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ADRIA MEDIATION ADVOCACY TASK FORCE

Tenth draft

WHITEPAPER

DRAFT #10 - JANUARY 11, 2015

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1. Executive Summary

Introduction

In April 2014 the ADR Institute of Alberta (ADRIA) established a task force to examine the complex questions around compensation practices for mediators and to produce a white paper to document its findings and make recommendations. The first step outlined in the Terms of Reference was to "explore and research mediator compensation, how it relates to pro bono activities, and its impact on the mediation profession and practices."

> ***Task Force Terms of Reference April 16, 2014***
>
> *In keeping with ADRIA's Vision and Mission to advance excellence in the field of ADR, its practice and its professionals, this task force is struck to explore the broader questions around mediator compensation and the advocacy role of ADRIA. The key purposes of this task force are to:*
>
> *First, explore and research mediator compensation, how it relates to pro bono activities, and its impact on the mediation profession and practices;*
>
> *Second, provide possible approaches/strategies for ADRIA Board consideration to effectively and appropriately advocate for ADRIA members moving forward.*
>
> In this work, the Task Force will consider the diversity of ADRIA's membership, including those in private practice, those who do mediation in employment situations, and those who are volunteers.

The task force examined the value of mediation services from a number of perspectives by reviewing governmental, regulatory, and community programs, mediation rosters, and private organizations offering mediation services. A literature search, while not exhaustive, provided the task force with relevant studies and valuable information about the quantifiable and non-quantifiable value of mediation services. The task force surveyed ADRIA members, and with the help of the ADR Institute of Canada (ADRIC) surveyed mediators from across the country. Professional organizations were also surveyed to learn about their practices in areas of advocacy, compensation, pro bono work, and managing complaints about breaches of ethics.

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This White Paper does not claim to be exhaustive in its analysis. Rather it is a solid, credible beginning with respect to moving the issue of mediator compensation in Alberta forward. It draws, in part, on the work and perspectives of others to help lay the framework for recommendations to the ADRIA Board for consideration.

Summary of Key Findings

1. The bulk of empirical evidence and research reviewed supports mediation as a cost-effective and robust way of resolving legal disputes and conflicts in a variety of professional and personal settings. Mediation produces better psycho-social outcomes for families and can save private companies and the public sector from significant monetary and non-monetary costs associated with workplace conflict. Mediation also helps alleviate the burden disputes place on the judicial

system while at the same time providing litigants with a speedier, less costly alternative to litigation. Without exception, every organization or roster providing mediation services that was surveyed for this White Paper was enthusiastic about the benefits of mediation.

2. Based on information collected, compensation for mediation services ranges from no payment (volunteer work) to several hundred dollars per hour or more. This discrepancy may reflect the varying education, experience and specialization of mediators, the different sectors they work in as well as the style of mediation practiced. Some highly educated and experienced mediators, for example, are paid very little and this depends on the sector in which they are mediating.
3. Relatively few mediators are able to earn a living from the practice of mediation alone. More than 70 per cent of Alberta survey respondents reported earning less than $50,000.00 from their mediation practice. This aligns with some of the research conducted in the U.S. and elsewhere
4. Those mediators earning higher incomes from their mediation practices are primarily those who complement their primary occupation with mediation, commonly those practicing law.
5. Concerns were expressed by survey respondents that use of pro bono or low bono (volunteer/honorarium) mediation may have devalued the financial viability of the mediation profession and led to the expectation that mediation services should be provided free of charge. 51 per cent of Alberta survey respondents indicated pro bono work either undermines the way in which the profession of mediation is viewed and/or the financial viability of the profession.

> As defined in the ADRIA Task Force Mediator Survey, pro bono is professional work undertaken without payment or at a reduced fee as a public service.

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6. Compensation for civil claims mediators who work for the provincial justice departments doing civil claims mediations is inconsistent across four provinces surveyed, with Alberta's compensation being the lowest at a $75.00 honorarium per co-mediator per mediation. (In Alberta a co-mediation model is the primary and predominant approach. When a file is mediated by a single mediator, the compensation is $150.00). In the comment section of the Alberta mediator survey, many respondents expressed frustration at this civil claims honorarium. Some expressed resentment that judges, lawyers and court staff are appropriately compensated for their work in resolving lawsuits while civil claims mediators are not. This sentiment is echoed in a report following the Alberta government's *Resolution Services Roster Mediator and Practitioner Information and Engagement Sessions*[1] held in August 2014 in Grande Prairie, Edmonton, Red Deer, Medicine Hat, Lethbridge, and Calgary. In focus group

[1] An internal GOA report shared with Civil Claims roster mediators that is confidential and not available to the public.

sessions where mediator compensation was discussed, mediators across the province criticized the honorarium provided as inadequate.

7. In Alberta, 78 per cent of those responding to the survey question about pro bono work either provide or would like to provide some pro bono mediation service. 50 per cent of those would provide the service as a contribution to society and 19 per cent would provide the pro bono service to gain experience. Those who provide mediation services do not appear to do so entirely for financial gain. Further, those who provide mediation services appear to understand the value of the service for the greater good.
8. There appears to be little regulation or consistency around education, training, experience required, the need for membership in a professional organization and credentialing (designations) within the mediation profession. There is no consistency or regulation about who can become or who can call himself or herself a mediator. Thus, there is little protection or quality assurance for the public. To address this, associations like ADRIC and the Alberta Family Mediation Society (AFMS) have introduced credentialing programs that implement standards for practice. Survey responses reflect membership interest in exploring regulation of the profession for the purposes of establishing credibility, consistency in standards of practice and protection for users of mediation services.
9. Alberta members hold proportionally more designations than their peers in other jurisdictions. (Approximately 19 per cent of ADRIC members are from Alberta, yet Alberta's mediators hold 35 per cent of the Q. Med and C. Med designations offered by ADRIC. 45 per cent of ADRIA's Full Members hold a mediation designation, compared to 29 per cent in Ontario).
10. There appears to be little recognition or understanding of the value of designations by hiring organizations or the public. Few of the organizations surveyed (private, government or community) require their mediators to hold a designation.
11. Mediators want more opportunities to work in their field and want to be compensated in a manner that is commensurate with their training, skills and experience. 86 percent of ADRIA survey respondents indicated they would accept more paid mediation work if it was available.
12. The percentage of mediators that are seeking and would accept more paid work is higher in Alberta than for mediators who participated in the Task Force's national survey (86 per cent versus 80 per cent). This is consistent with the finding that a smaller percentage of mediators in Alberta than nationally expressed confidence in the viability of mediation as a stand-alone profession (25 per cent versus 31 per cent).

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13. Mediation largely seems to be a secondary career or a second career that attracts older practitioners. In Alberta 90 per cent of mediators are 40 years or older.

> *For virtually all successful private mediators, mediation is a second or third career; most are in their fifties or older.* Making Peace and Making Money: Economic Analysis of the Market for Mediators in Private Practice by Urška Velikonja

14. The findings from the ADRIA Task Force surveys mirrors findings researched and analyzed in the United States and elsewhere when it comes to financial viability of the profession, the lack of paid work for mediators, the lack of awareness by the public in the value of ADR, and that the highest levels of compensation are received by only a few. Some of the literature suggested there may be an oversupply of mediators.

> *In its annual report on" Best Jobs" on December 19, 2007, U.S. News and World Reports included for the first (and so far, only) time, "Mediator," stating: mediators love their work, helping people beat their swords into plowshares. The problem is that there are more mediators than jobs. In part, this is because the barriers are so low—most mediators are required only to complete a 30-to-40-hour training course.*
> **Engaging Conflict for Fun and Profit: Current and Emerging Career Trends in Conflict Resolution** Robert J. Rhudy – March 2014

Refer draft

15. In an effort to exchange information, share best practices and "support ADR as a recognized and viable option for the resolution of disputes and for improved access to justice" the court mediation programs in BC, Alberta, Saskatchewan and Manitoba have formed a task group. This task group[2] has requested feedback and suggestions from stakeholders on how to advance ADR, promote mediation and provide consistency across provincial court mediation programs.
16. In the comment section of the Task Force mediator survey, a significant number of Alberta respondents feel ADRIA could (and should) advocate on their behalf in the following areas: public relations and education; compensation for mediators; roster development; pursuing regulation of the profession; providing mentoring to new mediators and pursuing alliances with other mediation associations. This mirrors similar findings in the United States.

[2] Western Provinces Court Mediation Programs, October 30, 2015 workshop presentation at the ADR Institute of Canada conference, Calgary, AB

Recommendations

The Task Force research and analysis went beyond purely mediator compensation, given that compensation can be impacted by a multitude of contributing factors such as required education, experience and training; perceived value of the work; rates of comparable professions; demand and supply, and diversity in level and nature of work, to name a few.

These recommendations are formed considering that complexity as well as data collected, including the opinions and ideas of those surveyed.

The Task Force recommends that the ADRIA Board of Directors adopt a multi-faceted, long-term, and progressive approach to **Advocacy for the Mediation Profession in Alberta** to enhance the potential for mediation through the following five key objectives:

1. **INCREASE AWARENESS** - ensuring Albertans are more aware of mediation (and other ADR options) and how such options can provide for less costly and more satisfying outcomes to disputes that arise in their personal and professional lives.

2. **INCREASE ACCESS TO AND USE OF MEDIATION (ADR FIRST)** - working to increase the use of mediation as a dispute resolution option available to Albertans. Putting forth progressive initiatives with the courts, government agencies, regulatory bodies, municipal bodies, professional associations, organized labor, industry groups, non-profits and the business community to create new "[3]mainstream" opportunities for ADR and mediation.

3. **ADVANCE THE BUSINESS CASE FOR MEDIATION** - promoting the economic argument for mediation (and related ADR practices) to demonstrate the value they provide to government, businesses, organizations and the public will increase investment in mediation and opportunities for mediators. Especially in times of fiscal constraint, the "business case" and industry-wide success indicators will ensure an organization's proposed or existing ADR program will be supported, or even expanded.

4. **ENHANCE THE VALUE OF THE MEDIATION PROFESSION** – by:
    - advocating for fair and appropriate compensation that recognizes the unique skills and competencies mediators bring to resolving disputes and their personal investment in training and development
    - supporting excellent training and education; and

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[3] **Mainstream** is a term that usually refers to the common current of thought of the majority, meaning that "mainstream" things are those that are currently popular with *most* people. It is most often applied in the arts (i.e., music, literature, and performance)..
Source Wikipedia

- ensuring proper and effective credentialing.

While recognizing pro-bono mediation activities are an important mechanism for developing skills and "giving back" to the community, our public institutions must be encouraged to do more to ensure their roster mediators are appropriately compensated and recognized for the significant role they play in reducing the heavy cost of workplace conflict, family breakdowns, litigation and the courts. Many of these institutions hope to increase the use of mediation in the resolution of disputes. Building public and organizational expectations for pro-bono or low-cost mediations will not sustain a profession and, over time, will compromise future quality and supply of mediators. Advocating for appropriate compensation is important to attract competent professionals and contribute to long-term viability of the profession.

