancy Paper Ryan J.P. (Ed) *The impact of Domestic and International Legislation on the Use of Dispute Resolution Options,* for the Canadian Department of Justice, and for a more recent survey of applicable legislation in New South Wales, Sourdin, T. (2001) *Aust Dispute Resolution Journal.*

15. See also Moore This author considers that legislation reflects current standards of mediation practice, but because of necessary simplification, there may be ethical conflict for lawyer mediators, for instance, it may be difficult to protect a weaker party because of imposed neutrality. (at 713).

16. See also Edney.

17. One study in the United States, which although it does not consider changes in practice directly, examines attorneys' attitudes to the use of mediation, and what they perceive as its benefits, by comparing surveys taken over the years between 1984-85, and 1998. They found that acceptance had grown, and there were fewer fears that clients' rights were at risk in mediation in later than earlier studies. They also found, not unsurprisingly, that approval rate improved with the lawyers' familiarity with mediation. One noticeable change that did occur over time was recognition of the increased salience of abuse issues in mediation. See Lee, Beauregard, and Hunsley.

18. A summary notes:

a) increased care taken with preparation for the mediation
b) use of visuals
c) discovering the efficacy of reframing and summarising
d) be relaxed; not lead or guide towards the correct solution
e) more attention to the clients than the lawyers when the latter are present.
f) more attention to own listening schools
g) persistence and patience