5. **PROTECT THE PUBLIC** – while mediation, (and other ADR professions such as Arbitration) are unregulated professions, the ADR Institutes of Canada and Alberta provide national standards, recognized designations, ongoing quality assurance and robust complaint policies that serve to protect the public. Continued diligence and attention to maintaining high standards of quality, and to building public awareness, will enhance the profession and increase demand for professionally qualified and designated mediators.

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It is further recommended by the Task Force that these objectives can be best achieved through Collaborative Stakeholder Engagement.

The stakeholder communities with whom ADRIA must work are:

The Courts and Justice System to:

- Encourage regular reviews of compensation and qualifications for mediators in various Court and Ministry of Justice mediation programs to improve consistency, comparability, and appropriateness;
    - Adopt program and compensation policies that fully and equitably value the unique skills and qualifications of staff and roster mediators;
    - Building on the Western Provinces Task Force, support the work of the Task force to develop compensation principles, explore best practices and establish a degree of consistency among comparable programs; and
    - Protect the public by ensuring access to robust complaint mechanisms, ensuring that roster mediators are members of recognized professional associations, are adequately trained and hold recognized credentials.
- Enhance, promote and expand mediation as an integral and preferred component of Alberta's Court diversion programs;
    - Work to ensure the highest possible percentage of potential litigants are diverted to some form of mediation, ideally before ever entering the court system;

- Reduce restrictions and reservations regarding the nature of disputes that can be addressed through ADR, mediation and restorative justice - building on best practices, established and proven in other jurisdictions; and
- Institute an effective public information strategy to influence the early behaviors and choices made by those initiating or considering litigation.

- Ensure compliance of the mandatory dispute resolution provisions of the Alberta Rules of Court;
  - Updated and introduced in November 2010, The Alberta Rules of Court govern litigation processes at the Court of Queen's Bench, the Court of Appeal and, to a lesser extent, the Provincial Court (for circumstances not otherwise addressed in the Provincial Court Act). The latest update to the Rules introduced the requirement that all parties to litigation participate in at least one form of dispute resolution prior to proceeding to trial. Acceptable processes include judicial dispute resolution (JDR) and a number of other court, government or private dispute resolution options, including mediation. Enforcement of this Rule was suspended by the Court of Queen's Bench in February 2013, in response to the heavy demand for JDRs and the court's inability to provide the service, given what it stated were insufficient judicial resources. There are, however, other forms of dispute resolution specifically recognized within the Rule that could be used other than JDR. This suggests enforcement of the Rule need not be suspended. Therefore, ADRIA should work to ensure that compliance with the Rule is reinstated, focusing on dispute resolution options other than JDR for that compliance. This would generate greater demand for mediation in the private sector.

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- Optimize the value of Judicial Dispute Resolution (JDRs) processes:
  - The appropriate and consistent use of JDRs as an <u>evaluative</u> dispute resolution process should be emphasized;
  - JDR should be used primarily in situations where other forms of dispute resolution have been attempted by the parties and where they have not reached a resolution. It should be used judiciously, primarily as a last resort, not as the first go-to dispute resolution option. This would create more work for private mediators and reduce the burden on the courts to provide JDR as the dispute resolution option of first instance. Additionally, minimizing the use of JDR as a dispute resolution option of first instance would reduce the cost to the taxpayer that could and perhaps should be born by the litigants themselves.
  - Acknowledging the heavy demand currently placed on the courts by the demand for JDR, options should be considered to reduce Alberta's over-reliance on JDRs so that other dispute resolution options can be fully utilized. These might include:
    - Introducing an appropriate application fee for JDRs that recognizes the true cost of engaging the judiciary; and/or

        - Requiring another form of dispute resolution option such as mediation prior to accessing a JDR process; and/or
        - Introducing objective criteria and a triage process to identify more cases for mediation, separating them from those that should proceed directly to JDR.
- Promote effective ADR training and professional development partnerships:
    - Promoting high standards of practice in a consistent fashion within the Alberta courts and legal profession will lead to broader acceptance of ADR and mediation as a profession. Building upon ADRIA's expertise and experience, this entails working with the Alberta's judiciary, law schools, the Law Society of Alberta, the Legal Education Society of Alberta (LESA) and the Ministry of Justice and Solicitor General (Resolution and Court Administrative Services).
- Maintain an emphasis on early dispute resolution within the Reforming Family Justice System (RFJS) initiative;
    - With Alberta engaged in a proactive approach to reforming the family justice system, efforts to strengthen the Dispute Resolution sector's voice within existing and future Working Group initiatives will build demand for early resolution options, most notably mediation.

<u>Other Government Ministries and publicly funded agencies</u> (Federal, Provincial and Municipal) to:

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- Adopt consistent standards for government ADR programs and practitioners;
    - Reduce inconsistencies within the programs offered by the Government of Alberta (GOA) Ministries, and reduce inconsistencies amongst comparable Federal and provincial ADR programs. Eliminate pro-bono (low bono) mediation for the provision of provincial public services and ensure that mediator compensation is fair and reasonable;
    - Introduce common standards for staff mediators that ensure they are adequately trained, supported with ongoing professional development, and funded to pursue recognized credentials as a condition of employment;
    - Introduce common standards for roster mediators to ensure they are members of a recognized professional association, are adequately trained and hold recognized credentials;
    - Support the informal efforts of the GOA's Dispute Resolution Network (DRN); and
    - Consider creating a Functional Authority (FA) for ADR within the GOA to provide oversight and broad policy guidelines within which individual Ministries can customize their ADR programs to meet specialized needs.
- Consider broad GOA policy directives that mandate development of internal and external ADR programs where such programs will benefit government functions, reduce the cost of litigation, enhance workplace relations, and improve the quality of daily interactions between Albertans and their government.

- Initiate with ADRIA and other non-profit assistance an Alberta multi-media public service information campaign to promote ADR and mediation, including continuing work with International Conflict Resolution Day:
    - Place emphasis on the positive social values that ADR and mediation embody within family settings, business culture and the workplace, including relationship building, collaboration and consensus decision making;
    - Emphasize the reduced financial and emotional cost of mediated resolutions; and
    - Consider government-sponsored forums to advance the practice of ADR in Alberta.
- Recognize, support and enhance Alberta's existing publically funded ADR programs[4], including but not limited to:
    - Municipal Dispute Resolution Services (MDRS);
    - Service Alberta's Registry and referral services for Alberta`s non-profit organizations and the general public;
    - Alberta Energy Regulator's ADR program in promoting ADR resolutions within Alberta's energy sector; and
    - Alberta Culture & Tourism's programs and services to assist communities and non-profits in Alberta;
- Explore Early Education programs and ADR resources in schools:
    - Build on the experience of the Peer Mediation and Skills Training (PMAST) initiative in Calgary, and the Restorative Action Program (RAP) program in Saskatchewan to explore new opportunities to integrate conflict resolution skills into the curriculum at all levels of Alberta`s Education System.

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<u>The Business Community and Professional Associations</u> to:

- Develop a convincing business case for ADR and mediation, applicable to all sectors of the economy, including its applications for the attraction, engagement and retention of human capital;
    - In order to be successful, this initiative needs to be commenced under the umbrella of ADRIC, our national credentialing organization, with the support of affiliates like ADRIA across the country. This would allow for the critical mass and national effort needed to make an impact in the long term. Funding support by ADRIC (and other partners/agencies) will also be needed.
- Engage the judiciary and legal profession to articulate and acknowledge the additional cost saving potential of utilizing ADR professionals who are not legally trained to conduct pre-trial mediations, provided they have the requisite training, experience and credentials to be effective. This would require engagement with the National Judicial Institute (NJI), Law Societies, Legal

[4] Detailed examples on how to achieve these recommendations are in the White Paper Appendices, Appendix C

Education Societies, Family Mediation Societies;

- Work collaboratively with industry groups, organized labour and professional associations to develop awareness of, and interest in, ADR policies, programs, training and services that would have a positive impact on their respective employment sectors. Promote ADR communication skills as an essential leadership or professional competency. These include:
    - Human Resources Professional Associations (HRIA, CCHRA, HRPA, etc.);
    - Health Care Professions;
    - Engineering & Construction Sector;
    - Chambers of Commerce and Economic Development Groups;
    - Better Business Bureaus;
    - Small Business Associations;
    - Organized Labor groups, and
    - many others.
- Develop a resource guide to assist organizations wishing to develop their own ADR policy or program, promoting high standards of mediator training and professional practice;
    - Ideally, this effort would also be commenced under the umbrella of ADRIC as the resulting resource and communication tools would be useful to all ADR Affiliates and Associations, in Alberta and across Canada.

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ADR Associations and Partners to:

- Increase mentorship and entry-level mediation opportunities. Where these opportunities involve pro-bono activities in sectors such as community mediation, ensure they do not undermine the professional aspirations of Alberta`s practicing mediators;
- Clarify and work to create consistency with respect to organizational use of ADR/mediation definitions, models, styles, techniques, etc. The variety of terms and constantly changing language is confusing, especially to the general public, and does not contribute positively to the professionalization of mediation. Care needs to be taken with language choice and there is a need to use terms consistently within Alberta and beyond. ADRIC should play a leadership role in this area;
- Support and actively engage with ADRIC committees that impact the mediation profession, notably designation standards, approvals and marketing; quality assurance; advocacy; organizational memberships; roster development; public information;
- Promote high academic and educational standards for academic and learning institutions that offer mediation training, currently and in the future;
    - Seek to establish more degree granting and masters programs in ADR;
    - Encourage the introduction of post-secondary credit programs in ADR that are accepted by multiple disciplines as enhancements to primary professions;
    - Link post-secondary ADR programs and courses to ADRIA, such that

training credits are earned towards national entry-level designations; and
    - Encourage the establishment of an ADR Centre of Excellence at an Alberta post-secondary institution.
- Develop meaningful metrics for the evaluation of mediation programs, ideally on a national scale; and
- Encourage other ADR non-profits to endorse and contribute to this Advocacy for the Mediation Profession initiative;
    - Jointly develop pro-bono mediation policies that will serve to provide meaningful training and experience without devaluing the profession; and
    - Focus on relationships with the ACR, AFMS, FMC, ARJA, AFCC, FOAJ, NCSA, AAMS, CAB, CMCS, MRJC, to name but a few important ADR[5] organizations active in Alberta.

Engaging ADRIA Resources and our Membership to:

- Provide feedback to the ADRIA membership on the Task Force White Paper Findings and Recommendations;
- Continue tracking compensation issues, ideally on a national scale through regular surveys and market analysis, in concert with engaged and relevant partners;
- Seek out career and employment opportunities for trained mediators, including roster development and opportunities, and assist ADRIA to advise the membership;
- Explore options for and feasibility of regulating the mediation profession in Alberta;
- Celebrate volunteerism, including our members' generous pro-bono activities;
- Continue the dialogue and transparency with members and students regarding:
    - the financial viability of mediation as a stand-alone profession;
    - mediation career pathways and resources available; and
    - the impact of pro-bono and low bono activities on the profession.
- Promote and enhance ADR Canada`s National Mediator designations;
    - Ensure that ADRIC and ADRIA are effectively communicating and positively influencing public awareness of the significance of National Designations, and that the demand for designated mediators is increased;
    - Consider unpaid and/or co-mediations as partial qualifications towards a Chartered Mediator (C. Med) designation;
    - Allow only designated members to be featured on ADR Canada and ADRIA online Directories of professional mediators; and
    - Provide meaningful incentives to advance beyond the Q. Med designation.

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[5] The full name of each of these organizations is found in Appendix J

2. Background

In Spring 2014, a number of ADRIA members raised concerns with the Board about the approach to compensation of mediators and the challenges of many mediators to develop a viable practice. Therefore, in April 2014, the ADRIA Board established a task force to examine the complex questions around compensation practices for mediators, to conduct research, produce findings and to make recommendations to the Board for possible changes.

A key component of the Terms of Reference for the task force was to "explore and research mediator compensation, how it relates to pro bono activities, and its impact on the mediation profession and practices." The task force was also to look at ways in which ADRIA might advocate for its members and the mediation profession.

The Board appointed Joanne Munro and Wendy Hassen from the Board to Co-Chair the Task Force. ADRIA put a request to its membership for volunteers and a small group was formed along with the assistance of the ADRIA Executive Director Paul Conway to undertake the work. Task force members' bios are found in Appendix A.

3. Research Methodology

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With the selection, formation, scope and mandate of the task force complete, and the scope of the task force defined, targets to survey were identified and surveys were drafted. The surveys included both qualitative and quantitative information. Quantitative data collection involves numbers, graphs and charts, whereas qualitative data collection deals with feelings, perceptions and other non-quantifiable elements. In addition, other information was gathered through web searches and from members who work in the field and have participated on various mediation rosters.

Mediator Survey: Understanding mediation practitioners was important to the task force and a survey consisting of more than 50 questions was distributed to ADRIA members and other mediators in Alberta. With the assistance of the ADR Institute of Canada, the survey went out to mediators across Canada. In Alberta there were 111 respondents (75 per cent were members of ADRIA) and there were an additional 82 respondents from Ontario, British Columbia, Saskatchewan and Manitoba (95 per cent were members of ADRIC).

Mediation Services Survey: The task force surveyed mediation services providers from three areas - government, community and private. The survey examined: services provided; target mediation clients; whether mediators were employees, contractors or volunteer; whether there were rosters, and if so what was the size of the roster; mediator qualifications (training, education, skills, experience, whether

the mediator belonged to a professional organization, whether the mediator held a Chartered or Qualified Mediator designation); compensation; and what processes the mediation service provider used (e.g., [6]interest-based, narrative, transformative, evaluative). More than 35 service providers were identified and asked to answer the survey with about 30 participating.

Several federal and provincial laws mandate or provide for the use of dispute resolution mechanisms to resolve disputes both within the government sector and between the government and the public. Because the government sector provides mediators with opportunities to practice, the task force decided to gather information from a number of government agencies across Canada and abroad. This research is intended to determine trends and correlations between mediator compensation and the impact of compensation on the mediation profession.

Professional Organization Survey: The task force created a survey to see how professional organizations respond to their members in the areas of advocacy, influencing compensation, pro bono work, managing complaints about breaches of ethics, membership fees, membership regulation, and use of ADR (internally/externally). Eight professional organizations responded to the survey and the results are summarized in Appendix H.

Literature Search

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The Task Force undertook an on-line search of related literature. While this research was not exhaustive, it has provided the Task Force with valuable information that in many cases has confirmed or corroborated its own findings. Relevant studies and views reflected by others have been shared in this paper. A bibliography of works accessed is found in the White Paper Appendices.

White Paper: This paper is a summary of the research and analysis conducted by task force members over the past 18 months. Readers interested in the detailed reports are encouraged to read the appendices attached to this paper in the document entitled White Paper Appendices.

4. History of Mediation in Alberta (Appendix B)

A Brief Overview of the Development of Mediation in Alberta

Mediation, both as an alternative to litigation and as a way of helping neighbors resolve disputes, gained a foothold in Alberta in the late 1970's and early 1980's. While mediation had been, and continues to be, used successfully in the realm of Labor Relations in this province, mediation at a local, community level was largely a

[6] A complete list and definitions of various ADR options and styles is found in Appendix G

grassroots effort. The Alberta Arbitration and Mediation Society (AAMS) was incorporated as a non-profit society in 1982. Primarily a membership organization at the time, its objectives included educating the public, professional organizations, government, and municipalities about arbitration and mediation, as well as to assist those wishing to use mediation or arbitration to resolve disputes.

Edmonton Community Mediation (ECM), a program administered by the City of Edmonton to provide "conflict resolution for the community by the community" was established in 1986. The backbone of these organizations, and other grassroots community-based ADR providers across the province, was made up of a strong core of volunteers. That volunteer component continues to ensure the viability of local/community mediation programs.

ECM was instrumental in the establishment of other mediation programs, including the Parent-Teen Mediation program offered by Edmonton Catholic Social Services. (Edmonton Catholic Social Services was the only organization at the time to offer mediators a small hourly rate). ECM also worked with Edmonton Police Service to provide mediation regarding minor complaints against officers. ECM was also involved in the establishment of the Civil Claims Mediation program in Edmonton.

According to Judy McIntyre, the first coordinator of ECM, the impetus for a civil claims mediation program was a 1994 letter from a defendant in a $4,000.00 lawsuit slated for trial. He requested and ultimately received mediation services to help resolve the lawsuit.

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In 1997 a Provincial Court Civil Claims Mediation pilot project was launched in Edmonton through collaboration between ECM and Alberta Justice. A similar pilot project was launched in Calgary. The Edmonton project drew volunteer mediators from both the ECM and AAMS. The project was a boon to those volunteers, says McIntyre. "We had a slate of talented volunteers and we didn't have enough mediations for them." After the project was concluded Alberta Justice decided to continue and then expand the civil claims mediation program to other centers in the province, namely Lethbridge, Medicine Hat and Red Deer in 2006 and Grande Prairie in 2007. Mediations are also being conducted as needed in areas such as Camrose and Wetaskiwin. Initially mediators were given an honorarium of $50.00 per mediation with the understanding they would also be supported through training opportunities, resources and free parking. The honorarium is now $75.00 per mediation.

Other mediation programs and rosters were being developed across the province at this time. Edmonton's Victim Offender Mediation (VOM) was a grassroots program that also relied heavily on volunteers. Eventually ECM and VOM merged to form the current Mediation and Restorative Justice Centre (MRJC) in Edmonton.

In October 1994, the Sherwood Park RCMP published a notice in the local paper inviting interested people to attend an information meeting on community

mediation. Almost 100 people attended. From this initial meeting and several working sessions over the ensuing months, the Strathcona County Community Mediation Society (SCCMS)[7] was incorporated on July 21, 1995 under the Societies Act, as a not-for-profit society of about 40 volunteers. In 1999, SCCMS was officially recognized by Revenue Canada as a registered charity.

In November of 1993, the Community Mediation Calgary Society (CMCS) was founded as a registered not-for-profit organization of volunteers. It provides conflict management and dispute resolution information and assistance through collaborative services and workshops to neighbors, community associations and other not-for-profit groups. CMCS relies heavily on volunteers.

As mediation became more visible and its effectiveness indisputable, the Government of Alberta (GOA) instituted several mediation programs through various government departments. These programs range from Family Mediation Services to mediation services offered to municipalities, to mediations under the Farmer's Advocate Office. In 1996 Alberta government employees formed the Dispute Resolution Network (DRN) consisting of GOA employees from departments and agencies offering dispute resolution services. Other mediation rosters have been implemented at universities, organizations such as the Better Business Bureau and are offered internally by private companies.

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AAMS continues to be a registered charity, whose purpose is to "promote, inform, publicize, communicate and improve the knowledge of arbitration and mediation," among other objectives. The ADR Institute of Alberta (ADRIA) was created in 2012 as a non-profit organization "dedicated to advancing excellence in the field of Appropriate Dispute Resolution, its practice, and its professionals." ADRIA is a membership organization for Alberta dispute resolution professionals and also offers professional development. As of December 31, 2015, ADRIA had 528 members.

The Alberta Family Mediation Society (AFMS), formed in 1984, is a membership organization for family mediators and registered parenting coordinators. Its mission is to advocate for the resolution of family conflict through the use of mediation by qualified professionals.

5. Government Mediation Services Analysis (Appendix C)

As government mediation rosters are a source of work for mediators, the task force researched several programs with robust mediation components: five family- or child support-related programs in Alberta; several other Alberta non-court public sector programs; and two federal ADR programs. Because many ADRIA members provide mediation services to the Provincial Small Claims Mediation programs

[7] http://sccm.ca/cms_data.php?page=about

across the province, it was decided to look not only at what was happening in Alberta, but in other provincial programs as well. Detailed information about the survey results as well as the civil claims mediation programs in British Columbia, Alberta, Saskatchewan and Ontario are included in Appendix B. The chart below summarizes each provincial program as it relates to compensation and mediator qualifications. The BC Civil Claims mediation program is being replaced by an online tribunal as defined by the Civil Resolution Tribunal Act and amendments. As such the services of mediators are no longer required. Voluntary at this point, it is anticipated the online tribunal program will be mandatory in 2017 for parties in a lawsuit of less than $10,000.

Comparison of Provincial Civil Claims Mediation Programs

	British Columbia **(prior to July 31, 2015)**	Alberta (Civil Claims of $50,000 or less)	Saskatchewan (Queen's Bench Civil Mediation)	Ontario (Superior Court Mandatory Mediation)
Qualifications (education, mediation training, experience, etc.)	Minimum 180 hours training in mediation theory and skills, and dispute resolution; 14 hours instruction in civil procedures; completed 10 civil mediations in an accepted practicum program; letters of reference; and insurance	Look for 180 hours in non-evaluative conflict resolution training, but will accept 40 hours in regional locations Resume, 3 References, Criminal Background Check, successful interview and role play, 10 mentored mediations	Mediators are initially screened for education and equivalent work experience. Rigorous training and development of staff and roster mediators are provided internally	Up to 100 Points are awarded for: training in mediation; educational background; mediation experience; Familiarity with the civil justice system; and three letters of reference that speak to candidate's aptitude and skill as a mediator
Compensation	Tier 1: $100/mediation for mediators with 1-10 mediations Tier 2: $200/mediation for	$75 per mediation if co-mediation, $150 if solo or mentored mediation	Entry level roster mediators: $35/hour. Experienced roster mediators:	3-hour mediation can't exceed: $600.00 for 2 parties; $675 for 3 parties; $750 for 4

Tenth draft

	mediators with 11 – 100 mediations Tier 3: $250.00/mediation for mediators with more than 100 mediations		$55/hour. Travel is paid at the hourly rate. FT staff mediators are paid between $38 -$48 per hour plus benefits	parties; and $825 for 5 or more parties. If another session is required the rate is negotiated between parties and mediator

One observation is that mediator compensation (honorarium) in Alberta's Provincial Small Claims Court is lower than other jurisdictions. Although these are all civil claims mediation programs the court levels vary from province to province which needs to be considered in looking at compensation. Ontario, for example, provides mediation in its Superior Court (the equivalent of Alberta's Court of Queen's Bench) whereas civil claims mediations in Alberta are in the small claims (less than $50,000) division. Further, while the practice in Alberta is primarily and predominantly to use a Co-Mediation model, on occasions when mediators work alone, they are paid a $150.00 honorarium

Fourth draft

In Alberta mediation is used in the Justice, Energy, Environmental, Agricultural, Municipal and Labour Relations sectors. Mediation is a common and growing practice in many court and legal systems in Alberta and across Canada and appears to be a way to meet many government goals to resolve disputes early and avoid more costly court or formal hearing processes. In Alberta the Reforming Family Justice System (RFJS) initiative driven by Justice Andrea Moen and Alberta Justice and Solicitor General has as one of its foundations the concept of early dispute resolution.[8]

The newest provincial mediation roster – the Alberta Provincial Police Complaint Mediation Roster – was established to provide mediation when members of the public complain about police officers or police services. According to the Call for Applications document sent to potential roster mediators,

> "The success of mediation initiatives within the court system has led to the expansion of mediation services offered by the Ministry of Justice and Solicitor General to include a Provincial Police Complaint Mediator Roster. This mediation program will provide an ADR process to resolve complaints filed by members of the public against police services and officers. This mediation program will be offered by the Public Security Division, in conjunction with Police Services and Police Commissions, and will operate with the support of Resolution and Court Administration Services."

[8] http://www.rfjs.ca/theinitiative

Compensation is $80.00 hour, similar to the compensation provided roster mediators with Alberta Justice Family Justice Services.

A surprising finding for the task force was the wide variations in mediator qualifications required by various government departments. While some emphasize conflict resolution training, others focus more on content knowledge and experience. Another surprising finding was that while some mediation training is often, but not always, a requirement, few programs require membership in a professional ADR organization and few recognize Q. Med and C. Med credentials.

There are wide variations in the rates for and structure of mediator compensation in government systems in Alberta and across Canada. Some Alberta government departments employ staff mediators, others use roster mediators and some a combination of both. Provincially rates range from $75 per mediation (small claims) to $80 per hour (Family Justice Services) to $300 per hour (Municipal Affairs). Finally, the number of mediations conducted under the auspices of government departments varies widely from an average of more than 2,300 annually (small claims) to three (Municipal Affairs) as well as the length of each mediation from a few hours (small claims, Family Justice) to a day (Alberta Energy Regulator) to weeks (Municipal Affairs).

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There are initiatives indicating there is a commitment to mediation in the Alberta Court System, which is positive for mediators. Justice and Solicitor General's Resolution and Court Administration Services is reviewing its mediation and dispute resolution services as part of a larger initiative to achieve better integration of programs and services. Its goal is to achieve shared outcomes, strategically aligned resources, and increased efficiency and effectiveness of program delivery including consistent access. Compensation practices are being examined with a view to ensure practices are consistent across various programs and across Alberta.

Recently a task group[9] has been formed with representation from the four western provinces' court mediation programs. Its purpose is:

- Collaboration and exchange of information;
- Learn from each province's experiences and share best practices (identify shared challenges, gaps, and risks); and
- Support ADR as a recognized and viable option for the resolution of disputes and for improved access to justice.

As explained at the recent ADRIC conference in Calgary, the task group is also looking at the following emerging trends and policy issues:

- How can western provinces work collaboratively to advance ADR;

[9] Western Provinces Court Mediation Programs, October 30, 2015 workshop presentation at the ADR Institute of Canada conference, Calgary, AB

- How can we promote mediation as an acceptable and widely recognized part of the justice system as opposed to an alternative to more formal processes? (expected process rather than mandatory);
- How can we promote consistency among provincial programs? (fees, access, service provider qualification standards);
- How can we better assess and determine the appropriate program/response to disputes;
- How can we better evaluate the effectiveness of ADR programs;
- How can we develop a system/process to capitalize on our learning and successes across provincial programs?

Federal Government

Within the Federal Government, many of the best known ADR programs are internally-focused and developed in response to the 2003 Public Service Labor Relations Act (PSLRA). Some departments, notably National Defence, the RCMP and Canada Revenue Agency began workplace ADR programs in the 1990s, well in advance of any requirements under the PSLRA. The Act mandates the introduction of voluntary Informal Conflict Management Systems (ICMS) for the resolution of workplace conflict and harassment situations, although it does not specify the manner in which such options be delivered by the respective departments. Some have introduced in-house mediation, awareness and training programs, while others have out-sourced provision of mediation services. Some departments, such as Treasury Board and Health Canada, are the service providers for workplace mediation services to other departments.

Tenth draft

For the purposes of this report, data was collected from National Defence and Industry Canada, these being representative of two federal departments. For those departments with internal ADR resources, there are relatively few standard hiring practices, although many recognize and value the ADR national designations.

Classifications and compensation also vary widely, with mediators employed within the Personnel Administration, Administrative Services, and Programme Administration groups, and perhaps others. Overall, compensation levels for ADR professionals in the federal government are in the $80-100K range, not including benefits. Efforts to standardize, and create a common classification and compensation framework within the Federal Public Service continue. Some degree of oversight and standardization is provided by the Office of the Chief Human Resources Office within Treasury Board, and there is a degree of self-regulation provided by the Federal ICMS Network (similar in function to the GOA's Dispute Resolution Network).

External ADR programs within the federal government are less common. That said, many Canadian federal departments offer external ADR to satisfy complaints from the public, through dedicated resources or their Ombudsman. Others, such as the National Energy Board, offer ADR resolutions to satisfy land use complaints

and right-of-way concerns. Contract disputes are often resolved through the Business Dispute Management program offered by Public Works and Government Services Canada. The Federal Mediation and Conciliation Service[10] promotes cooperation and fairness and provides expert advice and assistance on labor relations matters to workplaces within the federal jurisdiction. To that intent, the Labour Program has developed numerous services, measures and initiatives to assist employers and employees in creating and maintaining a workplace that is conducive to good industrial relations. Again, the classifications and compensation paid for ADR practitioners and mediators varies from department to department, but annual salaries and benefits are relatively high when compared to annual earnings from an ADR practice in the private (non-lawyer) ADR sector.[11]

6. Analysis of Private Organizations Surveys

Seven private organizations responded to the Task Force Mediation Services survey including a large oil and gas company, five law firms, and a family mediation services company. As such the information gathered is limited. This is an area of potential further exploration in regards to why private organizations are not using ADR.

Tenth draft

The data produced was examined to identify trends and unusual observations with a view to identifying useful information relevant to the questions to be posed by the White Paper. As such this analysis is not all encompassing and reference to specific responses can be found in the raw survey data. The following trends and observations were made:

The primary area of practice was in the family law area with five of the eight respondents practicing family mediation.

There was no clear consensus or over-arching trend for the qualifications of a mediator. The law firms only employed lawyers as mediators.

The question was posed as to what the internal training and or mentoring was offered to mediators. The family mediation services company provided no mentoring. The oil and gas company identified training through ADRIA, but did not identify a mentoring program. The five law firms ranged from none to informal coaching among their lawyers, to co-mediation and monitoring. One firm had a strong mentoring practice where one senior lawyer was assigned to a junior lawyer, and the firm had an open door policy. Also, this law firm conducted bi-weekly

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[10] http://www.labour.gc.ca/eng/relations/index.shtml

[11] AS pays scales can be viewed at this link, and ADR Practitioners are employed at the AS-4 thru AS-7 levels (i.e., $63 -102K) https://www.tbs-sct.gc.ca/pubs_pol/hrpubs/coll_agre/pa/pa08-eng.asp#toc288725025

meetings to discuss any issues. Training included speakers to assist with communication skills. From this we identified a trend that formal mentoring, specific to mediation, is lacking.

The respondents seemed to be optimistic for growth. When asked where they saw their program going in the future, many respondents emphasized expansion and growth. The oil and gas company foresaw an increase in mediation services and ADR being integrated into company policy. However, with the collapse in oil prices (occurring after the oil company was surveyed) it has dropped the mediation program. All the law firms foresaw or hoped for an increase in mediation. One lawyer reported doing exclusively mediation and mediation-arbitration.

The number of mediations that occurred in the last three years was not tracked by many of the private organizations. The family mediation services company saw a steady increase in Alberta as follows: 2012-100 mediations, 2013 -125, 2014-200. The oil and gas company had: 2011-7 mediations; 2012-5, 2013-8. The law firms did not share any numbers.

When asked how the respondent organization had benefitted from mediation, most responses were positive. Anecdotally, the majority of private organizations reported that most mediations were "Successful"; "Clients happier"; and "Firms reputation improved."

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Many private organizations use an interest-based model and three of the law firms indicated they use a more directive or evaluative approach. One used Med-Arb.

Many of the mediations were voluntary and not court mandated. Law firms were primarily client funded and the oil and gas company mediations were financed by the organization itself. Lawyers did not identify a difference in hourly rate if acting as a lawyer or mediator.

7. Volunteerism and Pro Bono Activities

78 per cent of respondents to the Alberta mediator survey either provide or would like to provide pro bono work - 50 per cent as a way of contributing to society and 19 per cent as a way to gain experience or develop skills. (Nine per cent don't currently provide pro bono services but would like to). As defined in the Alberta mediator survey, pro bono work is offering a volunteer service to not-for-profit organizations (just under half do this), offering a volunteer service to parties in financial distress (less than a quarter do this), accepting a stipend or small set fee (just under half are doing this), offering a reduced rate to parties in financial distress or offering a reduced rate to not-for-profit organizations or charities (less than a third do this).

In comparing the two subsets (the 50 per cent that wish to give back and the 19 per cent who wish to gain experience/skills) we find that those who wish to give back tend to be a little older, more likely to be self-employed and are engaged in mediation and/or ADR as a small percentage of their work week, although both subsets are eager to take on more paid mediation work. The vast majority of those who do pro bono to give back have more than five year's experience (compared to only half of those wishing to gain skills) and more than 75 per cent have more than five years' experience within a court resolution program. The average annual gross ADR and mediation income for both groups falls below $50,000, although 68 per cent of those who do pro bono to give back bring in more than $150/hour when they mediate privately. In general, however, just over half of both subsets report income greater than $50,000 annually when listing income from all sources (excluding pension/investment). In comparing mediation sectors, higher percentages of those attempting to gain skills access the court programs than those who wish to give back.

Most respondents do not believe that pro bono work in general undermines the profession, although a third believe it undermines the financial viability of mediation as a profession. While there was a theme that most see value in the province's Civil Claims Mediation program, they do not view it as a beneficial way for mediators to give back to the community (even though it is viewed as a pro bono activity). Most respondents feel civil claims mediators are not compensated fairly for their work. While many view the program as a great way for new mediators to gain experience, the program is diminishing the mediation profession in the eyes of the public (as people are becoming accustomed to cheaper or free mediation services). There is also the awareness that others in the court system are adequately compensated for their work towards resolving lawsuits while civil claims mediators are not. There was a general consensus the government needs to value mediation services by adequate compensation.

draft

Generally, respondents show a strong commitment to the idea of pro bono work under the appropriate conditions, where the mediator chooses the organization and also decides whether or not it is a free/voluntary service or offered at a reduced rate. A strong majority of respondents would rather offer pro bono services to not-for-profit organizations within their own smaller communities.

> *For instance, while volunteerism is a vital part of our profession's commitment to expanding the concept and use of mediation, there is a point at which it negatively impacts our practices and the members of the public we serve.*
> http://www.mediate.com/articles/BartnessB1.cfm

Community Mediation Programs

Some opportunities to gain experience and contribute to society are provided by grass roots community-based mediation programs. These programs primarily provide mediation services to neighbors and communities, although one is providing alternative measures services to young offenders.

In its survey of the three community mediation programs, a significant finding was the lack of consistency in many areas. It appears the programs are very much operating as silos, each establishing criteria and standards for roster mediators that vary significantly. For example, one community mediation program requires its mediators to have a minimum of 120 hours of training, either through a program such as that offered by ADRIA or delivered in-house, and to submit to a rigorous screening process that includes demonstration of skills through a role play. This same organization requires at minimum a Q. Med designation if the mediator is doing fee-based work.

None of the other organizations require their volunteer mediators to have any experience, designations or membership in a professional organization. All provide mentorship and in some cases mediation training. None paid their mediators for volunteer work although one organization is looking at providing fee-based services that would involve industry-standard compensation for mediators. The style of mediation expected by the organizations is largely interest-based, however, one organization encourages mediators to use a style (circles, narrative etc.) that best meets the needs of its clients.

Tenth draft

Some organizations keep stats on the case development and mediation work provided and all seek feedback from participants. The three community organizations receive some of their funding from various levels of government including municipal funding.

Finally, all three community organizations have values around the purpose of mediation – to help parties resolve conflict and create more peaceful, harmonious communities at a grass roots level. They also value being able to provide mentorship to new mediators.

8. The Value of Mediation (Appendix D)

Mediators practicing in the field are familiar with the benefits to those who are able to resolve their disputes with the help of a skilled and trained facilitator. Saving time and money, reduction in stress, repaired relationships, and peaceful workplaces, are just a few of the positive results that can occur. Statistical evidence, however, is harder to come by. Other than a 2007 report (summarized below) on the then Court

of Queen's Bench Civil Mediation[12] program, the task force was unable to access any cost-benefit analysis of mediation programs in Alberta. So the task force supplemented its findings by reviewing studies and literature from other provinces and countries to find what was being discovered about the value of mediation.

British Columbia

The most recent and possibly most comprehensive research on the value of Mediation in Civil, Family and Workplace was *The Case for Mediation – The cost-Effectiveness of Civil, Family, And Workplace Mediation*. (Mediate BC, January 2014)

This study looked at mediation in Civil Court, Family, and Workplace areas. (This study is of significance to the work of the Task Force as the ADRIA mediator survey showed that 50 per cent of respondents work in civil court mediation, 45 per cent work in family and divorce mediation and 45 per cent work in workplace mediation.)

What did this study find?

Mediation saves court administration money by resolving many cases outside of, or early into, the litigation process. It saves families and businesses money that could otherwise be spent in the economy. It produces better psychosocial outcomes for families, and can save private companies and the public sector from significant monetary losses associated with workplace conflict.

Tenth draft

The following five ways that mediation, either directly or indirectly, saves the government money were identified, with evidence for each provided:

1. By resolving conflicts outside of, or earlier in, the court system, limited court resources can be re-allocated to other matters. This happens when:

- Mediation results in conflicts resolving before a court action is commenced. Mediation occurs relatively early in the litigation process, resulting in shorter time to resolution and, therefore, less use of court staff and judicial time;

- Mediated agreements are complied with more often than court-imposed terms, thereby reducing re-litigation;

- Even when mediation does not result in an agreement, post-mediation court proceedings are shorter and therefore less expensive (e.g., because the mediation process gave the parties more information about the

[12] While the QB Civil Mediation Roster information has been removed from the website as of December 14, 2015 it is understood the government is exploring other options for the provision of civil mediation services at the Court of Queens Bench.

dispute, narrowed the issues for trial, allowed them to resolve some issues, made them less adversarial, etc.).

2. For both civil litigants and families, mediation saves money in legal and court fees that would otherwise be spent in the economy.

3. Family mediation produces better psychosocial outcomes than adversarial approaches, and this could result in reduced use of publicly-funded social assistance and other social services.

4. Mediation reduces conflict in the workplace, which saves businesses significant money.

- This boosts the economy through savings, investments, and hiring, and generates more tax income for government. Additionally, mediation reduces workplace conflict in the public sector – directly saving government money.

5. Mediation can reduce the cost of civil litigation in which government and/or crown corporations are involved.

Tenth draft

Ontario

Ontario has a mandatory mediation program and a roster of mediators to resolve disputes in the Ontario Superior Court (the Alberta Queen's Bench counterpart). A key piece of research regarding the benefits of mediation in this program was conducted in 2001 by Robert G. Hann and Carl Baar in their work: Evaluation of The Ontario Mediation Program (Rule 24.1) Executive Summary and Recommendations[13].

The research concluded that mandatory mediation under the Rule resulted in:

- significant reduction in the time taken to dispose of cases;
- decreased cost to litigants;
- a higher proportion of cases (40 per cent overall) being completely settled earlier in the litigation process, with other benefits noted in many other cases that did not completely settle;
- litigants and lawyers expressing considerable satisfaction with the mediation process; and
- in Ottawa and Toronto about 40 per cent of cases were completely settled at or within seven days of mediation.

[13] Hann, Robert G., Baar, Carl. Evaluation of The Ontario Mediation Program (Rule 24.1) Executive Summary and Recommendations. March 12, 2001. Retrieved from https://www.attorneygeneral.jus.gov.on.ca/english/courts/manmed/eval_man_med_final.pdf

The positive findings applied generally to all case types and to cases in Ottawa and Toronto. More details about this study can be found in Appendix D.

Canada

A federal Justice Department study in 2007, entitled The Effectiveness of Using Mediation in Selected Civil Law Disputes: A Meta-Analysis[14], involved an extensive literature review and contact with 85 individuals or organizations with expertise and experience evaluating mediation programs. The study was done because the Dispute Prevention Resolution Services of the Civil Litigation Division (Justice Department) was developing a pilot project called the Early Resolution Option (ERO), which was intended to reduce the time and costs associated with settling tort claims. It would make mediation mandatory for certain tort claims brought against the federal government.

The study found that mediation processes overall are fairly effective in creating time and costs savings. The meta-analysis showed mediation results in improvements of at least 16 per cent or 17 per cent to perceptions of time and cost savings, which is supported by documented savings. Depending on the characteristics of the mediation program, these improvements could be at least 40 per cent, but are more likely in the range of around 30 per cent.

Tenth draft

In addition, the meta-analysis showed that mediation results in improvements of at least between 3 per cent and 6 per cent in perceptions of fairness and satisfaction. Depending on the characteristics of the mediation program, these improvements could be in the 15 per cent to 25 per cent range but are more likely to be in the 10 per cent to 15 per cent range.

European Union

A 2011 study by the Policy Department C: Citizens' Rights and Constitutional Affairs regarding the advantages of using a two-step process (first mediate, then litigate if mediation was not successful) over a one-step process (go directly to court) found that the costs of mediation were 24 per cent of the costs of litigation. The study also found:

- The time and costs correlating with a high mediation success rate (75% or 50%) are quite impressive (e.g. a 75% mediation success rate in Belgium can save approximately 330 days and 5.000 € per dispute; a 75% success rate in Italy can save 860 days and more than 7.000 € per dispute);
- The EU break-even point for time is estimated to be a 19 per cent mediation success rate, and the break-even point for costs is 24 per cent. (The study used progressively lower mediation success rates in order to find the break-even

[14] Lawrence, Austin, with Nugent, Jennifer and Scarfone, Cara. The Effectiveness of Using Mediation in Selected Civil Law Disputes: A Meta-Analysis. Department of Justice Canada, 2007

point – the lowest possible threshold in which mediation can be successfully implemented); and

- The average cost to litigate in the European Union is €10.449 while the average cost to mediate is €2.497. Therefore, when mediation is successful, European citizens can save more than €7500 per dispute.

2014 Reboot Study:
In 2014 there was a follow up study on the progress of the mediation directive. A summary of its findings follows.

> Five and a half years since its adoption, the Mediation Directive has not yet solved the 'EU Mediation Paradox'. Despite its proven and multiple benefits, mediation in civil and commercial matters is still used in less than 1% of the cases in the EU. This study, which solicited the views of up to 816 experts from all over Europe, clearly shows that this disappointing performance results from weak pro-mediation policies, whether legislative or promotional, in almost all of the 28 Member States. The experts strongly supported a number of proposed non legislative measures that could promote mediation development. But more fundamentally, the majority view of these experts suggests that introducing a 'mitigated' form of mandatory mediation may be the only way to make mediation eventually happen in the EU. The study therefore proposes two ways to "reboot" the Mediation Directive: amend it, or, based on the current wording of its Article 1, request that each Member State commit to, and reach, a simple "balanced relationship target number" between civil litigation and mediation.

Tenth draft

England
The Legal Services commission administers legal aid in England and Wales. In 2007 the National Audit Office conducted a review of family dispute cases resolved through mediation and the courts, with the focus of improving value for money achieved through the legal aid budget. They found:

- The average cost of legal aid in non-mediated cases was estimated at €1682 pounds versus €752 for mediated cases; and
- Mediated cases were quicker to resolve, taking on average 110 days compared with 435 days.

Australia

Four years ago Australia adopted the Civil Disputes Resolution Act 2011 which encourages parties to take genuine steps to resolve a dispute before commencing certain legal proceedings in the Federal Court and Federal Circuit Court. Its objectives include promoting a movement away from an adversarial approach to litigation and to improve access to justice by encouraging early dispute resolution.

California USA

A 2007 study[15] looked at five court-annexed civil mediation programs in California – three mandatory programs and two voluntary programs referred to as the Early Mediation Pilot Programs. These programs authorized early referrals to mediation. After running for 30 months the study looked at five elements: trial rate; time to disposition; litigant satisfaction; litigant costs; and courts workload.

The study reported success in all areas. Of particular note for this review:

- Pilot programs reduced the proportion of cases going to trial by 24-30 per cent which saved substantial court time (Estimated to be 521 – 670 trial days per year in San Diego/Los Angeles jurisdictions (or about $1.6 million - $2 million per year); and
- Attorneys involved in cases that settled at mediation estimated savings ranging from 61-68 per cent in litigant costs and 57-62 percent in attorney hours.

Alberta (The Court of Queen's Bench Civil Mediation Program)

A study in Alberta piloted interest-based mediation in Edmonton and Lethbridge to eligible non-family cases filed in Court of Queen's Bench from 2005 to 2007. Entitled Evaluation of the Civil Mediation Program Court of Queen's Bench of AB Final Report – PRA inv. May 31, 2007, the study was based on stakeholder interviews, survey of lawyers, analysis of mediation feedback forms plus other research including evaluation of civil mediation programs. The study findings were positive. About 75 per cent of cases settled and more than 90 per cent of litigants and lawyers were satisfied with the process and believed mediation saved litigant time and money. There was also the perception the program complemented rather than duplicated existing services.

Fourth draft

Clearly mediation has value. It's not for every circumstance and there are times when other ADR processes, including litigation, would be more appropriate.

The Western Provincial Court Mediation Program Task Group[16]

A recently formed task group with representation from the four western provinces' court mediation programs presented at the ADRIC conference in Calgary in late October, 2015. The four provincial representatives described their province's ADR programs and shared some statistics.

British Columbia

Under the Provincial Court (Family) Rules (Rule 5), litigants in four locations (Vancouver, Kelowna, Nanaimo and Surrey) are required to see a Family Justice Counsellor prior to a court appearance being scheduled. The FJC provides the

[15] Administrative Office of the Courts – Judicial Counsel of California, 2007

[16] Western Provinces Court Mediation Programs, October 30, 2015 workshop presentation at the ADR Institute of Canada conference, Calgary, AB

litigants with information, dispute resolution options and assistance with court forms and assesses the family to determine if mediation is an option for the parties. The parties can then voluntarily engage in mediation or pursue their court case, or both.

In 2014 approximately 3200 clients were referred to Rule 5 services. Of those, approximately 2000 participated in mandatory intake assessments. There was a 70 per cent success rate with mediation (all or some issues resolved). The province is currently evaluating the Rule 5 Program.

B.C. has another ADR process available to litigants called the Notice to Mediate. It enables any party to an action in B.C. Supreme Court to compel all other parties to the action to mediate the matters in dispute. The Notice to Mediate process for motor vehicle personal injury actions, for example, has been in place for 11 years and has been used in more than 23,000 actions, with settlement rates (in or shortly after mediation) of approximately 80 per cent.

The province's Small Claims Mandatory Mediation program is being replaced with a Civil Resolution Tribunal program. However, between 2011 and 2015 there were 6,100 cases referred to mediation, with 4,200 proceeding to mediation. All issues were resolved in about 50 per cent of the cases.

Tenth draft

Alberta

The Provincial Court Civil Mediation program in the fiscal year 2014/15 saw 2337 cases mediated (by 220 roster mediators throughout the province) with 56 per cent being fully resolved and having an 85 per cent satisfaction rating by parties. The Family Mediation program in 2014/15 saw 1413 cases mediated (by 60 staff and roster mediators throughout the province) with 89 per cent of cases being fully resolved and having a 97 per cent satisfaction rating by parties. The province's Child Protection and Intervention Mediation Program has an 87 per cent resolution rate.

Saskatchewan

Saskatchewan has four ADR programs with the following success rates:

- Queen's Bench Civil Mediation (2014: 664 mediations with one-third settling at mediation, one third reporting no further action and one third proceeding to court)
- High Conflict Court Ordered Family Mediation (2014/15: 62 per cent of cases resolved)
- Family Matters Program (this is a pilot project fully funded by the Law Foundation of Saskatchewan for a three year period. Statistics are not yet available)
- Farmer/Lender Mediation (70 per cent of cases resolved in 2013 and 2014)

Manitoba
Mediation in Manitoba is offered by Family Conciliation Services in family law matters and by Judicially Assisted Dispute Resolution (JADR) in civil matters.

Manitoba has offered voluntary mediation in civil matters since 1994 through JADR in the Court of Queen's Bench and since 2014 in Small Claims matters. In 2009, the Manitoba Bar Association Alternative Dispute Resolution Section examined the JADR process and reported that anecdotal information indicated the JADR settlement rate in Manitoba was in the range of 85% to 95%, depending on the information source.

Success rates for Family Conciliation Services mediations were not available.

9. Mediator Work and Compensation (Appendix E)

To understand the compensation of mediators both locally and abroad a number of data sources were reviewed and summarized. Compensation for mediators varies widely, and factors including market demand, government or regulatory mandated mediation, mediator experience, and individual background of individuals need to be considered. A summary of findings is presented in the table following:

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Compensation Ranges	Comments	Source
$0-$700+ per hour	Approximately 30 organizations completed the Mediation Services survey. Rates ranged from pro-bono to $700+ per hour	ADRIA Task Force, 2014, Mediation Services Survey
Average annual salary $0 - $150,000+	Survey of Alberta practitioners, with 111 respondents, reported earning between $0 to over $150,000 per annum.	ADRIA Task Force, 2014, Mediator Survey Alberta
£0 - £8,500+ per day (*conversion CND $0 - $12,769)	Average earnings for a one-day mediation reported for 2012, with the largest number (24%) reported earning from £1,251 - £2,000, (*converted to CND $1,879 - $4,080)	The Fifth Mediation Audit, 2012, Centre for Effective Dispute Resolution
Average annual salary US $61,280 (*conversion CND $81,815)	As of May 2012, U.S. Bureau of Labor Statistics for Arbitrators, Mediators and Conciliators estimated 6,520 jobs with median salary for full-time employment of US $61.280 (*conversion CND $81,815).	Rhudy, R., 2014, Engaging Conflict for Fun and Profit: Current and Emerging Career Trends in Conflict Resolution
$0-$10,000+ per day (*Conversion CND $13,351)	Winner Takes All Model suggests 10% of mediators make 90% of revenues. Majority of the full-time mediators earn US $50,000 (*CND $66,755) or less, only a few	Velikonja, U., 2009, Making Peace and Making Money: Economic Analysis of

Compensation Ranges	Comments	Source
	hundred make US $200,000 (*CND $267,020) or more per year.	the Market for Mediator in Private Practice
		*Conversion rates obtained September 25, 2015 at http://www.bankofcanada.ca/rates/exchange/daily-converter/

The task force surveyed provincial ADR practitioners to obtain data including demographics (age, education, location), types of work involved in (ADR, mediation, teaching, coaching, mentorship, volunteer, other), hours worked (full time or part time), compensation levels, compensation sources, volume of mediations, areas of mediation, experience, etc. 111 individuals responded, and from the data we are able to determine some interesting information relative to demographics. Demographics - Edmonton and Calgary have the largest populations of respondents (80 per cent), with smaller representations in rural areas. 32 per cent of respondents were male, and 68 per cent female, with the largest concentration of individuals found in the 50-59 age category (37 per cent), followed by 60-69 (28 per cent), and 40-49 (20 per cent). 42 per cent of respondents began their mediation practice in their 40s, with smaller representations in their 50s (26 per cent), and 30s (22 per cent). It is likely these are second or third careers, or possibly work complementary to existing careers.

Tenth draft

The majority of individuals reported that they were self-employed (61 per cent), with employment in the public sector (16 per cent) identified as the second source of employment.

Looking at levels of employment, 59 per cent indicate that they are working full time (in one or more positions/contracts), and 40 per cent work part time. 59 per cent of respondents reported that less than 15 hours on average per week involves ADR practice, and an even greater 69 per cent reported spending less than 15 hours on average per week in their mediation practice. These percentages are similar for both full and part time individuals. This would suggest that less than half of total employment (thus income) is derived from either ADR or mediation practice.

58 per cent indicated their income is derived by providing ADR services and training other than strictly mediation and 67 per cent derive income from sources other than their ADR practice.

In terms of years of experience mediating, 47 per cent indicated they have five to 15 years experience, 29 per cent have more than 15 years experience and 24 per cent have less than five years experience.

In considering *gross annual income derived from mediation only*, we see the following results:
(*Note that "full time" respondents represent those who work full time in any employment, not just mediation.)

All Respondents (107)		*Full Time Only (64)
$0/Volunteer Only	8%	10%
Less than $10K	46%	40%
$10K – $25K	18%	19%
$25K - $50K	10%	8%
$50K - $100K	10%	10%
$100K - $150K	6%	10%
More than $150K	2%	3%

Survey respondents reported being paid the hourly rates for mediation as follows:

All Respondents (107)		*Full Time Only (64)
Nil/Volunteer Only	8%	10%
Less than $50/hour	24%	21%
$50 - $149	17%	13%
$150 – $249	31%	27%
$250 - $349	8%	11%
$350 - $499	5%	8%
More than $500	7%	10%

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The greatest percentage of respondents indicate their mediation practice is secondary to their other/primary professions (48 per cent), while 39 per cent report mediation as their primary activity (including retirement activity), and 13 per cent report it as secondary to their other ADR practice (including arbitration, training, etc.). Of the 24 lawyers who responded to the survey, 26 per cent made between $100,000 and $150,000 and 48 per cent made more than $150,000. Higher compensation is linked to those who provide ADR in support of their primary occupation, notably law. 50 per cent of those making more than $50,000 annually are lawyers, and 40 per cent hold a C. Med designation.

We can conclude from survey respondents and research elsewhere that it is difficult to make a living through the practice of mediation alone. Of the Alberta mediators responding to the task force survey, eight per cent make virtually no income from mediating, 46 per cent make less than $10K annually, 18 per cent make between $10K and $25K annually. Only 10 per cent make between $25K and $50K annually,

10 per cent make between $50K and $100K, six per cent make between $100K and $150K annually and two per cent make more than $150K from their mediation practice alone.

Urska Velikonja[17], in an analysis of the financial viability of the mediation profession in the United States, says:

> "To this day, making mediation a full-time career remains extremely difficult. Professor Eric Green, a law professor at Boston University and a successful commercial mediator, noted in a class lecture that there is 'no career path in mediation.' For virtually all successful private mediators, mediation is a second or third career, most are in their fifties or older. More interestingly, of those who decide to become mediators, 80 per cent cannot make a living solely as mediators. Aspiring mediators are constantly scrambling for work, but often must return to their old careers. Fifteen per cent keep busy, make a decent living, but never quite break through. The top five per cent, however, are booked months in advance and can gross upwards of one million dollars per year."

In the area of education 35 per cent have bachelors' degrees followed by 22 per cent with LLB and masters' degrees.

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Practitioners come from any backgrounds, holding designations or qualifications in many areas including law (29 per cent), other (24 per cent) including communications, clergy, accounting, finance, etc., education (14 per cent), social work (17 per cent) and psychology (13 per cent).

Many hold professional ADR designations including Chartered Mediator (36 per cent), designations from the AFMS (22 per cent), Qualified Mediator (18 per cent), or have applied or have expectations to apply within the next year (15 per cent). Eight per cent hold the designation of Chartered Arbitrator or Qualified Arbitrator, and many hold multiple designations.

A majority of respondents obtained their mediation training primarily from ADRIA (55 per cent). Others received training from the University of Alberta (14 per cent), Legal Education Society of Alberta or law society (11 per cent), other (10 per cent) and Justice Institute of BC (six per cent).

Individuals professionally hold memberships primarily with ADRIA (75 per cent), ADRIC (45 per cent), AFMS (25 per cent), and others (12 per cent). Again, many hold multiple memberships.

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[17] Velikonja Urska. Making Peace and Making Money: Economic Analysis of the Market for Mediators in Private Practice. Albany Law Review, Vol. 72, pp. 257-291 (2009)

Key Themes in Compensation
Only 25 per cent of survey respondents indicated mediation alone can provide a viable income. A further 37 per cent felt one could make a living if mediation was combined with other ADR services and training. 13 per cent agreed that mediation could provide a viable income if combined with another non-ADR profession, while 21 per cent felt mediation could only supplement or enhance other ADR and non-ADR services, qualifications or programs. Five per cent indicated mediation is only viable as a volunteer or secondary activity. Thus 39 per cent did not feel that an ADR or mediation practice could provide a viable income unless combined with another skill or profession.

Areas of Work
More than 90 per cent of respondents practice interest-based (facilitative) mediation followed by transformative (22 per cent), Med-Arb (21 per cent) and Restorative (17 per cent). Half the respondents are coaching new students and mentoring new mediators. Mediators find most work in the following settings: family and divorce, court, workplace, community, coaching, contracts and government.

Those with C. Med designations are working in the following settings: workplace, family and divorce, court, community, contracts and coaching. The highest roster appointments are in Alberta Civil Mediation, Alberta Family Mediation, Provincial Police Complaints Mediation and Better Business Bureau.

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We hear from our mediators, anecdotally, that other private sector opportunities exist. There seems to be a growing interest in dispute resolution in some sectors, for example in the growth of divorce companies that provide mediation or quasi-mediation services. Various employee assistant providers have rosters of conflict resolution specialists that can be called upon to provide assistance in workplaces. The federal government's Specialized Organizational Services office has recently been contacting some Alberta mediators to join a roster of conflict resolution specialists to provide services on a contract basis to various departments.

So while there seems to be a growing interest in mediation, it is difficult to get statistical confirmation. We've heard from our survey respondents, but there are other mediators in Alberta who are not members of ADRIA or any ADR professional association, and we are not clear about the type of work they do, the amount of work they receive, and how they are compensated. This is an area of opportunity to further explore.

While there are a number of governmental and private sector rosters of mediators, being on those rosters does not guarantee work.

10. Education, Training and Designations

ADRIA is a professional membership organization for ADR practitioners in Alberta, and an affiliate of the ADR Institute of Canada (ADRIC). Secondarily, ADRIA provides professional development to its members, including training in communication, negotiation, mediation and other areas. ADRIA also collaborates with other educational institutions regarding mediation training and skill development, assessment requirements, and ways to ensure public is well served by competent mediators.

ADRIC offers mediators two national designations that reflect experience, education and skill. The Qualified Mediator (Q. Med) designation is attainable after 80 hours of related education and minimal experience, and the Chartered Mediator (C. Med) designation is attainable after 180 hour of education, a formal assessment of skills, and more extensive experience mediating. According to the ADRIC website[18],

> "These designations allow our members to convey their level of experience and skill to prospective users of their services based on an objective third party assessment.
>
> Users of ADR services or lawyers and other professionals referring clients feel confident knowing that when they choose an ADR professional with a designation granted by ADR Canada they are choosing an individual whose performance has been reviewed and assessed by a committee of senior and respected practitioners who have verified that the professional is working at a particular level.
>
> Highly experienced members can apply for the Chartered Mediator (C. Med) and the Chartered Arbitrator (C. Arb), designations. These designations are known and respected across Canada and internationally. These are the most senior designation offered by the Institute."

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Provincially and nationally within the ADR community, designations are seen not only as a way of recognizing skill, experience and training, but as a way to protect the public using services of an unregulated profession. However, our research indicates designations are not recognized by the public, government or mediator service providers as necessary or a priority. To maintain designations mediators must assemble continuous education credits and remain active in the field. To be a member of ADRIC/ADRIA practitioners agree to adhere to the respective organizations' Code of Ethics and Standards of Practice. Further, the organizations have robust complaints policies to provide ADR services users with an avenue to register complaints against members. Finally, a mediator can only maintain his or her designations by being a member of ADRIC and, in the case of Alberta, ADRIA.

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[18] www.adric.ca

About 45 per cent of ADRIA's full members hold a mediation designation (23 per cent Chartered and 22 per cent Qualified). And although ADRIA members comprise about 19 per cent of ADRIC's members, Alberta's mediators hold 35 per cent of the national designations. Paradoxically, however, very few organizations surveyed by the task force require their mediators to hold designations.

Where to get mediation training?

It is vitally important students receive training that applies to the area they plan to work in. Students need to discern whether their training is focused on teaching skill development to use personally or in a specific workplace setting, or whether it is designed to provide the skill development and knowledge to mediate professionally. Some programs equip the learner to support clients in specified areas of dispute such as family, labor, environment, or as part of one's overall knowledge to work as a lawyer. In addition, mediation training can support the knowledge needed to co-ordinate dispute resolution programs through the courts, government programs and non-profit agencies.

Education available in Alberta that qualifies for the educational requirement of designations:

- ADRIA;
- Justice Institute of BC - Certificate in Conflict Resolution, Business and Management Programs at the University of Calgary;
- Mount Royal University, Calgary - Conflict Resolution Program.

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Other institutions that offer some conflict management training:

- Northern Alberta Institute of Technology (NAIT), Edmonton (Business and Leadership Training);
- Southern Alberta Institute of Technology (SAIT) Construction Project Management and Applied Management Certificate Programs;
- University of Alberta (U of A) Business Program, MBA Program;
- Legal Education Society of Alberta (LESA);
- MacEwan University - Conflict Resolution Certificate Program in partnership with the Canadian Institute for Conflict Resolution (St. Paul's University in Ottawa). This program has not been offered in recent years;
- Various private organizations, workplaces and individuals.

Professional Designations and Qualifications in Alberta

- Chartered Mediator (C. Med)
    - 180 hours of education including a 40-hour pre-approved mediation course; reference letters; practical experience of 15 solo, fee-paid mediations; a skills assessment; and sometimes an interview.
- Qualified Mediator (Q. Med)

- 80 hours of education including a 40-hour pre-approved mediation course; reference letters; practical experience of two solo mediations with a 300-word summary of each mediation, or two successful role-play mediations evaluated by a chartered mediator, or a formal Assessment and one of either a solo mediation and written report or a successful role play evaluation.
- Certified Family Mediator University degree; 80 hours of education including 40 hours training in family mediation; 14 hours of training in domestic violence; and 26 hours of training in family mediation skills; reference letters.

> In its annual report on "Best Jobs" on December 19, 2007, U.S. News and World Reports included for the first (and so far, only) time, "Mediator," stating: mediators love their work, helping people beat their swords into plowshares. The problem is that there are more mediators than jobs. In part, this is because the barriers are so low—most mediators are required only to complete a 30-to-40 hour training course.
> Engaging Conflict for Fun and Profit: Current and Emerging Career Trends in Conflict Resolution Robert J. Rhudy – March 2014

The Chartered Mediator designation requires more training and higher levels of integration and competency to achieve the designation. Skill levels are higher and the overall experience and general knowledge is greater with those who hold this designation.

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Registered Family Mediators are trained in mediation and also have other specialized training in the areas of family and family law.

Controversy Regarding the Qualified Mediator designation

The designation of Qualified Mediator has been a hotly debated topic at both the national and provincial level. Proponents say the qualified designation is useful as a secondary qualification to those working in a profession, such as Human Resources or Law. The ADRIC website[19] describes the designation as "an intermediate step for mediators working to receive their Chartered Mediator designation. The credential will assist the public to select a mediator who has been reviewed to determine if that mediator is qualified *by training* to conduct mediations." The designation also recognizes that it is difficult to mediate the required 15 solo, paid mediations necessary for the C. Med without a post-nominal after a new mediator's name.

Critics of the designation ask whether the "qualified" descriptor is misleading to the public who would not necessarily understand the Q. Med has received minimal training and may not have mediated a real case. They ask whether awarding the designation sends potential consumers a realistic message about the education, experience and skill levels to adequately mediate life altering situations. Does it suggest mediation can easily be accomplished with 10 days of training? Does it make it easier for people to take minimal training, call themselves a mediator, and mediate within their own professions with little requirement to integrate the

[19] www.adric.ca

principles and values of the profession? Finally, critics ask what other profession allows for "staged" designations. If a qualified mediator is practicing to become a chartered mediator, as is indicated on the ADRIC website, then the title given the mediator needs to reflect that.

The ADRIA Board of Directors, as part of its strategic plan, recognizes the importance of the Q. Med designation as a secondary qualification for those already in a profession, and as a stepping stone to the C. Med designation for those who want to mediate professionally.

Mediation Training Programs (historically)

Training in mediation and conflict resolution skills, like in any other profession, is costly. It will cost students taking ADRIA's Communication in ADR course and the National Introductory Mediation Course $5,000. There are only a handful of educational institutions in Alberta that offer ADR and mediation training. None offer an undergraduate degree or post-graduate credit program in ADR. ADRIC has recently provided a National Introductory Mediation course for use across the country.

Based on information provided by instructors of these programs, the main training certificate programs in Western Canada traditionally had close standardization of course training hours, and similar content. If student assessment was required, the competency and scoring rubric was similar. Past training offered by the Alberta Arbitration and Mediation Society as well as the Justice Institute of British Columbia required completion of a series of about 11-13 courses that were two to four days in length (averaging 220 hours total). Receipt of a Certificate in Conflict Management by various training programs in Western Canada also required achieving a competent standing in demonstrated mediation and negotiation assessments. This provided a standard assurance of well-rounded integration of skills, concepts, and application of processes. This training qualified as the educational component in the requirements for the Chartered Designation. The C. Med candidate then needed to obtain experience and references and to apply for the designation within a two-year time frame.

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Mediation Training Programs (today)

Recently ADRIA changed its training program to a five-day Communications in ADR course followed by a sixth day of evaluation, and the five-day National Introductory Mediation Training followed by a sixth day of skill evaluation. ADRIA adopted the national mediation program to support consistency and educational standards nationally for credentialing. (Q. Med, C. Med). These workshops pull highlights of concepts, skills and the model from the former workshops. The final evaluation looks to determine if the student understands the concepts and can demonstrate at a reasonable level what can be expected from five days of training. Because of the learning curve of comprehension and the minimal opportunity for practical roleplay experience in those two workshops, students are not assessed on integrated skill development.

Critics of the condensed training say it has diluted the overall depth of integration and well-rounded knowledge. Students completing the introductory training are advised that they are not yet ready to mediate, that they need to practice, co-mediate, be mentored and so on before taking on real mediations.

While critics argue the number of training hours is inadequate to prepare a student to mediate, ADRIA's standards are tougher than many other affiliates in Canada. ADRIA has added a day to the National Mediation course and requires students complete the 40-hour Communications in ADR course as a pre-requisite. Other provinces do not.

With this 80-hour training, students have fulfilled the educational requirement for Q. Med designation. Many students are applying for Q. Med. designations as evidenced in the April 2015 round of applicants. Of 24 applicants, 20 were for the Q. Med and four for the C. Med designation.

The task force survey, research and feedback tell us that training programs are not consistent across the province or across Canada. ADRIA's experience is that this relative inconsistency in the programs is confusing students in planning their careers, with many opting for shortened and cheaper programs over robust training. This has the potential to dilute standards of mediation practice across the country.

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Conclusions:

As stated elsewhere in this paper, there are benefits to mediators providing pro bono services in terms of contributing to society and gaining experience. At the same time there are ripple effects that can profoundly impact the profession. Students wanting to mediate professionally, competently and with strict adherence to ADRIC's/ADRIA's code of ethics, will pay thousands of dollars for training and spend hundreds of hours practicing their skills. For those wanting designations as a concrete demonstration of their training, skill and experience, there are additional costs. To then discover their skill set is desirable, but only on a volunteer basis, is frustrating and disheartening. Why get a designation if it is not recognized or appreciated by mediation service providers, and the differences between Q. Med and C. Med is not understood by the public?

Institutions providing training may ask themselves whether it remains viable to do so when students leaving the programs are finding it difficult obtain paid, meaningful work. Are they misleading students about the viability of the mediation profession by offering the training?

At the same time students also need to take responsibility for researching the market, putting together a business plan, networking and marketing themselves to launch their ADR business. Training in mediation does not guarantee employment in the field and nor should the training providers be expected to find work for their

students. Many who enter the field do so later in their working careers, bringing considerable life, technical experience and maturity to the profession. They often look at mediation as a second, or secondary career.

On a positive note, feedback from those who have taken ADRIA's training is that even if they never formally mediate a day in their lives, they have learned something life changing and useful in both their personal and professional life.

11. Public Awareness and Attitudes

Public awareness of mediation as a profession is arguably very low, although many have been exposed to or made aware of mediation through some form of personal experience. Such exposure, however, was likely limited to a single sector of their public or private life: a workplace conflict, family separation, warranty program, construction or contract dispute. Broadly speaking, the mediation process, its wide range of applications, its benefits, and knowing who can provide mediation services, are not well understood by the general public. This is, in part, because of conflicting information provided by the various professional communities and organizations that provide conflict resolution services that include mediation options.

Truth draft

Many studies have concluded that "[20]court-ordered mediation, as well as mediation generally, is overwhelmingly provided primarily by lawyers." If not drawn from the legal community, then mediators "[21] often are non-lawyer professionals such as engineers and architects in construction disputes, accountants in financial and contractual cases, social workers and psychologists in family matters." Practitioners and the public struggle with the question of whether mediation is a "field" or a "profession."

Each professional group understandably defines and markets those mediation practices that best suit their needs or niche market, and the public are not presented with a consistent or unified picture of mediation as a profession unto itself. This is supported within this White Paper by findings that suggest mediation often serves as a secondary practice within a primary occupation, and that mediation alone does not provide a professional income.

Compounding this public awareness challenge, mediators themselves "do not share a common understanding of the language they use. To Illustrate, most mediators define their role as facilitative, however, in some instances "facilitative" was linked to the management of process, in others it was about enhancing communication between the parties, and in still others it had to do with resolving the

[20] Engaging Conflict for Fun and Profit: Current and Emerging Career Trends in Conflict Resolution Robert J. Rhudy – March 2014

[21] Regulation of Dispute Resolution in the United States of America: From the Formal to the Informal to the 'Semi-formal', Carrie Menkel-Meadow 2003) p 44.

dispute."(Source to be added) With conflicting messages from the various professional communities, and from within the mediation community itself, it stands to reason that public awareness, attitudes and understanding of the mediation sector is lacking. As an additional consideration, barriers to entering the mediation profession are low, with no legislated requirements for training, professional membership or credentials. As an unregulated profession or activity, there is no overarching voice for mediation in Alberta, nor elsewhere in North America or abroad. In this absence the public only hears discordant messages, if they hear anything at all.

While the US is a more litigious society than Canada, it remains startling to learn that in one US study with 400 respondents, "only two .... mentioned mediation as a possible means of resolving disputes, and neither spoke positively about it." (source to be added) This is juxtaposed against overwhelming evidence that ADR and mediation provide better, more timely and less-costly outcomes, while often preserving important relationships. In Canada and elsewhere, the advice most often given to those in a business conflict or facing family separation is to "get a good lawyer", instead of to "seek out a good mediator." (Source to be added) In describing some alternative forms of justice, Lauren Abramson said: "We are seeking to shift people from a culture that is focused on punishment in a win-lose system, to one that is focused on accountability in a win-win system." (Source to be added) The public is not aware of, and needs to hear more about mediation services, outcomes and the value that professional mediators provide. Public awareness of ADR Professional Associations such as ADRIA and the AFMS, as well as national training standards and credentials, is even lower. The mediation profession needs to demonstrate, and the public needs to be aware, that there is a "powerful business case for how the conflict field and practice contributes to organizational effectiveness and efficiency." (Source to be added) The role of a Mediator as a highly skilled and capable professional needs to be communicated. Cultural change is a long process, best led by a unified body speaking for the profession, and using consistent and understandable language. The profession still needs to communicate its worth to the public because, despite its long history in Alberta, the average Albertan does not recognize the generalist mediator as a professional, comparable to other competing professions, many of whom also offer mediation services.

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12. Advocacy

One of the key areas the task force was asked to tackle was to *provide possible approaches and strategies for ADRIA Board consideration to effectively and appropriately advocate for ADRIA members moving forward.*

Wikipedia describes 'advocacy' as a political process by an individual or group which aims to influence decisions within political, economic, and social systems and institutions. Advocacy can include many activities a person or organization undertakes including media campaigns, public speaking, commissioning and publishing research.

Professional Organization Survey:
In an effort to learn from others, the task force conducted a survey of professional organizations to see what other professions were doing. (See Appendix H) Of the eight respondents, some regulated and some not, advocacy generally fell into the following categories:

- **Public and media relations** (Promoting recognition of the profession, designations, and public awareness; promoting professional quality standards and access to services provided by members);
- **Influencing and liaising with Government** (Promoting the credentialing/regulation of the profession); and
- **Membership Communications** (Educating and supporting members in developing understanding about matters that impact them and the profession)

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ADRIA's Advocacy Activities include:

Working with the ADR Institute of Canada (ADRIC) by:

- Participating in the following committees
  - National Insurance Committee
  - National Conference Committee
  - National Information Technology Committee
  - National Marketing & Membership Committee
    - Corporate, Organizational and Educational Membership Subcommittee
    - Designation Marketing Subcommittee
    - Roster Development Subcommittee

Contributing to the following ADRIC initiatives

- National Introductory Mediation & Arbitration Courses
- ADRIA President and Executive Director participation in the ADRIC and Affiliates Presidents' Round Table
- ADRIA co-chairing a Task Force reviewing the Memorandum of

Understandings between ADRIC and its Affiliates
- Advocacy Committee initiative

Working with other Alberta Organizations:
- Reforming the Family Justice System (RFJS) initiative
- Conflict Resolution Day Planning Committee
- Government of Alberta Municipal Dispute Resolution Services (MDRS) Advisory Group
- Government of Alberta Dispute Resolution Network
- Peer Mediation and Skills Training (PMAST Calgary)
- Alberta Restorative Justice Association (ARJA)
- Alberta Family Mediation Society (AFMS)
- Community mediation programs (e.g., Mediation and Restorative Justice Centre (MRJC) and Community Mediation Calgary Society (CMCS))
- Universities and Colleges (Royal Roads University, Mount Royal University, MacEwan University, Concordia University, University of Calgary)
- Native Counseling Services of Alberta (NCSA)
- Alberta Law Reform Institute (ALRI)
- Alberta Culture and Tourism – Board Development Program (BDP)
- Service Alberta – Societies Registry

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In 2015 ADRIA increased efforts to provide support for ADR initiatives and policy development within the provincial government. ADRIA has participated in the *Condominium Property Act* (CPA) review team to support ADR in Condominium disputes. Both board and staff are involved in the *Reforming the Family Justice System Initiative* by contributing to key committees looking at working how to effect system-wide change in the family justice system. The purpose of the initiative is to help Alberta families settle their disputes in ways they can afford, and to protect the needs of their children. This work serves our members by providing their voice in ADR policy-related initiatives that will impact the use and practice of ADR in our communities.

What did we hear from Alberta respondents to the Mediator Survey?

There were 52 responses to **Q48**: What could have been done to promote Mediation as a viable profession by your ADR Professional Association(s), and 46 responses to **Q54:** What are your recommendations regarding the Advocacy role that your ADR Professional Association (ADRIA) should play in promoting ADR/Mediation in the Province?

Key themes

- **PR and Education:** The most frequent suggestion (more than 40 per cent of respondents in Q48 and more than 30 per cent in Q54) was for ADRIA to actively promote ADR (the profession) and educate the public and

businesses, government, legal community, etc. on ADR services and the advantages and benefits of ADR by:

- Communicating the benefits of mediation and ADR practices (speed, confidentiality, cost savings, etc.)
- Providing infomercial online for public education on mediation (provide hard information)
- Inviting endorsements from people that have benefited from mediation
- Putting an advocacy plan in place and advertise the ADR profession (including correcting misconceptions about mediation)
- Lobbying the courts to focus on third party mediators as a solution to overcrowding of the court system

- **Compensation for Mediators**: lobby the provincial government to increase compensation for mediators working within the Provincial Small Claims Mediation Program and the Family Justice Services mediation roster
  - Roster rates need to be more in line with marketplace (discontinue provision of mediation services on a pro bono and low bono basis)
  - Seek transparency with regards to success rates and cost savings of mediation

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- **Roster Development**
  - Provide different rosters for people with different training and backgrounds, such as rosters for mediators with nursing or engineering backgrounds, etc.
  - Provide equal opportunity for members to participate in roster programs and transparent, fair referral processes
- **Pursue regulation of the profession** (licensing or mandatory certification) and advocate for requirements in training and qualifications
- **Mentoring**
  - Provide mentoring programs for new and inexperienced mediators as a way of getting experience.
  - Provide advanced mentoring
  - Be more upfront when providing mediation courses, that this is not a likely pathway to a career due to the lack of work

- **Alliancing with other Associations**
    - AFMS and ADRIA should combine

Note: When looking at the survey results from mediators in other provinces (28 responded to Q48 and 30 to Q54) there were generally similar themes.

13. Conclusion

The literature and surveys reviewed strongly support mediation as a cost and time effective way to approach dispute resolution in many different forums. Mediation is also reported to have a number of positive psychosocial outcomes including maintaining relationships.

In recent history many governments, in Canada and beyond, have adopted mediation and ADR through policy or legal process in order to achieve some of these benefits – with varying degrees of success. As noted elsewhere, while some mediators have made mediation a viable career and livelihood, many more have not and are seeking more mediation work. One factor that seems to have had a restraining influence on the use and compensation levels of mediation is the historical beginnings of mediation that relied heavily on volunteers, as well as the continued expectation in some quarters that mediators should volunteer their time. Another may be that mediation, being a secondary profession for many or as a supplement to another profession, notably law, has diminished understanding of the need and value of training, quality assurance and credentialing to mediate professionally. Despite these challenges, mediation training in Canada has evolved and a credentialing system is now in place to support service quality for the benefit of consumers.

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So to pose the same question that the European Union researchers voiced:

In the face of all of the benefits to be gained from mediation, the question remains: Why is mediation not a more obvious choice in Alberta?

The time is ripe for ADRIA and ADRIC to take a leadership role in advancing the mediation profession, creating a win-win outcome for its members, the profession, and service users.

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